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Winter  
2020



Institute of Seatransport

海運學會

# SEAVIEW

# 海運季刊

JOURNAL OF THE INSTITUTE OF SEATRANSPORT

**Cancellation of Crew Change Policy is good  
for Maritime Industry in COVID-19?**

**粵港澳大灣區海事教育合作探索**



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# Embracing blockchain technology in shipping industry: Motivators and Challenges

*Carmen Sum / Helen Wong / Kenneth Lo*

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## ***Blockchain Technology***

The technological industry keeps launching innovations to enhance business operations and improve people's quality of life. Blockchain technology is one of the creations receiving attention from governments and enterprises. It is a distributed ledger technology (DLT) involving computational techniques linking and storing digital information in a database.

Blockchain technology was used initially in the financial industry. Its first generation works well for the digital currency, and its applications are evolving. The second generation focuses on assets and trust agreement – smart contract. The next revolution will emphasise on the criticism about scaling, transaction processing time, and bottlenecking issues. The potential and benefits of blockchain technology are enormous and expected to contribute to the business processes for various industries. This technology is penetrating other sectors, and the shipping industry is the early adopter.

## ***Blockchain Technology and Shipping Industry***

The shipping industry is taking the second lead to the adoption of blockchain technology in operations. Maersk Group and IBM cooperated and developed a blockchain platform, TradeLens, which is used as the foundation for digital supply chains. It establishes a single shared view of each transaction with details, data privacy, and confidentiality for the trading parties to access and collaborate. More than a hundred organisations from third-party logistics, inland and intermodal providers, ports, terminals, and ocean carriers, are involved or participated in this platform. They could interact efficiently with real-time access to accurate shipping documents. Modern Terminals Limited, Hong Kong's second-largest container terminal, is one of the network members of TradeLens.

PSA International also joined the TradeLens network, while it has developed a rival Global eTrade Services (GeTS) blockchain platform after acquiring Crimson Logic. Some port operators and global carriers also signed a shareholders

agreement, Global Shipping Business Network (GSBN), to develop blockchain technology in the shipping industry. Involved parties include CMA CGM, COSCO Shipping Lines, DP World, Hapag-Lloyd, OOCL, COSCO Shipping Ports, Hutchison Ports, Port of Qingdao, and Shanghai International Port Group (SIPG). CargoSmart and Kerry Logistics also worked with Deloitte to employ blockchain technology to facilitate the documentation process. A blockchain platform, BDTS, was also developed by CargoX to enhance traffic-related documentations by smart contracts. Mercuria, likewise, partnered with ING and Societe Generale to develop blockchain technology for the shipping business.

### ***Pull and Push Motivators***

The blockchain technology evolves as a gamechanger to transform the shipping industry efficiently and responsibly. Employing this initiative will generate substantial administrative savings, improve operational efficiency, increase the documents and transaction processing time, enable real-time updates, enhance trust and transparency, and facilitate authentication for avoiding fraud and counterfeits. When some key industrial players adopt

blockchain technology in the shipping industry, other channel parties may have the interest to follow the norm and join the network. They are kinds of pull factors attracting the adoption of blockchain technology in the shipping sector.

Another appealing factor is government support. Blockchain technology was proposed as one of the project initiatives under “Smart Living” in the Hong Kong Smart City Blueprint drafted in 2017. At this moment, the focus of the blueprint is placed on its implementation in cryptocurrency and the financial industry. The Government of Hong Kong Special Administrative Region (The HKSAR Government) is exploring the adoption of blockchain technology in the public sectors with some pilot projects and initiatives. The Innovation and Technology Commission is supporting the research and development work in DLTs and blockchain through various funding schemes under the Innovation and Technology Fund (ITF). Moreover, Cyberport keeps organising workshops and talks about blockchain for start-ups, students, and industry parties. The Hong Kong Blockchain Week 2020 will be organised with NexChange as well. All these initiatives would encourage the industrial parties to adopt.



On the other hand, climate change and coronavirus outbreak are pushing the industry to leverage technological innovations to adapt to the new normal. For overcoming the unpredictable challenge, the industry players have to stay undisrupted to transport medical supplies, food, health protection goods, and energy to keep the wheels turning for the community. They have to be adaptable and agile in uncharted waters meanwhile be responsible for climate change, which calls for a revolution in the global shipping industry. Blockchain is one of the innovations contributing to this move. However, not all industrial players are heading to this technology.

### ***Challenges***

The shipping industry welcomes the adoption of blockchain technology in business, but some industrial players hesitate to embrace it in place because of the regulatory issues. An effective regulatory regime or legislation is critical to the successful application of technological innovation like blockchain. However, there is currently no legal framework on DLTs or blockchain in Hong Kong. The legislative council has yet to pass any laws to govern the adoption of blockchain in any industries and protect user rights in using it. As a kind

of innovation, blockchain technology will also undergo an iterative process. A clearer picture of the development is needed for any authority or council to take a stance and plan ahead. The governance issues may include:

- the number of participants in the blockchain network
- the consistency in the validation of transaction records and the encryption process
- the trusted portals for presenting trades
- the basic requirements for transaction information
- the technical and security standard for encryption
- the obligations to the security and technological capabilities
- the regulations on information and content publications
- the property rights and tax regulations

Although regulation is recommended, the industry is fearful of overregulation,

and that hinders the investment and deployment of blockchain technology. It is also a dilemma to the regulatory authority to find a balance that could encourage blockchain adoption while regulating the market. China, Japan, US, UK, Singapore, and South Korea have taken different approaches to regulating DLTs and its adoption in the market, which could be a reference to the HKSAR Government for consideration.

### ***The Way Forward***

The successful adoption of an innovation in business needs the involvement of different parties, for instance, industrial parties, technology firms, final users, the government and regulatory departments, research institutions and universities. Their voice and suggestions have to be taken into consideration for facilitating the adoption of blockchain technology in the shipping industry. Using cases from other sectors, countries, or regions can be referenced for fostering the adopting of blockchain technology in the industry.

