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Asia Bulletin

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The Standard
for service and security

The Standard

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The Standard Club has been doing business in the Asia-Pacific region for much of its history, and in 1997 we opened our Singapore office. Since then we have seen a steady increase in tonnage insured and our Asian team has grown significantly. Our members and operations in Asia are a key part of the club and a review of some of the issues and challenges facing the region is timely.

Continued growth in Asia

When The Standard Club established a permanent presence in Asia almost 20 years ago, it decided not to set up a branch office. Instead, The Standard Club Asia Ltd. (Standard Asia), managed by Charles Taylor Mutual Management Asia (Pte) Limited (CTMMA), was incorporated as a subsidiary in Singapore in the heart of South-East Asia.

Business volumes have increased steadily since then, reflecting Asian economic expansion and our penetration into regional markets. The Standard Club's Asian business is now 26% of owned mutual tonnage. Some of the group's Asian business remains entered in Standard Europe for historical reasons, most notably the Japanese business through TS21 (a joint venture with Tokio Marine & Nichido Fire Insurance Co., Ltd.), although CTMMA handles the claims for these accounts. Page 3 shows a map of the club's Asian tonnage.

Standard Asia does business in markets across the region including Singapore, South Korea, Hong Kong, Indonesia, India, Taiwan, Thailand, Australia, China and Japan, so we have a lot of ground to cover.

Today, CTMMA employs 34 people across our Singapore and Hong Kong offices. The Singapore team spans claims, underwriting, loss prevention, accounts and IT. Our Hong Kong claims office services the Greater China area. Both the Singapore and Hong Kong offices also act as P&I correspondents for members' ships trading in the region.

In June 2015, The Standard Syndicate incorporated its Singapore service company, The Standard Syndicate Services Asia Pte. Ltd., established under the Lloyd's Asia scheme. It employs a further two people. Read the article on page 4 of this bulletin for more information.

The future of shipping in Asia

Asian shipping has been impacted by the same factors that have affected global shipping: an oversupply of tonnage, a slowdown in world trade and lower commodity prices all combining to depress freight rates and asset values. The challenge for our Asian membership is how to survive and identify opportunities in these extremely tough market conditions.

In this edition

Introduction continued

How the club can help members meet this challenge

We will stand by our members in these difficult times as an integral part of their overall team. We are providing strong support by keeping premiums as low as we are able and by providing a proactive, pragmatic and responsive claims service that reduces members' exposure thereby giving them a competitive edge.
The fact that Standard Asia has local decision-making autonomy and a fully empowered team means we can provide fast and effective service to our members when they need it, both in their local time zones and elsewhere.
We never forget that shipping is a services business and keeping clients happy through an appreciation of their needs is paramount. We also try to be adaptable. We live in a fast-changing world and need to be able to respond accordingly. When I first entered the industry in 1992, the pace of change was relatively slow and it has accelerated dramatically since then. I have no doubt it will continue to do so.

The club's aspirations in Asia

We view Asia as a growth market with enormous potential, reflective of its fast-developing economies and the commercial dynamism of key shipping centres such as Singapore, Hong Kong and Shanghai.

Standard Asia and its shipowner board are focused on targeted regional growth, both for the club and The Standard Syndicate, in accordance with our risk appetite and business plan. We have been making good progress with seven new members so far this policy year and are seeing continued growth in our war class, the Singapore War Risks Mutual, which now has over 400 ships entered from 25 insured owners, significantly ahead of business plan forecast. Read the article on page 13 of this bulletin for more information.

Left side L to R: James Woodrow (China Navigation Co. Pte. Ltd.), Nick Taylor, Jack Marriott-Smalley, Philip Clausius (Transport Capital Pte. Ltd.), Darren Ee, Dipo Oyewole.

Top side L to R: David Roberts, SS Teo (Chairman) (Pacific International Lines (Pte.) Ltd.), Jeremy Grose.

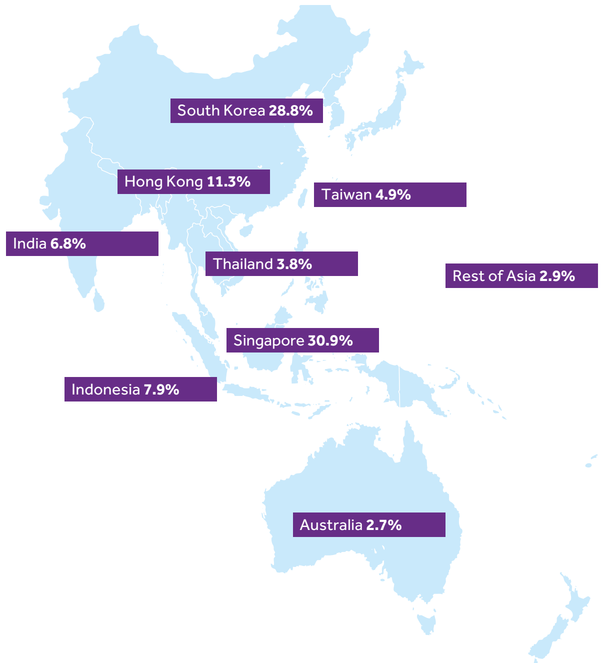
Right side L to R: Rod Jones (CSL Group Inc.), Nick Jelley, Bhumindr Harinsuit (Deputy Chairman) (Harinsuit Transport Co. Ltd.), Rupert Banks, David Koo (Valles Steamship Co. Ltd.), Andrew Broomhead (Pacific Basin Shipping (HK) Ltd), Ricardo Menendez (Ultraocean SA).

Standard Asia board meeting at The Shangri-La Hotel, Singapore, on 10 August 2016

A centre for shipping services

Asian values centre on the importance of family, hard work and achieving your goals. Singapore is a prime example of this. In the 51 years since independence the city state has developed from relative obscurity into one of the most successful economies on the planet. Not bad for a country with no natural resources and only 278 square miles of land. It is efficient, well-run and embraces business.

It is also great to be working in a place where the maritime industry is of such importance. Singapore was founded in 1819 by Sir Stamford Raffles as a trading post of the East India Company which recognised its strategic importance. Today Singapore is a high tech, cosmopolitan, global city which has developed into a major transportation hub and one of the leading maritime centres of the world. The maritime sector comprises more than 5,000 companies who collectively contribute an impressive 7% of GDP. The focus is very much on what government can do to help, and they don't just talk, they deliver. In the P&I space, we receive ongoing support and assistance from the Maritime and Port Authority of Singapore and the Singapore Shipping Association, in particular.



The Standard Club's Asian business is now 26% of owned mutual tonnage.

The Standard Syndicate Asia

The Standard Syndicate Asia was established to provide a streamlined method for brokers and their insureds in the Asia-Pacific region to transact business with The Standard Syndicate in London.

Wei Wei Tan, The Standard Syndicate Asia's Business Development Underwriter, shares some insights.

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What is The Standard Syndicate Asia?
The Standard Syndicate Asia is a Lloyd's coverholder, which means that we have the authority to enter into contracts of insurance on behalf of the underwriters of The Standard Syndicate. We provide access to the capacity of the syndicate in the same way that a Lloyd's broker would do in London.

What do you do on day-to-day basis?
We create awareness of and market The Standard Syndicate to the brokers, insureds and reinsureds in the Asia-Pacific region.