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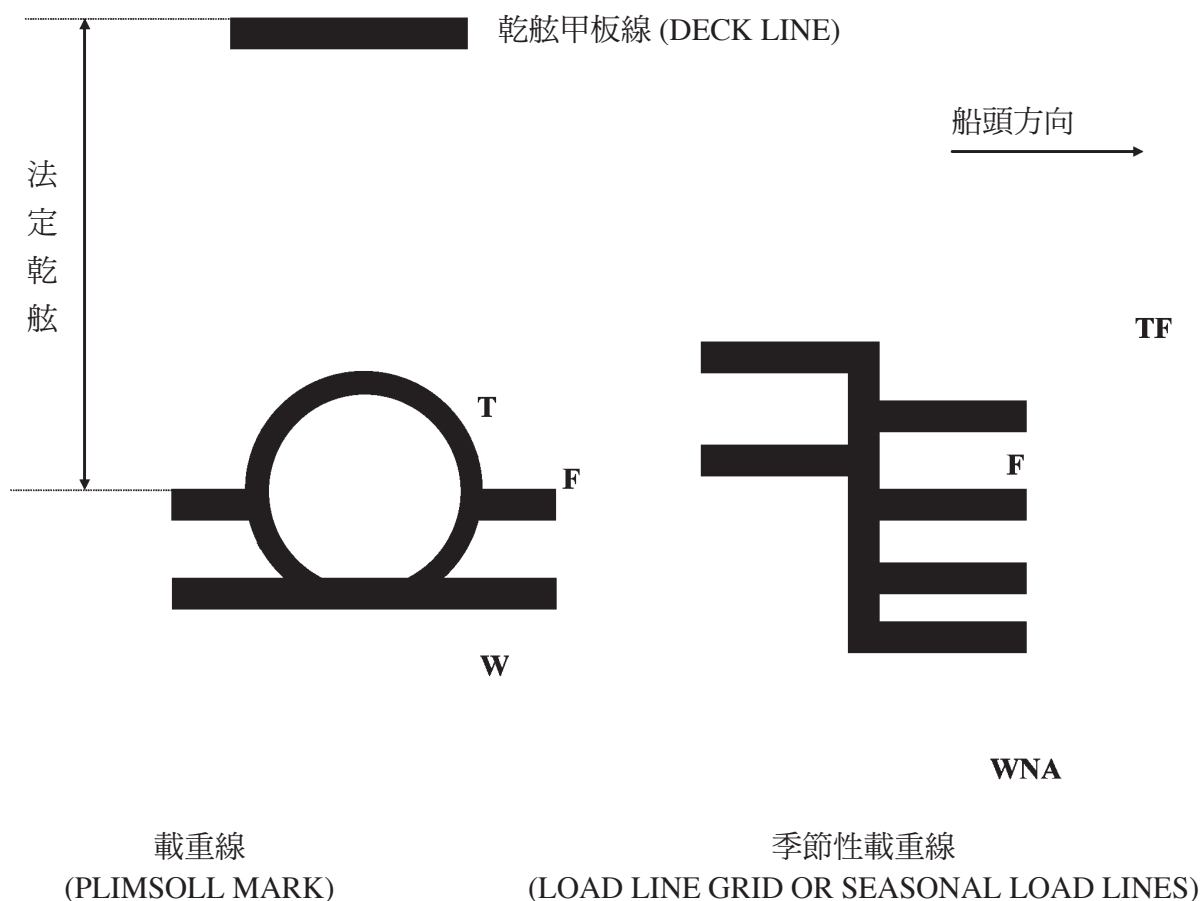
### 載重線的介紹

載重量和滿載排水量是以夏季吃水為根基的，究竟這個夏季吃水是什麼一回事？相信任職航海副長或船長的人士，對此點是一點也不陌生的。

一艘商船如何界定她的載重量呢？商船建成後，由船級社 (CLASSIFICATION SOCIETIES) 或政府驗船師根據國際載重

線公約的條文，而給與該船的法定乾舷 (STATUTORY FREEBOARD)。這法定乾舷就是界定載重線的位置，而刻在輪船兩舷的中部，輪船便需要以這載重線為依歸來裝運貨物才不致超載。

載重線的位置也就是輪船可達到最大吃水的浸度。但為什麼要說夏季吃水線呢？相信你們曾經看過輪船兩舷的載重線的標誌吧（如下圖）：



圖一：商船的載重線（右舷）。每條線的寬度是 25 毫米。

季節性載重線向船頭方向的字母 T 表示熱帶海水，S 是夏季海水，W 是冬季海水，WNA 是北大西洋冬季海水載重線；向船尾方向的 T F 表示熱帶淡水，F 是淡水載重線。WNA 載重線祇在輪船長度 100 米或以下的船舶才刻有的。

在船舶建造學上，海水的密度是每立方米 1025 公斤，而淡水是每立方米 1000 公斤。因此，F 和 S 之間的垂直距離便相等於一個比重計，輪船浮在不同密度的水中是自會調整的，假如排水量保持不變的話。

法定乾舷是由乾舷甲板上緣邊，量度至通過圓圈中心的載重線的上緣邊。此條載重線的上緣邊是通過圓圈的中心，並且和季節性載重線上的夏季（S）線的上緣邊同一水平的。

那麼，為什麼要把載重線分為不同季節性的呢？若你張開載重線圖時，會發現整個地球的海洋被劃分為很多個區域，這些區域是因應該地每年大風的比率，經過長時期觀察錄得而區劃出夏季、冬季、熱帶區域和季節時期。詳細細則詳載於國際載重線公約內。

公約內規定季節性區域的劃分如下：

夏季：蒲福氏 8 級（34 節）或以上的風力不超過 10%；

熱帶：蒲福氏 8 級（34 節）或以上的風力不超過 1%，於十年任何一單獨月份內在 5° 平方區域內，熱帶風暴不會多於一次。

## 如何使用載重線

當輪船在每個海區及其季節時期，水線（吃水）只可浸到該季節性載重線的上緣邊。例如，當海水密度是每立方米 1025 公斤時，載重到夏季載重線，即水線只可浸到 S 線的上緣邊。如海水密度是每立方米 1000 公斤時，則水線可浸至 F 線的上緣邊。介於 1025 和 1000 的海水密度時，可用公式算出 S 線上的可浸量（DOCK WATER ALLOWANCE）。其他海區和季節時期的應用，也是基於相同的道理。

## 雙重季節時期

在同一海區內，有些是劃分了兩個季節期的，例如在每年 X 月 X 日至 Y 月 Y 日該海區被定為夏季區域，其餘的日子則被定為冬季區域。當輪船在指定的季節時期，在相應的海區內，其水線不應浸至超出該海區和季節時期所規定的載重線，否則便是超載。

## 分界港（BOUNDARY PORT）

載重線圖上劃分的海區，在兩個海區相連的港口，被定為分界港。香港港口便是其中之一，它是位於季節性熱帶區域和夏季區域之間。

輪船位於分界港內如何應用那一條季節性載重線？現舉一例子以說明之。

你可在載重線圖上清楚地獲悉：介於每年一月廿一日至四月卅日期內，由香港南下是熱帶海區，北上為夏季海區；而由五月一日至下年一月廿日，南下為夏季海區，北上也是夏季海區。



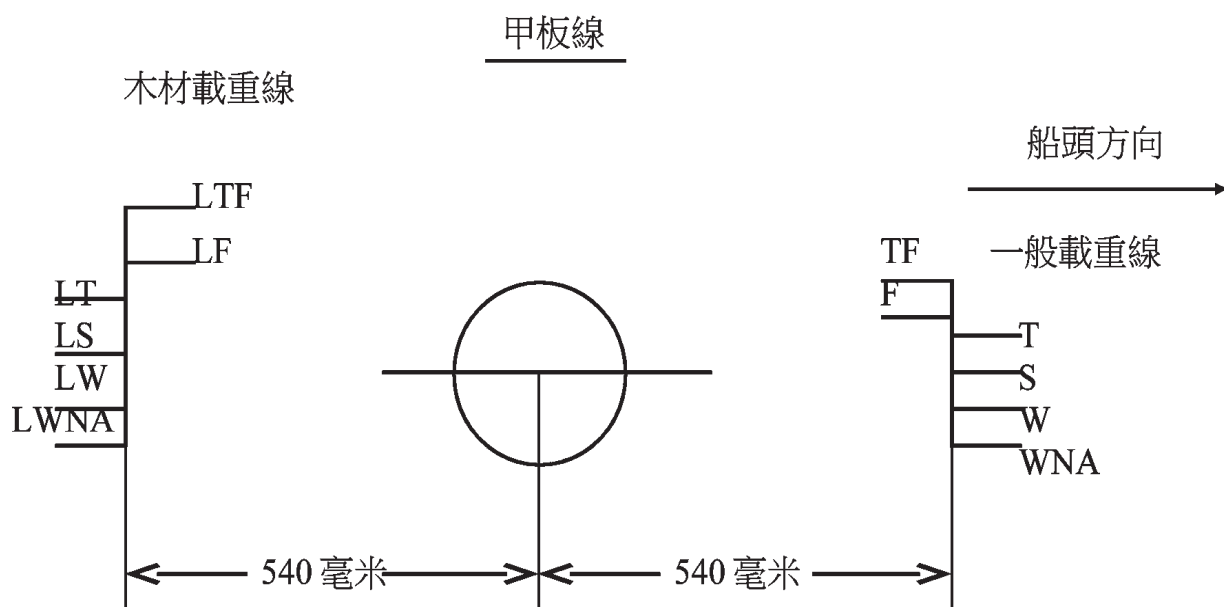
在香港港口裝貨，如北上運往日本，只可使用夏季載重線。若南下運往新加坡，又適值是一月廿一日至四月卅日期內，便可應用熱帶載重線；到了五月一日，那只能應用夏季載重線了。

由這個說明，你可意會到，介於一月廿一日至四月卅日期內，運貨往新加坡是

可以比其他日子運得多些。

## 木材載重線

有些商船除了刻有前述的載重線外，如在設計、建造上符合公約是有關木材乾舷的規定，因而另外也給與木材載重線，見圖二。



圖二：刻在右舷的載重線

木材載重線是用多一個字母 L（LUMBER 即木材）表示，它們的應用與季節性的海區和時期與一般的規定無異。

如果輪船只是裝載木材，木材佔盡了所有船艙的容積，而還未能達到輪船的載重噸，因而輪船被允許把木材裝載在露天甲板上。如裝載適當的話，木材本身能提供良好的浮力，所以輪船可被允許吃水深

些，這是為什麼會有木材載重線的規定。因為木材乾舷是比法定乾舷少，說明了輪船可以吃水深些。

若輪船只在貨艙內裝載木材，她只能應用一般的載重線，即是她不能獲得木材載重線的好處。但是，如她按照規例來裝運木材於露天甲板上，她是可以允許多裝木材直至適當的木材季節性載重線為止。

木材載重線的應用，必需依照國際海事組織定下的有關輪船載運木材的安全操作法則 (CODE OF SAFE PRACTICE FOR SHIPS CARRYING TIMBER DECK CARGO)，或英國 - 商船 (載重線) (甲板貨物) 規例 (UK-MERCHANT SHIPPING (LOAD LINE) (DECK CARGO) 有關木材裝載高度，安全進入及通道，木材縛扎和加固及用料等。

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( 林傑：退休船長

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## Cancellation of Crew Change Policy is good for Maritime Industry in COVID-19?

*Yui-yip Lau / Helen Wong*

COVID-19 is the infectious disease produced by the coronavirus, SAR-CoV-2, which is a respiratory pathogen. Since 31 December 2019, COVID-19 has spread rapidly and widely throughout different parts of the world. As of 27 October 2020, the World Health Organization (WHO) has discovered almost 44 million confirmed cases of COVID-19, resulting in around 1.2 million deaths.