We also transact and bind business with The Standard Syndicate Asia's stamp in the following classes of business:

- Hull and Machinery
- Energy
- Cargo
- Fine Art & Specie
- Property
- Political Violence and Terrorism
- Political Risk
- Liability and E&O
- D&O

Facts
- The Standard Syndicate Asia was established on 1 June 2015.
- It is based in the new Lloyd's Asia building in Singapore's CapitaGreen – Lloyd's largest underwriting hub outside of London.
- The Standard Syndicate Asia is a service company owned by Charles Taylor Managing Agency Ltd.
- Wei Wei Tan has been a broker and underwriter for over 15 years in the marine insurance industry.

The Standard Syndicate

Why choose The Standard Syndicate Asia?

There are several advantages to transacting business through The Standard Syndicate Asia. As we are based in Singapore, we are able to monitor and keep abreast of changes to local and regional regulatory requirements and factor these in when doing business.

By working in a similar time zone as our clients in this region, we also ensure the highest levels of service in our turnaround time when transacting business and managing claims.

Lastly, The Standard Syndicate Asia leverages its association with The Standard Club, particularly Standard Asia, which is a stone's throw from our offices. The Standard Syndicate Asia aims to replicate the long-standing relationships fostered between the club and its members through mutual style claims management and aims to build long-term, high-contact relationships.

What issues have been faced by The Standard Syndicate Asia since its founding in 2015?

We have had a very positive first year. Being new in the market has meant people are interested in meeting us and understanding what we can provide. This is compounded by the ongoing support from members of Standard Asia.

However, building new relationships and proving that we are the right choice for assureds is a challenge which is what makes my job interesting!

What, in your view, are the main challenges faced by the shipping industry in Asia over the next three years and how well prepared are you to meet them?

Competitive pricing is certainly one of the top challenges facing the current market. Socio-economic and regulatory changes are also areas of concern – the dynamics are changing all the time. For instance, some countries in Asia, in their desire to grow their own insurance market, are proposing or have implemented changes in legislation to protect the domestic insurance market.

We have the right people on board to face these challenges, and the support and expertise of The Standard Club and the wider Charles Taylor group to draw upon when required. As such, I am confident that we are well positioned to meet the challenges of the next three years and beyond.

The state of the dry bulk market in Asia and the impact on P&I

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2015 saw increased pressure on the dry bulk market, with a drop of average bulk carrier earnings to $7,123/day, which was the lowest level since 1999. Many speculated that the markets could not get any worse from this position, but in 2016 there has been a further softening. In this article, we look at the ways in which owners have been responding to this unprecedented situation.

A downturn in Asia bulk imports has been a contributing factor
The two key players in Asian bulk imports, China and India, have both reduced their demand and this has had a detrimental impact on seaborne trade. India's impact is smaller, but nonetheless, the increase in domestic coal production contributed heavily to the first year-on-year reduction in bulk coal trade for over 30 years. China has had a more significant effect, and reductions in demand for coal, iron ore and steel reflect both a maturing of its economy as it moves away from reliance on heavy industry and then a partial collapse of the domestic Chinese construction market.

Key factors

The key issue for the dry bulk market is an imbalance of supply and demand. There has been a glut of new deliveries over the last seven years and, although ship demolition increased in 2015, the global dry bulk fleet still increased by 14% between 2012 and 2016. At the same time, there was a noticeable slowdown in global trade between 2010 and 2014, and the global bulk trade actually contracted in 2015 by 0.1%.

As a result, owners have been taking various measures to reduce the impact of this downturn by attempting to reduce the supply of ships.

Reduction in newbuilding orders

Newbuilding orders dropped by 30% in 2015 on a year-on-year basis and 2016 has followed suit with the lowest monthly order rates seen in over 30 years. Owners in China, South Korea, Singapore and Taiwan have all reduced orders compared to a 10-year average, although it should be noted that Japanese owners are an exception to the rule and have increased orders against the same parameter.

Lay-up

Another way owners have looked to control the supply is by idling or laying up ships. One only has to fly in or out of Singapore to see hundreds of ships lying idle in the outside port limits (OPL). Owners hoping for a short-term recovery have put them in hot lay-up, whereas those seeing no immediate turnaround in fortune have put ships into cold lay-up. The club can assist with advice for members on laying up ships and, where the right conditions are met, a return of premium can be made to the member given the reduced risk to insurers.

Scrapping

For some owners, the cost of putting ships into lay-up and then reactivating them is not offset by the value of avoiding losses, and demolition yards have been benefitting as a result. The demolition of bulk carriers increased by 87% in 2015 to 30.6m dwt and this is forecast to be surpassed in 2016 by some margin. Asian owners account for 35% of ships scrapped in 2016 so far. There are mixed feelings from a club perspective. The slowdown in fleet growth means that clubs will need to be more competitive for business when opportunities arise, but at the same time, the average age of the Asian fleet is set to reduce. In Asia, this will now be 17 years against a global fleet average age of 20 years.

Other impacts of the downturn

Financial difficulties
A different risk to owners and their clubs is that ship value reductions have led some creditors to reconsider their position in the Asian dry sector. This has affected owners in both north and south Asia, and the future remains unclear and unpleasant. For

other owners and clubs there is an increase in counterparty risk, which in turn escalates trading difficulties and, for clubs specifically, may lead to an upsurge in FDD disputes.

Reduced maintenance standards
With bulk freight rates below or at the level of operating costs of vessels, even before financing is taken into account, some owners will be forced to reduce investment in their vessels. This has implications for ship maintenance and the standard of crewing. While the former may have a larger impact on H&M underwriters, P&I clubs remain vigilant for deteriorating technical standards and the clubs' loss prevention departments have a larger role to play than ever. Perhaps more significant for clubs and owners is the reduction in crewing standards and training. This has short-term ramifications as claims can increase, especially costly navigational claims, and then a longer-term impact for owners reliant on international crew.

Outlook
Unfortunately, the slump looks set to continue. The financial uncertainty in Europe and potential political change in the USA does not help matters, even in Asia. However, some owners do see some positives and are betting that the current efforts being made to trim the bulk carrier supply will help bring the Asian bulk market back into balance by the end of 2017. This is evident from the increase in second-hand acquisitions already in 2016.

One other positive is that there is a space for new companies that are able to take advantage of low ship values and relatively low overhead costs to find ways to make small profits.

Either way, we remain hopeful that the market will indeed recover and owners can put the last eight years behind them.

The author acknowledges Clarksons Research Services Limited in respect of the market figures referred to in the preparation of this article.

Korea in shipping and shipping in Korea

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The shipping and shipbuilding industries in the Republic of Korea (hereafter referred to as Korea) have been developing rapidly since the 1960s. Today, Korea is the principal shipbuilding country in the world and owns approximately 80m dwt (4.62% of world tonnage), making it the world's sixth-largest shipowning country. This mirrors the development of the Korean economy, which is now the world's eleventh largest.

Korea: the facts

- World's principal shipbuilding country
- Owns 4.62% of world tonnage – 80m dwt
- Korean membership accounts for 4% of The Standard Club's tonnage.

Civil law system

As a civil law country, Korea has been updating its maritime laws to correspond with the developments of international conventions and international practices. However, legal practices in Korea under the civil law system are not always in line with international practices, which are usually influenced by common law doctrines.

For example, whilst in principle there is no concept of in rem under Korean law, it was one of the most controversial issues in the maritime law society in Korea for a long time whether a time charter should be considered as a type of demise charter in legal terms. The result of this decision could determine whether a time charterer is liable for the operations of a time-chartered ship, eg collisions, against a third party.