COVID-19 spreads easily when people are physically close via social gathering, working, studying, travelling, dining, to name but a few. An infected person spreads the disease very easily via aerosols or small droplets. In the maritime industry, seafarers are readily affected by the COVID-19 pandemic due to the following reasons. Firstly, seafarers are highly mobile in that they perform sailing duties in different parts of the world. Secondly, some port authorities and shipping firms have a low awareness of the COVID-19 pandemic. The loose regulations and practices fail to detect the sources of COVID-19. Thirdly, the seafarers lack knowledge and experience in response to infectious diseases. In other words, they have taken relatively low preventive action against COVID-19.

In the recent months, governments and port authorities adopted cancellation of crew change policy. As a result, seafarers suffered depression and mental injury. Their safety and mental health have been under threat. Worse still, some seafarers incline towards suicide, refuse to perform sailing duties, and ending their seagoing careers. Maritime transport is one of the the key pillars of the global economy and international trade. More than 80% of global trade volume and 70% of global trade value are supported by seaborne trade. As expected, the shortage of seafarers adversely affects the vessel's normal operations and as a result of that, the global supply chain system ranging from medical goods and food, to raw materials and energy. Clearly, the cancellation of crew change policy not only affects global economic development, but also impacts on the local communities.

Obviously, cancellation of crew change policy only generates a short term solution in response to COVID-19. In the long-term, we suggest abolishing the cancellation of crew change policy. We suggest some measures to tackle this chaotic situation:

- Governments need to find solutions of crew change from the International Maritime Organization (IMO). There are various professionals and policymakers working in IMO who can generate a framework for solutions;
- Digital medical check solutions which can track crew when disembarking and monitoring big data. It can adopt an Internet of Things (IoT) under Industry 4.0 idea;
- Vessels may remain idle until a peak demand season. Thus, vessels can avoid sailing due to insufficient cargo. In other words, there will be a fewer chance of crew members sailing at sea

and go different parts of the world; and

- Ports may consider assigning medical teams including doctors, nurses, and health professionals in response to vessels arriving at a port.

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2019年初，中央人民政府頒布了《粵港澳大灣區發展綱要》，重申香港作為國際金融、航運、貿易中心的地位。香港擁有高度國際化、法制化的營商環境以及遍佈全球的商業網絡，是全球最自由的經濟體之一。香港與大灣區其他城市文化同源、人脈相親、優勢互補。香港還有許多其他優勢：有利營商的稅收制度、國際公認的法律體系、由高端海運服務商組成的龐大海運集群、獨特的海洋文化和美麗海港以及與國際市場的良好聯繫等。粵港澳大灣區作為中國建設世界級城市群和參與全球競爭的重要空間載體，在國際戰略佈局中具有獨特地位和優勢。

粵港澳大灣區在海事高端教育方面，還有很大的提升空間，應該全面推進香港與粵港澳大灣區其他城市的合作。個人認為，參與大灣區海事高端教育和培訓的建設對有關各方都是互利共贏的好事，將有可能解決香港和其他大灣區城市在海事高端教育發展方面的某些結構性問題，有利於各方的長遠發展。

香港是世界四大船舶註冊，截至2019年底，共有2596艘船舶（包括2387艘遠洋船舶）在香港註冊，共計1.27億總噸。許多世界級的航運公司、船舶管理公司和其他高端海事服務公司都在香港設有總部或分部，為全球客戶提供服務。

雖然香港擁有這些傳統的產業優勢，但海事人才的短缺一直是業界面臨的日益緊迫的問題，已成為香港航運業多年來面臨的重大挑戰。

作為國際航運中心，香港對船上和岸上的海事專業人員都有著巨大的需求。岸上崗位包括技術主管、船隊經理、領航員和其他專業人員，所有這些崗位都需要具備航海經驗的合格專業人員。然而，由於本地海員人數有限而且年齡結構不合理，大部分本地海員已經接近或超過退休年齡。香港航運業不得不依賴外來的退役海員來填補岸上工作崗位的空缺。而作為港口監管機構的香港海事處也面臨著類似的人才後繼乏人的問題。

香港特區政府和業界多年來一直認識到香港海事人才短缺的問題，並推出相應的政策和計劃，支持航運業培養本地人才，其中最重要的是2014年成立的海事及航空訓練基金，用於支持本地的海事及航空培訓和教育。

雖然政府的舉措在一定程度上解決了行業面臨的人才短缺問題，但仍遠遠不能滿足業界的要求。從本質上來說，本地對航海職業感興趣的年輕人嚴重短缺，僅靠本地人才不可能填補這一缺口。今天，大多數服務於香港註冊船舶和香港航運公司的海員都來自國外。

香港本地年輕人加入航運的主要障礙在於工作環境的特點和來自其他行業的競爭。航海職業要求從事航海工作的人長期在海上漂泊。香港的年輕一代很難接受這樣艱苦苛刻的船上工作條件，而他們的家庭、社交活動及個人感情生活都將受到很大的限制和影響。以往航海職業在待遇方面相對具有競爭優勢，是年輕一代加入



這個行業並接受不尋常工作條件的主要動力。然而，如今海員的工資待遇與香港其他行業相比並不具有競爭優勢。而這種現狀在可預見的將來也不可能會有改變。

香港擁有良好的甲板和輪機學員海事培訓設施，也有豐富的培訓知識和經驗，包括本地大學、海事服務培訓機構和香港職業教育學院等都提供這方面的培訓。但他們在招收對這個行業感興趣的本地學生方面面臨困難。這些學校的畢業生尋求航海職業生涯的人數非常有限。截至 2019 年 5 月底，與香港船東和管理公司每年招收數千名畢業生相比，僅有 23 名來自相關專業的畢業生參與了政府海員培訓激勵計劃。