This issue seems to have been settled so that the legal effect under Korean law is the same as under English law, ie that a time-charterer is not responsible for navigational matters against a third party. However, the logic behind this conclusion under Korean law is based on various complicated theories which are beyond the scope of this article.

International maritime conventions

Korea is not a party to any cargo conventions such as the Hague Rules, the Hague-Visby Rules or the Rotterdam Rules. However, its Commercial Act (Part V – Marine Commerce) is enacted based on the Hague-Visby Rules, including provisions for the limits of liability of carriers (666.67 SDR per package or 2 SDR per kilogram) and the exemptions of liability of carriers for errors in navigation, etc.

Likewise, whilst Korea is not a party to the 1976 Limitation Convention[1] or the 1996 Limitation Protocol[2], its Commercial Act introduced a right to limit liability on similar terms pursuant to the 1976 Limitation Convention except for personal injuries to passengers, for which the limit was increased in line with the 1996 Limitation Protocol.

Korea is, however, a party to the 1992 CLC[3], the 1992 Fund Convention[4] and the 2003 Supplementary Fund Protocol[5]. Korea ratified the 2001 Bunker Convention[6] in 2009 but has not, at the time of writing, ratified the 2007 Nairobi Convention[7].

Timebars

Pursuant to Korean law, a general five-year timebar applies to claims arising out of commercial activities (eg breaches of commercial contracts). However, the one-year timebar applies in respect of cargo claims against a carrier, claims founded on maritime lien or in general average. A two-year timebar applies to claims arising out of time or voyage charters, salvage and collisions.

1 Convention on Limitation of Liability for Maritime Claims 1976
2 Protocol of 1996 to amend the 1976 Limitation Convention
3 International Convention on Civil Liability for Oil Pollution Damage 1992
4 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992
5 Protocol to the 1992 Fund Convention (Supplementary Fund Protocol) 2003
6 International Convention on Civil Liability for Bunker Oil Pollution Damage 2001
7 Nairobi International Convention on the Removal of Wrecks 2014

Maritime lien
Article 777 of the Commercial Act provides that the following claims give rise to a maritime lien against a ship:

- The costs of litigation for common interests of creditors, all taxes imposed on the ship concerning the voyage, pilotage dues, towing fees, maintenance charges and inspection charges of the ship and its appurtenances after final entry into a port.
- Claims out of an employment contract for a crewmember or any other employee.
- Salvage charges arising from rescue operations at sea and claims in general average.
- Claims for loss or damage arising from collision of the ship and other navigation accidents, loss of and damage to navigation facilities, port facilities and routes, and loss of life or injury to crew or passenger.

Interestingly, however, whether or not there comes into existence a legally recognised maritime lien in Korea against a foreign-registered ship is not to be determined by reference to Article 777 of the Commercial Act, but instead by reference to the law of the ship's flag.[8] As a result of this peculiarity, Article 777 only applies to ships registered in Korea.

8 Article 60 Korean Act on Private International Law

Compensation under the Seafarers Act

Compensation for personal injury against a shipowner pursuant to the Seafarers Act may be broadly divided into two categories: work-related and non work-related injuries. Compensation for work-related injuries is greater.

- Scope of compensation in respect of work-related injury/illness:
  - Medical costs until the seafarer has recovered.
  - 100% of ordinary wages for up to four months and 70% thereafter until the seafarer has recovered.
  - Compensation in respect of the seafarer's permanent disability post-recovery.

  A shipowner may, however, be released from these obligations where the seafarer fails to recover after two years and the shipowner opts to make compensation in a lump sum equivalent to average wages of 1,474 days.

- Scope of compensation in respect of non work-related injury/illness:
  - Medical costs for up to three months.
  - 70% of ordinary wages for up to three months.

As regards compensation following a work-related death, the amount of compensation is the equivalent of 1,300 days' average wages, whereas compensation in respect of non work-related death is capped at 1,000 days' average wages.

Arrest and security

Although Korea is not a party to any arrest convention, a claimant may obtain pre-judgment security by arresting the ship in appropriate types of claims. The arresting party would have to also provide counter security amounting to 10% of the amount of its claim in cash or by way of a surety bond or as ordered by the court. No counter security is required where the arrest is in respect of the enforcement of a judgment or a maritime lien.

In order to release a vessel from arrest, the shipowner must pay into court a cash security equivalent to the amount claimed. Neither a P&I club's letter of undertaking nor a bank guarantee is acceptable by the court.

Establishment of maritime divisions in courts

In the past, there were concerns about the potential risk of adverse and/or delayed decisions by judges who might not be familiar with maritime disputes. To dispel such concerns, on 22 February 2016, the Seoul Central District, Busan District and the Seoul High Courts established maritime divisions within the respective courts, which are presided by specialist maritime judges who are capable of dispensing professional and speedy service to resolve maritime disputes. Whether the maritime divisions will be elevated to the level of a fully fledged maritime court remains to be seen.

Conclusion

Maritime law in Korea has kept up with the developments in domestic and international shipping environments. Korea has adopted most of the major international conventions without becoming a party to them, whilst concurrently developing some distinctive features in its domestic shipping legislation. The choice of Korean law and jurisdiction in shipping contracts may also increase in popularity over time. Where our members are confronted with unfamiliar provisions in Korean law in such contracts, we as a club are able to recommend appropriate Korean shipping lawyers to clarify the position and to protect our members' interests.

Singapore – an international legal hub: update on the Singapore International Commercial Court (SICC)

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Singapore is a renowned international legal hub due to its strategic geographical position, reputation for impartiality and neutrality, specialist legal service providers (both local and international) and experienced judiciary. This has been recently enhanced by a new centre for court-based international commercial disputes: The Singapore International Commercial Court, a division of the Singapore High Court and part of the Supreme Court of Singapore.

The SICC supports Singapore's aim to be a leading forum for both legal services and dispute resolution for commercial matters. The vast economic growth projected in Asia-Pacific and south Asia, with its accompanying international capital and trade, presents a great opportunity for Singapore to offer legal services and a suite of dispute resolution products. The Standard Bulletin has previously provided an overview of the dispute resolution landscape of Singapore. This article provides an update on where the SICC presently is.

Singapore's existing dispute resolution institutions

The Singapore legal system is founded on English common law. To complement her status as the second busiest port in the world is the judiciary of the Singapore Supreme Court, which includes its admiralty court, renowned for its expertise. Singapore's judges are drawn from specialised areas of practice including insurance and maritime law. The court's legal decisions are considered to be serious, albeit non-binding, authority by courts in other commonwealth jurisdictions. In September 2008, the Political & Economic Risk Consultancy survey reported Singapore to have the best judicial system in Asia.

Of the several arbitration institutions in Singapore, the two relevant to our membership are the highly regarded and successful Singapore International Arbitration Center (SIAC) and the Singapore Chamber of Maritime Arbitration (SCMA).

SIAC

The SIAC was launched in 1991. 2015 saw 271 new cases filed, of which 84% were international in nature. More than 21% of its case profiles concern shipping and energy matters. According to the Queen Mary University of London International Arbitration Survey 2015, Singapore is the fourth most preferred seat and most improved seat in the world for arbitration, and the SIAC is the fourth most preferred arbitral institution in the world.[2]

SCMA

The SCMA was established in 2004. Its members come from all sectors of the maritime community and from around the world. In the last four years, there has been an average of 25 cases per year, with 2015 seeing a record 37 shipping cases. While it has a relatively recent history, the SCMA should not be underestimated, given the increasing reference to Singapore law and arbitration in accordance with SCMA rules being expressly written into contracts, particularly where one of the parties or the operations are in the Asia-Pacific region.

1 http://www.arbitration.qmul.ac.uk/docs/164761.pdf; pp.12,15 and 17

SIMC
In addition to arbitration institutions, the Singapore International Mediation Center (SIMC) was launched in November 2015. Its board comprises international and Singaporean mediation experts. Since its inception (and at the time of writing), nine cases have been filed in respect of disputes between international companies, including one concerning shipping and sale/supply of goods and services. While mediation is a key service, it also provides other mediation products and services to support parties in any major deals to help avoid potential disputes.

These three institutions can accept all governing laws and are not just confined to Singapore law. Significantly, their awards are enforceable in the 156 countries that are party to the New York Convention.

The Singapore International Commercial Court (SICC)
The concept of an international court is not new. Dubai has the International Financial Centre and London its commercial court. The SICC is part of the Singapore Supreme Court and was created to take on complex high-value cross-border (international) commercial cases as defined in the Rules of Court. Save for admiralty in rem matters, which remain within the jurisdiction of the Singapore High Court, all other international commercial matters (which include other shipping and energy matters) can be submitted to the SICC jurisdiction or, alternatively, the Singapore High Court may transfer certain cases to the SICC that meet the 'international and commercial' criteria as set out in the Rules of Court. At the time of writing, four such cases have transferred, two of which have judgments rendered. SICC judgments are enforceable as judgments of the High Court.

Judges
Judges are drawn from Singapore's own Supreme Court and/or from an international panel of jurists. The ultimate choice of judge is made by the Chief Justice and not by party nomination, as is the case in arbitration, and the disputes can be subject to any law. The present distinguished and diverse panel of jurists comprises all Honourable Justices of Singapore, including Justices Belinda Ang, Judith Prakash and Steven Chong, who were well-known Singaporean maritime and commercial legal practitioners before being elevated to the Singapore bench. The judges additionally comprise international jurists, including former English Supreme Court Judges, Sir Bernard Rix, Sir Vivian Ramsay and Sir Henry Bernard Eder, to name but a few. Every claim can be heard either by a single judge or by three judges.

Of the four aforementioned international commercial cases, two were transferred to be heard before a panel of three judges, one Singaporean judge and two international judges, and two by a sole international judge for each respective case. The choice of legal counsel is also not restricted to Singapore qualified lawyers. Foreign lawyers are free to act in cases where there is no substantial connection with Singapore. However, to appear before the SICC, foreign lawyers must have at least five years of experience in advocacy, be registered with the SICC and abide by the Code of Ethics of the Legal Profession Act.

Powers
The SICC has wide powers and flexible court procedures, making it commercially attractive. For example, it may join third parties to an action even if they are not parties to a written jurisdiction agreement. In contrast with conventional court proceedings, proceedings of the SICC may be conducted confidentially (if the case has no substantial connection with Singapore). Additionally, questions of foreign law may be determined by legal submissions without needing to tender witnesses to prove a point of foreign law. Rules of evidence are not confined

Singapore – an international legal hub: update on the Singapore International Commercial Court (SICC) continued

to Singapore law and parties may be allowed to choose alternative rules of evidence. Significantly, the decision of the SICC can be appealed provided the parties have not contractually agreed to limit or exclude their right of appeal.

Enforcement

While the intention of the SICC is to grow Singapore's legal services sector and promote the use of Singapore law, one main obstacle for the SICC presently is the enforceability of its judgments. Already in existence is the Reciprocal Enforcement of Commonwealth Judgments Act (RECJA), which has reciprocal arrangements with certain commonwealth countries such as the United Kingdom, the various states and territories of Australia, New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei Darussalam, Papua New Guinea and India (except the State of Jammu and Kashmir). The RECJA enables mutual recognition of superior court judgments in respect of monies payable under that judgment and it would extend to the SICC as a division of the Singapore High Court. A similar reciprocal arrangement is in place with Hong Kong. Singapore is presently exploring further solutions to the recognition and enforcement of SICC judgments in the court systems of other countries, possibly looking at bilateral and multilateral arrangements.

Of significance is the Hague Convention on Choice of Court Agreement (HCCCA), which comes into force in Singapore on 1 October 2016. Its purpose is to promote and provide legal certainty in cross-border commerce. The HCCCA has been ratified by 30 countries. These include all members of the EU (except Denmark), Mexico and Singapore. The USA and Ukraine have signed but not yet ratified the HCCCA. Much like the New York Convention, the HCCCA recognises the choice of court agreement between parties in certain civil/commercial law matters.

In essence, the courts of the HCCCA states will stay all proceedings and, more importantly, recognise the judgments in all states where the convention is applicable. Recognition and enforcement of such judgments in cross-border court-based disputes is of utmost importance if the SICC is to be a compelling international proposition. However, the HCCCA's scope is limited and it presently excludes matters in respect of the carriage of passengers and goods, marine pollution, and limitation of liability for maritime claims, general average, emergency towage and salvage, and personal injury claims brought by or for natural persons. In effect, from the P&I context, this excludes claims from the maritime world but arguably not in respect of certain types of claims from the offshore energy sector.

Conclusion

The SICC has the strong and supportive backing of both Singapore's Chief Justice and the Ministry of Law. This initiative is certainly a very interesting and unique solution to resolving international commercial disputes. It has distilled the best features of both worlds – court-based substantive principles of international commercial law and commercial arbitration. It will undoubtedly enhance Singapore as a dispute resolution centre and provider of international legal services. While presently in its nascent stage, it will be interesting to measure its progress ten years on from its launch.

Piracy in South-East Asia

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Since 2011, the world's focus has slowly moved from the piracy hot spot of Somalia to the waters of South-East Asia as piracy attacks have risen year on year. In 2015, South-East Asia accounted for the majority of the world's piracy incidents. This article looks at the history of the area and what members can do to combat the risks.

History

The *Asiatic Journal* in 1825 writing on the topic of 'Malay Pirates' describes piracy in the waters of the Straits of Malacca as follows: *'…A glance at the map of the Indian islands will convince us that this region of the globe must, from its natural configuration and locality, be peculiarly liable to become the seat of piracy…'*[1].

Today, with more than 200 vessels transiting the Straits of Malacca every day, this body of water is one of the most important shipping waterways in the world, from both an economic and strategic perspective. With any 'choke point' such as the Gulf of Aden or the Straits of Malacca, pirates know these are must-use routes for shippers and are rich pickings as a result.

Between the 1990s and the mid-2000s, South-East Asia emerged as the international piracy hotspot, but it was an escalation of incidents in the strategically important Straits of Malacca that caused international concern. After a run of incidents in 2005, and a fear that the shipping lane might become a terrorist target, the Straits of Malacca were declared a war risks additional premium area by the Joint War Committee (JWC) of the London Market. This enabled war risk underwriters to charge an additional premium for transiting this region. This was a concern to Singapore and the littoral states as higher premiums meant higher operating costs, which could have deterred owners from trading in the region. After lobbying by the Singapore Shipping Association and the Maritime Port Authority of Singapore, the JWC removed the Straits from the list of excluded areas. Following an increased effort to combat piracy in the Straits, reported incidents declined and, with the rise in attacks off the horn of Africa from 2008 onwards, piracy in the region was all but forgotten.