鑒於粵港澳大灣區的資源優勢，個人設想在大灣區某個條件許可的城市設立綜合性的海事教育機構，為海事專業人員提供教育和培訓，為香港航運業服務，支持國家海事發展戰略。可由香港船東及管理公司及其他專業機構代表組成監督機構，確保教育培訓計劃與行業不斷變化的要求密切結合。同時也可為機構未來的畢業生就業提供保障，同時可以考慮與內地的海事大學合作，在申請手續和學歷互認方面提供合作和便利。此外，可以與香港的職業培訓機構合作，共享資源和經驗，採取實踐導向及寓教於學的方式，並以香港海事教育為基本模式。招收學生可來自香港和中國其他地區，也可向「一帶一路」沿線其他國家招生。畢業生將為香港和其他設在大灣區的航運公司服務。課程設計重點應結合扎實的海事知識和船舶操作實際技能，同時考慮到未來的發展趨勢，確保有關課程符合世界標準和最新的行業要求。除了為遠洋海員提供培訓外，有關機構還可為普通海員謀求更高船上職位提供銜接課程，以及提供為幫助海員今後擔任

岸上海事及技術總管等職位的培訓方案，這是目前大部分海運院校所不具備的培訓課程。也可以聘請香港船東和管理公司的人員提供導師服務，以幫助學員取得更有效的學習成果。

為了支持香港的國際航運中心地位和政府發展高附加值海事高端服務的戰略，香港十分需要擁有世界級的綜合性海事教育機構來發展本地海事人才。香港人才儲備有限，土地資源稀缺，但大灣區廣闊的腹地為我們提供了一個獨特的機遇來解決這個問題，通過整合香港和大灣區其他地區的資源，在大灣區各相關城市及香港特區政府及航運界積極合作和支持下，在大灣區建立綜合性的海事教育機構，從香港和香港以外地區招收學生，未來的畢業生可以優先為香港航運業和大灣區其他城市服務，可以緩解香港海運人才儲備的困難，進一步鞏固和發展香港國際航運中心的地位。

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(馮佳培：香港船東會副總監、香港特區政府港口福利委員會 2017-2020 年度主席)



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疫症本文指的是新冠肺炎，下面所述的時間，並沒有嚴格分水嶺，以先後排列。所述乃筆者或親身所歷，或書本所得，或公眾傳媒所得，目的是給大家一個較全面的看法。由於香港乃一小島，資源全賴入口，陸路只有國內，海路只得靠船運，空運極其有限，本文只論船運。

對於船運從業人，疫症並不陌生，在筆者入行時，就要在抵達每一個港口時，懸掛所謂黃旗，意是本船健康要求免檢疫(Quarantine)，當地港口檢疫人員上船，檢查船上有沒有傳染病或老鼠，傳染病主要檢查船員有沒有打針預防當時的流行病，如天花、霍亂等，後期天花絕跡了。船上應持有有效之健康證明書(Ship Sanitary Certificate)，證明船上沒有傳染病的動物媒介、溫床或病人。其中老鼠是一媒介，但似乎不太受重視，也許現在沒有鼠疫，船舶檢疫這任務，一直由香港之“港口檢疫組”(Port Health) -- 衛生署轄下組織進行？疫症前，由於船隻基本上沒有傳染病風險，所以，船隻入港前由船長電傳申述“本船健康”就可。船隻到港，如靠泊碼頭，仍需要在所有系船的纜繩上安放老鼠罩(Rat Guard)。作用不言而喻，防止老鼠，有趣的是，是防牠們上船或落船呢？老鼠一般會趨熱，所以作用很大可能是防止老鼠上船，但對中流作業中遇到的老鼠視乎作用不大，香港十多年前，船舶中流作業比靠碼頭作業更多。所以，防鼠罩我想主要是安慰作用吧！但好多國家會懲罰違例者。

總之，檢疫就是檢測有沒有疫症或風險，從來沒有停止。

疫症初期<sup>(1)</sup>，有不少國家採取鎖國措施，例如拒絕船員過境及船隻在港口供油等所謂的非理性行為。如果每個國家都這樣做，船運不是要停滯了嗎？其實這些國家是把自己國家應盡的責任，推給另一個國家。例如今天大洋洲某國就不允許船員在其國離船或上船。香港地方雖小，卻給予船員在香港“上落船”(經陸，空口岸)的便利。

這些船員，其實還有機師及其他，造成了所謂另一波疫症？由於豁免了他們的入境檢疫措施，令他們可以入境，但卻忽略了他們可能有“疫”的可能。

豁免他們入境，不等如說他們免疫，這事現已亡羊補牢，現在保證了船員在離船至上飛機途中及在香港期間不會有傳播疫症的可能。但是，為什麼最初在豁免時，那些一早行之有效的機制好像又停止了？起碼應做檢查及監視及限制活動範圍，現在只能肯定地說，船員經香港的轉換“上落船”已經做到基本上“水密”了。

另一個問題，在香港不能斷供的前題下，來港船舶如果從事“貨物(Cargo)”操作，可以豁免十四天檢疫期<sup>(2)</sup>。

香港一直以來是個國際的中轉港，很多船隻來香港添加燃料、物品、修理。這類服務，曾是香港重要支柱行業，根據現有法例，上述全部不得豁免。

但對於來港添加燃料的船舶，筆者有以下的看法。貨物乃一綜合名詞，你可以有散裝貨物、貨箱貨物、煤、油等等，這多附合 wiki, merriam-webster 對 cargo 的解釋，除非政府令有針對性的定義。所以船舶來港裝卸油是“貨物”操作之一。在操作層面而言，他們同其它貨物的操作相比疫症風險更小。

入口油船的操作如下，船在錨地或碼頭完成入港手續後，錨地船會由本地邱駁靠泊後，接上輸油管，然後由入口船把油經輸油管泵入油駁。油駁船駛往岸上油庫，把油泵入岸上油庫。

如果香港有油出口，例如待處理的廢油，其操作則會如上，不過是先由岸上油庫把油泵到油駁，由油駁靠上出口船舶，按上輸油管，把油泵上出口船。油管由雙方船各自接駁。安排處理得好，雙方船員根本無須接觸，如果要接觸，也比貨箱作業少很多。