Current situation

After a number of years of relative stability, piracy in the region has been increasing year on year since 2012, with more than 50% of the 200 South-East Asian incidents reported in 2015 having occurred in the Straits of Malacca and Singapore (SOMS). The region was subsequently declared to have the highest number of pirate attacks worldwide in 2015. In response to this escalation, Singapore and the littoral states stepped up sea patrols in the region to combat the problem. For the period of January to May 2016, the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP) Information Sharing Centre advised that a total of 38 incidents were reported. This is the lowest number compared to the same period in the past four years (2012-2015) and represents a 57% decrease on 2015. As a result of the

1 Malay Pirates, The Asiatic Journal and Monthly Register for British Indian and its Dependencies, (1825) 19 *Asiatic Journal* No.111, 243-245.

Piracy in South-East Asia continued

Piracy versus robbery: Is the problem as bad as the media make out?
Although the number of attacks in the region has caused concern, there is dispute as to the severity and nature of these incidents, and how they are reported. Under international law, 'piracy' is defined as any act of violence, detention or depredation committed for private ends on the high seas or outside the jurisdiction of any state[2]. The definition of 'armed robbery against ships' is any act of violence, detention or depredation committed for private end within a state's internal waters, archipelagic waters and territorial sea[3]. The difference between the two is where the incident occurs. Within South-East Asia and the SOMS, pirates are predominantly hijacking slow-moving tankers to steal oil cargos or boarding anchored vessels to steal spares. This is a very different model to that off East and West Africa where kidnap for ransom is the main driver. In ReCAAP's 2015 annual report, only 11 of the 200 incidents in South-East Asia were categorised as piracy, with the remainder being incidents of armed robbery against ships. While there have been a number of high-profile oil cargo thefts in the region, the majority of incidents are, in reality, low-value thefts.

2 Article 101 United Nations Convention of the Law of the Sea
3 See Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships of the International Maritime Organization (IMO) Assembly Resolution A.1025 (26)

increased cooperation by local law enforcement agencies, it is expected that this downward trend will continue.

The emerging threat
However, it is unfortunately not all positive. In recent months, the militant group Abu Sayyaf has attacked, and successfully hijacked, a number of merchant vessels off the Sabah and eastern Indonesian coasts. This upturn in abductions can likely be attributed to pressure placed on the militant group by local armed forces. In March and April 2016, four vessels were hijacked resulting in 18 crew members being abducted. As in the Straits of Malacca, the militants can act with relative freedom due to the complex geographical terrain and, particularly in the case of the Sulu Archipelago, the relatively small reach of local law enforcement agencies. In addition to the above, the JWC removed the Sulu Archipelago from its list of excluded areas in December 2015, potentially leading to a greater flow of trade through the area. In an agreement made on 5 May 2016, the governments of Indonesia, Malaysia and the Philippines agreed to implement co-ordinated anti-piracy controls in the region.

What can members do to combat this?
Members should remain vigilant when trading in the region and stay informed. ReCAAP, together with The Republic of Singapore Navy's Information Fusion Centre (IFC) and the S Rajaratnam School of International Studies (RSIS), Singapore has recently published *The Guide for Tankers Operating in Asia against Piracy and Armed Robbery Involving Oil Cargo Theft* to help with the prevention of piracy attacks on tanker vessels operating in Asia and the *Regional Guide to Counter Piracy and Armed Robbery Against Ships in Asia*. The two guidelines can be found on the Standard Club website and make a number of detailed recommendations to ship managers, as well as the master and crew, on dealing with South-East Asian piracy. The guides also provide guidance on post-incident response. In response to the problem of Abu Sayyaf off the Sabah and eastern Indonesian coasts, ReCAAP has published a special report on the abduction of crew from tug boats in these waters.

The Singapore War Risks Mutual (SWRM)
After the 2005 JWC declaration of the Straits of Malacca as an additional premium area, there was a fear in Singapore that this may have an adverse effect on the city state's maritime economy. The Singapore maritime community had no vehicle to influence the additional premium areas and there was concern at the reliance on the international insurance markets. In response to this, The Standard Club Asia Ltd, with the support of the Singapore Shipping Association and the local maritime community, established the SWRM to give Singapore-connected shipowners more control over their war risks insurance. The SWRM is a class within The Standard Club Asia Ltd and offers cover for P&I War, Hull War, Detention and Diversion Expenses, Sue and Labour, discretionary insurance and additional insurance such as War Loss of Hire, with all covers being written on a mutual basis. Further details can be found on the SWRM website.

The website also gives access to an interactive map showing the AP Areas and piracy incident information from the last three months. This map is provided by NYA International, a world-leading risk and crisis management consultancy with over 25 years' experience of providing services to the maritime industry. SWRM works in partnership with NYA International to provide members with a free trial of NYA's intelligence reports (including live piracy and maritime security alerts), and subsidised access to MarTrack™ to view global piracy incident data since 2009.

Limitation of liability in India

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India is a signatory to the Convention on Limitation of Liability for Maritime Claims 1976 (the 1976 Convention) and the Protocol of 1996 to amend the 1976 Convention (the 1996 Protocol). India's Merchant Shipping Act 1958 (the Act), which governs the right of shipowners to limit liability in respect of maritime claims, is not completely aligned with the 1976 Convention and the 1996 Protocol, which gives rise to legal uncertainties. The High Court of Bombay's recent decision in *Murmansk Shipping Company v Adani Power Rajasthan Ltd.& Ors*[1] clarifies the Indian position as regards the rights of shipowners to limit liability.

Legislative background

In 2002, the Act was overhauled to align Indian law with the 1976 Convention. Pursuant to the 2002 amendments to the Act, persons allowed to limit liability in respect of prescribed maritime claims include:

- an owner of a vessel
- a charterer/manager/operator of the vessel
- master/crew/other servants of the owner, manager, operator of the vessel acting in the course of their employment
- a salvor, for any act, neglect or default of persons he is responsible for
- an insurer of liability to limit his liability to the same extent as his assured.

Additionally, under Indian law, in order to limit liability, the vessel must at the material time be flagged with a contracting state of the 1976 Convention[2].

The 2002 amendments to the Act, however, departed in significant respects from the 1976 Convention. As a consequence, shipowners seeking to limit liability in India have encountered legal uncertainties and obscurities. The language employed in some sections of the Act is at odds with the words used in the 1976 Convention. There are significant gaps in the legislation, with the most startling illustration being the complete omission in the Act of Article 4 (Conduct barring limitation) and Article 10 (Limitation of liability without constituting a limitation fund) of the Convention. In addition, although India signed up to the 1996 Protocol in 2011, no corresponding amendments were made to the Act to give domestic effect by statute to the enhanced limits of liability contemplated by the 1996 Protocol.

It is against this legislative background that the Bombay High Court was called upon by a Russian shipowner to consider (amongst other things) whether it was entitled to constitute a limitation fund and, if so, whether the enhanced limits of the 1996 Protocol would be applicable.

Case study

The case of *Murmansk Shipping Company v Adani Power Rajasthan Ltd* concerned the Russian-flagged vessel, the *MV Yuriy Arshenevsky* which was carrying project cargo in 2011 from Tianjin to Mundra and Mumbai when she encountered a typhoon leading to the partial loss and damage to the cargo. Upon discharge of the cargo at Mundra, the vessel was arrested by multiple claimants and security was posted for her release. The shipowner, anticipating the arrest of its ship by cargo claimants, promptly applied to the Bombay High Court on the same day that the first order of arrest was obtained to constitute a limitation

1 Murmansk Shipping Co v Adani Power Rajasthan Ltd and Others (The Yuri Arshenevskiy) – High Court of Bombay (Admlty), Mr Justice S C Gupte delivered judgment on 8 January 2016 (2016) 946 LMLN 2
2 Section 352E(1) Merchant Shipping Act 1958

Limitation of liability in India continued

fund in accordance with the limits prescribed by the 1976 Convention.

Legal analysis
Despite strident objections from cargo claimants, the owner argued that its right to limit was absolute and unconditional as all it needed to demonstrate was that the claim was capable of limitation under Section 352 A of the Act. Section 352 A of the Act corresponds broadly to Article 2 of the 1976 Convention. As it was undisputed that the claim was one for loss/damage to property, ie it was a claim capable of limitation, it was submitted that the court's scrutiny was limited to determining whether there was any statutory exception to limitation such as conduct barring limitation as envisaged by Article 4 of the 1976 Convention. The court, after carefully considering the statutory provisions of the Act, concluded that Article 4 was wholly absent from the Act and that there was no equivalent statutory provision in the Act excluding or suggesting any exception to limitation.

The court therefore rejected the cargo claimant's argument to read into or add Article 4 of the 1976 Convention to the Act as it would be tantamount to judicial legislation. The court held that the object of the 1976 Convention was to make limitation virtually 'unbreakable'. The omission of Article 4 of the 1976 Convention from Part XA of the Act would not therefore make any meaningful difference in practice as was contended by the liability claimants[3].

In respect of the issue as to whether the figures of limitation are to be calculated on the basis of the 1976 Convention or the 1996 Protocol, the court rejected the shipowner's argument that the lower limits of the 1976 Convention should apply, which the owners contended was based upon a lack of any domestic legislation or amendment to the Act giving effect to the increased limits of the 1996 Protocol. The court held that the expression 'Convention' as defined by the Act expressly included amendments made to it from time to time. In the result, the Court had no hesitation in finding that the 1996 Protocol was, in fact, an amendment to the Convention which was already embraced by the Act.

The limitation action was accordingly decreed and the owner permitted to set up a limitation fund. Security posted by the owner was ordered to be returned to it upon deposit of the higher amounts contemplated by the 1996 Protocol.

Comment
The judgment is groundbreaking considering that the Indian courts have for the first time endorsed the right of a shipowner to limit liability by constituting a limitation fund, albeit at the higher limits stipulated in the 1996 Protocol. It provides much needed clarity on this branch of the law, which is welcome news for the shipping industry and all participants in international trade. As a result, one hopes that the expensive and time-consuming litigation of challenging the owner's conduct with the objective of seeking higher limits of liability will be a thing of the past in the Indian context.

The co-author, Zarir Bharucha, and his team successfully represented the plaintiff shipowner.

3 Since '*...persons seeking to limit liability are given what is described by the Courts as a virtually unbreakable right to limit...*': at para.37 of the grounds of judgment. '*...If nearly 40 years...of the regime of the 1976 Convention has not thrown up a single instance throughout the world of successful breaking of limitation, it would not be unwise for the Indian Parliament to do away completely with the very concept of breaking of limitation...*': at para.39 of the grounds of judgment

Cabotage in Indonesia

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Implemented in order to vitalise fledgling local shipping industries, cabotage laws in South-East Asia were passed to regulate shipping along coastal routes and restrict the operation of ships between sea ports within a particular country. In Indonesia, this has had a particular effect on the offshore industry.

Cabotage in South-East Asia

Laws to restrict the operation of ships between South-East Asian ports were introduced to promote the development of domestic marine industries with the ultimate aim that the indigenous industry might one day compete against its foreign counterparts on a level playing field. The legislation was met with varying degrees of success and today boasts companies which are challenging their more prominent and historical competitors on the international stage. Invariably, cabotage legislation has had significant effects in the offshore industry as well, as projects and contracts have taken on increasing local content, and offshore players have had to consider the impact of this legislation, both financially and logistically, on their operations.

Cabotage in Indonesia

Under Indonesian cabotage laws, all vessels operating in Indonesian waters have to fly the Indonesian flag and be manned by Indonesian crew. Indonesian-flagged vessels have to be owned by entities whose shareholding structure must satisfy 'local content' requirements (essentially, such entities have to be at least 51% Indonesian owned). As such, a foreign owner would have to relinquish majority ownership of the asset to its Indonesian counterparty. There are, however, legal structures which can be put in place to protect a foreign owner's interest.

Global oil prices

With the dramatic fall in oil prices, a great number of oil and gas offshore projects have been shelved indefinitely. There has been a virtual cessation in drilling operations in Malaysia, and the outlook is equally bleak in the rest of South-East Asia. While measures are being undertaken to make major producers freeze output in order for prices to rise, the fact that players such as Iran have come back into the fold has exacerbated the global oversupply.

The effect on Indonesian cabotage

Against this backdrop of depressed oil prices, the Indonesian government has created an exemption to the cabotage restrictions for ships engaged in offshore drilling activities (namely, jack-up rigs, semi-submersibles, deep-water drillships, tender-assist ships and swamp barges) to allow foreign-flagged ships to operate.

It is commonly understood, however, that the intention of the Indonesian Government is to end this exemption on 31 December 2016. If the exemption is ended, foreign-flagged rigs currently operating in Indonesia will have to either be sold internally to Indonesian interests or be forced to discontinue activities and leave Indonesia. Should the rig re-enter Indonesia, once reflagged, it could face significant import taxes.

Cabotage in Indonesia continued

An uncertain future

As a result of the uncertainty, many shipowners have begun engaging law firms to advise on the consequent complicated procedures and legal work to be undertaken should the period of exemption expire as scheduled on 31 December, without any extension allowed. Ince & Co, for example, has advised a number of clients in the sector that in spite of the current exemption, owners should consider commencing the process of conforming with Indonesian cabotage laws now and reflag their rigs in favour of the Indonesian flag. If not, owners face the risk of logistical and financial fall-out should the exemption lapse on 31 December 2016.

As part of this process, owners should conduct due diligence on their prospective Indonesian counterparties in order to ensure they are trustworthy, financially secure organisations that will not overtake the operations of the company, while essentially receiving a majority stake in the asset. In addition, in so far as these expensive assets are almost always financed through debt financing, the consent of the owner's bank will usually have to be sought in order to fly the Indonesian flag; otherwise, such a reflagging could contravene the financing arrangements or requirements imposed by the bank(s).

Further advice

Owners are encouraged to adopt a proactive approach in the circumstances as it may take, at the very least, between two to four months for a joint venture to be concluded and an Indonesian shipowning entity to be set up.

As for developments in cabotage policy within the region, members may contact the authors to receive up-to-date information on developments.

The Hong Kong Competition Ordinance and the maritime industry

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Hong Kong's first-ever competition legislation came into force less than a year ago, on 14 December 2015. Anti-trust regulations have existed in many countries for quite some time, and it might seem that Hong Kong is rather late to the party. Be that as it may, the Competition Ordinance (CO) has arrived and it is important that businesses that have dealings in Hong Kong learn to adapt to the new regulatory landscape. In this article, we provide a brief introduction to the CO and its impact on the maritime sector, with a particular emphasis on the container liner business.