從操作、商業及方面的考慮，船舶來港加油同上述出口油一點也沒有分別。

油駁由岸上油庫接載供給船舶的燃料油，這燃料油對油駁而言不過是一種貨物，至於商業上的 Bill of Lading 提單，Mate Receipt 乃商業文件操作的形式，不應影響疫症的風險，而油駁亦不會有任何困難，如果要安排上述文件，疫症給各界及政府帶來了很多挑戰。

四人或八人在酒吧或餐室多無窮的選擇，我們不應單注意某一操作的風險，我們更應注意及尋找如何減低或去除風險的措施。在這方面，專業團體或個人，商界及從業員們及政府的 professional officer 共同合作應可找到可行之措施，盡快恢復香港經濟活動。

附註：

- (1) 初期，筆者任意指某一時期
- (2) 如果沒有豁免，船舶要同外界隔離 14 天，即 14 天內不能同外界（杭港的人員甚至其他船舶或設施），對船舶造成 14 天停工停入息，無形中一個懲罰，船舶就不會來香港，有關從業員會頓失工作

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(朱志統：peter@southexpress.hk)



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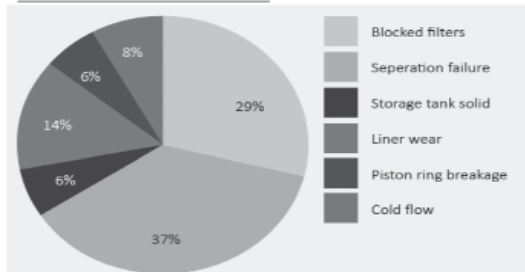
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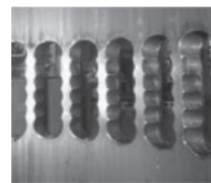
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## HULL INSURANCE CLAUSES - Insured Perils (II)

**Raymond Wong**

*(As noted in Issue 122 the Editor of this column advised he would visit ITC-Hulls 1/10/83 with the assistance of the book "ITC HULLS 1.10.83" which was written by Mr. D. John Wilson who kindly allowed the Editor copyright on his book for any future editions.)*

### **Clause 6 PERILS** (Cont'd from Issue 219)

We come now to another group of perils insured against with the classification 6.2, and it is worth mentioning immediately that loss or damage caused by this particular group of perils is covered only provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers.

It is thought that perils in Group 6.1 are largely beyond the control of the Shipowner, but that he can do much to prevent the operation of perils in this Group 6.2.

The particular perils in this group are:

#### *6.2.1 "Accidents in loading discharging or shifting cargo or fuel"*

This particular wording owed its origin to the case of *Stott (Baltic) Steamers Ltd. v. Marten* (1916), where three heavy boilers were being loaded into a vessel as part of her cargo and one of the boilers

caught on the hatch coaming and fell into the hold of the ship, causing considerable damage. It was held that this damage was not covered under the main body of the policy, nor under the then Inchmaree Clause, whereupon underwriters introduced this particular wording.

#### *6.2.2 "Bursting of boilers breakage of shafts or any latent defect in the machinery or hull"*

##### *"Bursting of boilers breakage of shafts"*

The important thing to note about these two phrases is that if a boiler bursts or a shaft breaks, only the damage resulting to other parts of the ship as a result of the bursting of the boiler or breakage of the shaft is covered. If a claim is to be made for the boiler itself, or the shaft, regard must be had to what was the cause of the boiler bursting or the shaft breaking, and to see whether the cause is covered elsewhere in the policy wording.

This construction was confirmed in the case of *Scindia Steamships (London) Ltd. v. London Assurance* (1936), where the propeller of a ship was being wedged off the tailshaft in drydock, when the tailshaft broke owing to a latent defect in the shaft, and the propeller fell into the drydock. The cost of repairing the damage to the propeller was held to be recoverable as a

loss consequent on “breakage of shafts”, but the cost of renewing the tailshaft itself was not recoverable because it was latently defective and, if the defect had been discovered before the actual breakage, the shaft would have been condemned on that account alone.

*“or any latent defect in the machinery or hull”*

This expression proved extremely troublesome for a great many years (and perhaps it still does!) and a considerable number of important legal cases have been fought to decide exactly what is covered by the expression, (and by the policy).

The word “latent” means concealed, dormant, existing but not developed or manifest, and in the context of the clause, a latent defect is generally regarded as meaning a defect of material in respect either of its original or after acquired condition, and which could not be discovered by a person of competent skill and using ordinary care; alternatively, “a defect or flaw, generally in the metal itself, which could not be discovered by any known and customary test” (Parente v. Bayville Marine Inc. & General Insce. Co. of America - 1975).

A brief resume of some of the important legal cases may give a better idea of what is, and what is not, covered by the expression:

Oceanic Steamship Co. v. Faber (1906)

On drawing the tailshaft of a vessel for examination, a flaw was found, this

being the result of an imperfect weld during manufacture. As a result, the shaft was condemned. It was held that there was no claim for the cost of renewing the shaft as the insurance did not cover the mere discovery of a latent defect and the defect had caused no consequential loss. (This construction is identical with that mentioned above under 6.2.2 in respect of “bursting of boilers and breakage of shafts”).)

Hutchins Brothers v. Royal Exchange Assurance Corp. (1911)

A vessel drydocked and, during the course of painting, the stern frame was found to be cracked. This crack had occurred during building but had been concealed by the makers by filling it up with metal and welding, and then covering with a steel wash. The stern frame was condemned but, again, no claim arose on the policy, effectively because there was no consequential damage; the stern frame was in precisely the same condition as when it was installed, and the only change was that a latent defect had become patent.

C. J. Wills & Sons v. World Marine Insurance Co., Ltd. (1911)

Considerable damage to the hull and machinery of a dredger was caused when the hoisting chain for the buckets broke owing to a latent defect in the weld of one of the links of the chain. The consequential damage to the dredger caused by the falling buckets was recoverable as a loss resulting from a latent defect, though there would be no claim, of course, for the latently defective chain itself.

Stott (Baltic) Steamers Ltd. v. Marten (1916)

This case has been mentioned earlier above under 6.2.1.