Both the First and Second Conduct Rules apply to 'undertakings' that are 'engaged in business activity', which is defined very widely under the CO. Practically, 'undertakings' include individuals and virtually every conceivable business-related entity (ie companies, partnerships, groups of companies, sole traders, etc). It is therefore almost certain that any shipowner, operator or charterer would be considered an 'undertaking' by the Competition Commission (the competition regulatory authority in Hong Kong).

Who and what is subject to regulation by the CO?

The CO consists of three key rules: the First Conduct Rule, the Second Conduct Rule and the Merger Rule. Currently, the Merger Rule only applies to the telecommunications industry, so we will focus on the First and Second Conduct Rules in this article.

The First Conduct Rule

This prohibits agreements, concerted practices and decisions by undertakings that have the effect of preventing, restricting or distorting competition in Hong Kong. The most obvious example of prohibited conduct is cartel behaviour by means of price-fixing, market sharing and output limitation, amongst others.

It is important to note that the CO defines 'agreement' much more broadly than the strict legal understanding of the word. Here, an 'agreement' can include any 'meeting of minds', arrangement, understanding or promise, whether express or implied, written or oral, and whether legally enforceable or not.

A 'concerted practice' may also fall foul of the CO. This is a form of cooperation that is not quite an 'agreement'. An example is if a group of competitors do not expressly agree to fix prices, yet knowingly exchange sensitive information that can influence each other's market strategies or pricing policies.

The Second Conduct Rule

This prohibits an undertaking that has a substantial degree of market power from abusing this power to engage in conduct that has the object or effect of preventing, restricting or distorting competition in Hong Kong. The difficulty is that the CO does not define 'substantial degree of market power', which will be determined on a case-by-case basis.

It is important to note that the First and Second Conduct Rules apply to non-Hong Kong undertakings and conduct that takes place outside of Hong Kong.

Impact of the CO on the maritime shipping industry

Liner cooperation agreements and block exemptions

The Commission has announced that in the initial years of the CO, one of the Commission's top priorities is to target cartel behaviour and Serious Anti-competitive Conduct[1] such as price-fixing, market sharing, output limitation and bid-rigging agreements.

During the drafting and public consultation stages of the CO, the Hong Kong Liner Shipping Association (HKLSA) informed the Competition Commission that enforcement of the First Conduct Rule would pose a serious threat to the viability of Hong Kong as a shipping hub. Hong Kong is the fifth-largest container port in the

The Hong Kong Competition Ordinance and the maritime industry continued

The phenomenon of cooperative liner agreements is by no means unique to Hong Kong and has existed since 1875. In modern times, such cooperation commonly takes the form of liner consortia, VSAs, strategic/global alliances, capacity stabilisation agreements and VDAs.

world by volume, and roughly 70% of its throughput comes from transhipment. More than 95% of the container liner shipping business in Hong Kong operates under liner agreements such as vessel-sharing agreements (VSAs) and voluntary discussions agreements (VDAs) that may well be considered Serious Anti-competitive Conduct under the First Conduct Rule. Industry experts and participants have expressed concerns that if the liner trade were no longer allowed to operate using liner agreements in Hong Kong, ship liners could, and would, abandon Hong Kong in favour of a new transhipment hub, such as Shenzhen.

At first glance, such cooperative agreements could easily fall foul of the competition regulations of many developed countries, including the CO in Hong Kong. However, the liner industry has always defended such practices on the basis that cooperation between liners actually produces pro-competitive effects which achieve economies of scale and improve the quality of services for consumers.

Liners in Australia, China, the EU, India, Israel, Japan, Malaysia, Singapore and the USA have successfully relied on similar arguments to obtain block exemptions for certain types of liner agreements from competition authorities, although the exact criteria of what is or is not exempt differs from country to country. Looking across these other countries as a whole, technical and operational arrangements tend to be allowed, such as joint use of vessels and port installations. Rate-fixing and price discussions are allowed in some jurisdictions but prohibited in others.

Three days after the CO came into force, the HKLSA lodged an application with the Competition Commission for a block exemption for certain liner shipping agreements, specifically VSAs and VDAs. While the Commission has yet to publicly issue a final decision, it has indicated that it is unlikely to initiate enforcement action against ship liners in respect of these types of agreements while the application is under consideration.

Mergers and alliances

There are also possible contraventions of the Second Conduct Rule. In particular, the failed P3 alliance is a prime example of Second Conduct Rule issues. In June 2014, the would-be alliance of Maersk, MSC and CMA CGM was rejected by China's competition authorities despite having already been approved by the EU and US authorities. The Chinese authorities stated that the alliance's market share in the Asia-Europe trade would be 46.7%, which was too strong.

The past few years have seen a spate of actual or planned container line mergers, as well as the breaking apart and regrouping of various container shipping alliances: Hapag-Lloyd and United Arab Shipping Co; CMA CGM and NOL; the 2M, THE and Ocean Alliances. If this trend of consolidation continues, vessel owners, operators and charterers doing business in Hong Kong could, in principle, find themselves in a position where they are considered to be a 'powerful undertaking' that has 'abused' its dominant position under the Second Conduct Rule.

Learning to live with the CO

In the past years, we have seen major investigations by the Chinese, Russian and EU competition authorities against box carriers for purported anti-competitive conduct, some of which have resulted in fines. While the CO is still in its early days and it remains to be seen how block exemptions and related case law will develop in Hong Kong, it would be wise for vessel owners, operators and charterers to educate themselves on the CO and adapt to the new regulatory landscape in order to avoid fines and criminal prosecutions.

1 The First Conduct Rule of the CO distinguishes between Serious Anti-competitive Conduct (listed above) and other conduct (eg exchange of information, group boycotts, joint purchasing agreements, standard terms and standardisation agreements, etc)

Disclaimer: This article is general in nature and is not intended to constitute legal advice. The information in this article should not be applied to any particular set of facts without seeking legal advice.

STS in the Singapore OPL – Don't!

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Ship-to-ship (STS) transfer operations at anchor in the outside port limits (OPL) are prohibited, but ships continue to take this risk. This article looks at one example to demonstrate why and how this operation should be avoided.

The case

In 2015, in the course of a long-term time charter, a ship was ordered by its charterer to discharge her to another ship by a ship-to-ship (STS) operation at an anchorage in the western outside port limits (OPL) at Singapore. The master refused to do so as he was concerned that an STS in the OPL would be unsafe and was contrary to shipping notices issued by both the Singaporean and Malaysian authorities.

The charterer put a considerable amount of pressure on the master and the owner to proceed with the STS despite the master's reluctance. The owner agreed that the master would carry out a risk assessment. The conclusion of the master following that assessment was still that the operation was dangerous and he refused to go ahead.

The right decision?