Scindia Steamships (London) Ltd. v. London Assurance (1936)

This case has been mentioned earlier above under 6.2.2.

Prudent Tankers v. Dominion Insurance - 1980

In the “Caribbean Sea”, which was considering the assured’s claim for a total loss following the sinking of the vessel, the Court found as a question of fact that the cause of the fatal ingress of sea water was the existence of fatigue cracks in a wedge shaped nozzle between a sea valve and the shell plating. The presence of these cracks was attributed to two factors - the manner in which the ship was designed (viz., the welding of gussets to the nozzle in proximity to another circumferential weld) and the effect upon the nozzle of the ordinary working of the ship. The Court also found that these fractures must have been in existence at the inception of the policies current at the time of the total loss. In considering whether there was a defect in the hull and machinery which directly caused the loss, the judge held that the Court is concerned with the actual state of the hull and machinery and not with the historical reason it has come about that the hull and machinery is in that state. He also held that the condition of the nozzle, which had arisen in part from the ordinary working of the ship, was not ordinary wear

and tear and therefore was not excluded under section 55 of the Marine Insurance Act 1906.

Promet Engineering (Singapore) v. Nichols Colwyn Sturge - 1997

In the “NUKILA” case, in the Court of first instance, there was much debate about what was the latently defective part, and what, if any, was the consequential damage. The case concerned a mobile, self-elevating accommodation and work platform supported on three tubular leg columns. To stop the legs sinking into the seabed there was connected to the bottom end of each leg a 28’ square spudcan - effectively a large steel box. The spudcans were welded circumferentially at top and bottom to the steel legs.

It was in the welds attaching the top plates of the spudcans to the legs that the latent defect existed, the welds had not been properly profiled. The weld was in a location where there was a high stress concentration and an inadequately profiled weld would increase the concentration excessively and be likely to shorten the fatigue life of the structure and lead to fatigue cracking.

For several years from 1983 when she was built the “NUKILA” operated without incident but in 1987 during a routine inspection of the legs and spudcans carried out by divers, serious cracks were noted in the top plates of all three of the spudcans. Closer examination revealed that the metal of the legs themselves also contained serious cracks as did some of the internal



bulkheads of the spudcans. Extensive repairs had to be carried out which were the subject of the claim against insurers on the basis that the cracking in the legs and spudcans was damage caused by a latent defect in the welds.

It was agreed that the welds did constitute a latent defect but Underwriters denied liability on the grounds that there was no consequential damage. The Court of first instance agreed with this view.

The Court of Appeal, however, rejected the arguments put forward in the lower Court, and reversed the decision relying partly on principle but partly also on the authority of previous case law.

According to Lord Justice Hobhouse, there were three questions that needed to be asked:

1. Was there damage to the subject matter insured?
2. Did that damage occur during the period covered by the policy?
3. Was that damage caused by a latent defect in the machinery or hull?

Justice Lord Hobhouse said:

“In my judgement the application of the language of the Inchmaree clause to the facts of the present case is straightforward. At the commencement of the period of cover there was a latent defect in the welds joining the underside of the top-plate of each spudcan to the

external surface of the leg tube. By that time that latent defect had also given rise to minute fatigue cracks in the surface of the tube in the way of the weld which could also properly be described as latent defects. Those features during the period of cover caused extensive fractures in the full thickness of the tube extending in places both above and below the defective weld, extensive fractures in the metal of the top-plating and bulkheads of the spudcans and other fractures at other locations. This was on any ordinary use of language damage to the subject matter insured, the hull etc of the Nukila. It was, as the Judge found, caused by the condition of the Nukila at the commencement of the period, that is to say by the latent defects I have identified. Therefore, subject to authority, the arguments of the owner should be accepted and the claims should succeed.”

Lord Justice Hobhouse felt that the discussion about separate parts disclosed

“a confusion both of thought and language”

He pointed out that the Inchmaree clause does not itself refer to the word “part”.

He went on to say that whilst the word “part” is referred to in the Additional Perils Clauses, it is used only in a context which does not affect the primary question of whether or not there has been damage to the subject matter of the insurance.

After dealing with the principles Lord Justice Hobhouse then proceeded to

demonstrate that the authorities supported him - citing all the preceding leading cases on the subject.

The decision is an important one. Reverting to the example given at the beginning of this subject herein, we have explained what the practice was when a tailshaft broke in two as a result of a latent defect causing the loss of a propeller - the propeller was recoverable but the tailshaft was not since the latter was the latently defective part. This practice was probably based on the decision in Scindia vs. London Assurance Co. - 1937 the last (prior to the “N11KILA”) in a line of cases on the latent defect cover in the Inchmaree clause. That case which actually involved a tailshaft breaking in drydock due to a latent defect as per the example was carefully analysed by the Court of Appeal, and in particular, by Lord Justice Hobhouse. Lord Justice Hobhouse pointed out that in that case the rationale was not that the tailshaft was a separate part from the propeller but that there was no damage to the tailshaft during the currency of the policy. This was because the latent defect in the shaft had progressed to such an extent prior to the inception of the policy that the shaft was already condemnable and therefore, worth no more than scrap at the inception of the policy. It, therefore, fell foul of the second of the three questions referred to by Lord Justice Hobhouse earlier above.

However, on Lord Justice Hobhouse’s analysis there would be a claim for the tailshaft if, at the inception of the policy, the latent defect had not developed to an extent where the shaft was condemnable.

If for example, at inception there was a minor crack on the shaft that, if it had been known about, could have been the subject of a minor repair then the ensuing condemnation of the shaft as a result of the crack developing during the currency of the policy could be characterised as damage. In some cases there will undoubtedly be problems in showing on the balance of probabilities that the damage was sustained during the insured period.

It is, of course, implicit in the decision that the defect must still be latent (i.e. not discoverable by due diligence on the part of the assured) at the inception of the policy but subject to that and provided the criteria set out in the three questions posed by Lord Justice Hobhouse are answered in the affirmative, the Appeal Court in the “NUKILA” case does appear to have extended the cover beyond the practice as it existed in the 60 years prior to this decision.