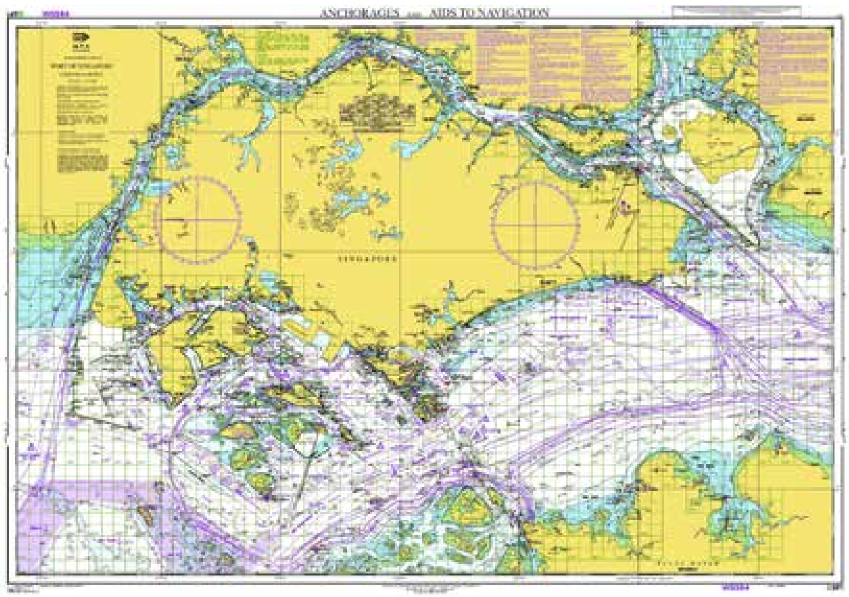
The decision of the master was without doubt the right decision, for the following reasons:

- **There is a high risk of collision in the Singapore OPL**. The OPL are extremely congested because many ships anchor there (for bunkering, taking on supplies, changing crew, repairs or waiting for cargo operations) to save money on pilotage and port charges. The risk created by congestion is compounded by wind and tide. Ships in the OPL are often swung by the wind and may experience tidal currents of up to 4 knots. Ships engaged in STS operations cannot take evasive action quickly and are more likely to be involved in a collision.

- **It is a criminal offence to anchor a ship in the OPL.** The OPL fall within the territorial waters of Singapore and Malaysia. The Singapore Maritime and Port Authority has issued a circular (No. 5 of 2001) advising against anchoring within the OPL and the traffic separation scheme. The MPA takes the view that ships doing so are in breach of Rule 10(g) of the *International Regulations for the Prevention of Collisions at Sea* (Colregs) and reports such ships to their flag states. Breach of the Colregs is also a criminal offence and may lead to fines being imposed. Under Malaysian regulations, anchoring within the OPL without permission is prohibited. A ship found anchored there is not only liable to be reported for breach of the Colregs, but she is also liable to be detained and her owner fined.

- **Claims arising out of the operation may not be covered.** A number of P&I clubs have issued circulars warning against the practice of anchoring in the OPL. It is likely that a club would take the view that an STS operation within the OPL is unsafe and would not (without the

STS in the Singapore OPL – Don't! continued



This chart featuring anchorages in Singapore is published with permission of the Maritime Port Authority of Singapore and must not be amended, copied, reproduced or distributed in any form without the permission of the Chief Hydrographer, MPA. The Chart Image is for illustration only. Singaporean Chart GSP1 "Anchorages And Aids To Navigation" can be purchased from MPA's chart distributors, a list of which can be found on MPA's corporate website.

exercise of the directors' discretion) cover claims arising out of such an operation, such as collision or pollution liabilities or fines imposed.

Refusing charterer's instructions

The charterer claimed that the operation would be safe, pointing out that many STS operations are completed in the OPL without incident. This may well be true. However, this does not mean that the operation will not result in an incident on the next occasion, and the consequences of ignoring the risks are serious.

Refusing to carry out an STS in the OPL is, therefore, advisable. The question then is whether an owner is allowed to refuse instructions to do so from a charterer. If an owner has expressly agreed to an STS in the Singapore OPL, it may be difficult for him to refuse to do so without being in breach of the charterparty. Even so, if the STS operation is illegal in the state in whose waters the operation is ordered, the charterparty or the relevant part of it may be unenforceable.

If the owner has not agreed to an STS operation in the OPL, the legal position is easier. In the case referred to above, the charterparty stated that any STS operation was 'subject to the Master's consent'. As the master did not consent, the owner was not obliged to proceed. Many charters contain similar terms, and from an owner's point of view, such a provision is desirable and should be insisted upon in negotiating the fixture, not just in the context of an STS in the Singapore OPL but in the context of STS operations in general.

Even in the absence of such a term, it is unlikely that a charterer under a time charter can make an owner carry out an STS in the OPL for the following reasons:

- Most time charters require that the charterer nominate only safe ports, berths and places for the ship. An anchorage in the OPL would probably not be held to be safe for an STS operation, especially if it is an anchorage that is specifically prohibited.
- An owner is not obliged to comply with a charterer's order if it would endanger the crew, the ship or the cargo in a manner that the owner has not expressly agreed to. Again, an order to proceed with an STS operation in the OPL would probably be held to be an order to undertake a dangerous operation and would, therefore, not be one the owner was obliged to obey.

Conclusion

It is not clear when, if ever, the problem of STS operations in the Singapore OPL will be resolved. Anchoring in the OPL remains prevalent, despite the state authorities having advised against it, and prohibiting and continuing to take action against owners for it. This is doubtless because of the economic benefits to charterers and owners in doing so. Shipowners would, however, be well advised not to risk the very serious consequences that might result from an attempt to obtain such relatively minor short-term gains.

FPSO Round Table Seminar

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As part of the club's ongoing commitment to its members, an FPSO Round Table Seminar was held in Singapore on 21 June 2016, hosted jointly with the international law firm, Holman Fenwick Willan. The event was well attended by senior management across the industry, including FPSO owners, oil companies, salvors and a mortgagee bank. The seminar looked at the market conditions, insurance solutions, claims trends and more.

The FPSO Round Table Seminar followed by discussions over luncheon.

Floating Production Storage and Offloading (FPSO) is a floating vessel located near an oil platform, where oil is processed and stored until it can be transferred to a tanker for transporting.

Useful take-away points

FPSO market conditions

The FPSO industry has seen challenges in recent years, with the drop in oil prices impacting the oil and gas market globally. An in-depth analysis of the FPSO market by Clarksons Research highlighted the pressures of the current market, as well as forecasting a positive future outlook. The fall in oil prices and reduction in capital expenditure has lowered exploration and production budgets, slowing down the ordering potential for new FPSOs. As the breakeven cost for many potential projects is above current oil prices, short-term opportunities seem scarce. However, there is more positivity in the longer term. In line with a forecast improvement in global oil prices, the backlog of potential FPSO projects may regain momentum from 2018 onwards.

Cover available for production operations

The programme touched upon the insurance covers and expertise available to assist members involved in production operations. Whilst IG poolable P&I cover could respond to liabilities incurred during navigation only, the club's Standard Offshore Rules (SOR) provides non-poolable cover for operating production units of up to $1bn. This will respond to a member's liability in connection with the operation of the unit for personal injury/death/illness, collision/FFO, pollution, wreck removal, damage to third parties and contractual indemnities falling within the scope of the SOR. The Standard Syndicate provided an overview of tailored cover that can wrap around and dovetail with a P&I entry.

Case studies

Two engaging case studies were presented. The first looked at a casualty scenario and discussed the P&I cover and market insurance solutions that are available. The first case involved claims following severe weather leading to a failure of the mooring lines and a subsequent loss of position, resulting in third-party property damage, pollution from the unit and other field property, wreck removal and the associated consequential losses. The case study was developed to then look at a collision between an FPSO and an offtake tanker.

The second case study focused on the human element and crewing issues, and the importance of effective safety management procedures that are both promoted by the onshore management and consistent with the practices and operations that are performed on board.

These workshops raised many relevant issues for all participants and sparked engaging conversations, which continued over lunch after the seminar. For more information on the seminar or the presentations and workshop materials, please contact the author or visit The Standard Club website.

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