#### 6.2.3. *“Negligence of Master Officers Crew or Pilots”*

Negligence has been defined in the case of *Blyth v. Birmingham Waterworks* (1856) as:

“Doing something which ought to be done in a different way or not at all, or omitting to do something which ought to be done.”

Were an investigation in depth to be held, it is probable that almost every accident which occurs to a ship could be traced to negligence on the

part of somebody. Most fires result from negligence, e. g. in carelessly disposing of lighted matches or cigarette ends; and most strandings and collisions etc. are the result of negligence on the part of those navigating the ship.

In the particular examples quoted, however, the fire, stranding, or collision is regarded as being the Proximate cause of the Loss (and recoverable as a loss by fire or by perils of the seas) and any negligence is regarded as being only the indirect cause of the casualty, and is accordingly ignored. This is in accordance with Section 55(2) (a) of the Marine Insurance Act 1906, where it is stated:

“The insurer.... is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the.... negligence of the master or crew.”

The wording under present discussion in 6.2.3 is intended to cover, therefore, losses which are proximately caused by negligence of the Master, officers, Crew or Pilots, i.e. where negligence is the only effective cause of the loss, and no other casualty named elsewhere in the policy operates, or results.

The most common examples of claims for negligence occur in the engine-room of the ship and, for instance, the engineers may fail to keep the boilers properly topped up with water, such that they overheat and the furnace crown collapses; or the engineers fail to lubricate machinery adequately such that the bearings and moving parts etc. seize up and are damaged.

Purely for the sake of interest, in the old days, there were few claims for negligence damage. In the first place, the machinery on board ships was far less sophisticated, it ran much more slowly, and had much greater areas of bearing surface; in the second place, no self-respecting shipowner would expect or be prepared to admit that the engineers he employed could be negligent! If they were negligent, their employment was quickly terminated.

In later years, however, attitudes changed and claims for negligence - real or supposed - multiplied to such an extent that, for a number of years, there used to be a stipulation in the policy that 10% of such claims had to be borne by the Shipowners themselves. Only since this set of Institute Time Clauses (1983) has this 10% deduction been withdrawn.

#### 6.2.4 *“Negligence of repairers or charterers provided such repairers or charterers are not an Assured hereunder”*

A number of claims for damage, particularly to machinery, also arise owing to faulty workmanship on the part of shore repairers etc., and additional cover for this risk is provided here.

#### 6.2.5 *“Barratry of Master Officer or Crew”*

Rule of Construction No.11 of the Marine Insurance Act 1906 provides that:

“The term ‘barratry’ includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.”

Crews have been known to make off with and sell the ships in which they sail (e. g. Marstrand Fishing Co., Ltd. v. Beer - 1936), or their cargoes, and provided such acts are committed without the connivance or privity of the owner, they constitute barratry and the loss is recoverable under the policy.

“provided such loss or damage has not resulted from want of due diligence by the Assured, Owners or Managers”

As already mentioned, loss or damage caused by any of the perils detailed in Group 6.2 is recoverable only provided such loss of damage has not resulted from want of due diligence by the Assured, Owners or Managers.

“Want of due diligence” is a term that would rarely be used in everyday English speech, and its use is probably confined solely to legal circles. However, and purely for the purpose of this simple Clause Analysis, “lack of care” might be a suitable translation.

It would seem to mean that the assured must, in the management of his vessels, exercise that degree of diligence which might reasonably be expected of him having regard to the nature of the voyage, the cargo to be carried, and the circumstances known or fairly to be expected.

The due diligence requirement in the policy of insurance is included to protect the insurers in those cases where the vessel has been flagrantly mismanaged to such an extent as to render the vessel grossly unseaworthy.

Thus – and to take an extreme example – if the owner of an elderly ship:

- a) failed to change engine parts at the intervals recommended by the makers,
- b) employed only 3 inferior engineers when the age and condition of the engine probably required the regular attention of four or five competent engineers,
- c) supplied those engineers with the engine builders’ instruction books in a language quite foreign to them,

Underwriters might reasonably suggest that the shipowner had failed to exercise due diligence and that they were not liable for certain types of damage occurring in the engineroom, even if the apparent cause could nominally be attributed to one of those specified in Clause 6.2.

*Who are the Assured, Owners or Managers?*

The assured is clearly the person or company named in the policy as the one entitled to indemnify in case of loss. The owners may well be the same persons, but not necessarily. In the case a vessel under demise charter it is usual for the charterer to insure the vessel. He will then be the assured but not the owner.

Management of vessels is frequently carried out by a company which is not the owning company but which has the day-to-day responsibility of dealing with



the organisation of trading, repairing, maintaining and insuring the vessels under its management contract. The purpose of the proviso is to bring such companies within the scope of the Clause.

Whether it is the assured, owners or managers in any particular case, the exercise of due diligence must be that of the executive officer of the company, its alter ego, its directing mind. The obligation does not extend to servants or employees below the level of management. While this concept is more applicable to the expression "fault or privity" it is thought that it would equally apply to the concept of due diligence.

*Upon whom does the onus of proof fall to show that due diligence has or has not been exercised?*

In relating this general principle to claims under the Institute Time Clauses, it is necessary to ask whether an assured making a claim under Clause 6.2 has to show, not only that the loss was caused by one of the named perils, but also that the loss has not resulted from want of due diligence within the terms of the proviso.

Once the assured has raised a prima facie case that, on a balance of probabilities, the loss has been caused by one of the named perils in Clause 6.2, the onus shifts to the underwriters to show that the loss has resulted from lack of due diligence within the terms of the proviso.

*6.3 Master Officers Crew or Pilots not to be considered Owners within the meaning of the Clause 6 should they hold shares in the Vessel*

It sometime happens that the Master other officers of the vessel will hold shares in the ship and the clause ends by stating that they shall not be considered as part owners within the meaning of the clause should they so hold shares in the vessel.

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*(Raymond T C Wong: Average Adjuster)*



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