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If you have any questions please refer to the team member page.
Legal Burden of Proof in Cargo Damage Claim

It is not a new topic, but given its critical importance, we believe that it is still worthwhile to review Chinese law on it. Particularly, we note that the English Supreme Court dealt with the same issue in Volcafe Ltd. and Others v. Compania Sud Americana De Vapores SA in December of 2018. This indicates that clarifying the rules of the burden of proof in cargo damage claim is of the same significance in the two jurisdictions although it seems that they adopt not the entirely same rules.

1. The Carrier’s obligations and liability of making vessel seaworthy and taking care of cargo

Chinese law makers formulated the rules on the carrier’s obligations and liabilities by reference to Hague Rules 1924 and Hamburg Rules 1978. The relevant provisions of China Maritime Law are as same as art. III rule 1 of Hague Rules 1924 that the carrier shall be bound before and at the beginning of the voyage to exercise due diligence to make the ship seaworthy, properly man, equip and supply the ship, make the holds refrigerating and cool chambers and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and reservation. It is also as same as art. III rule 2 of

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1 [2019] 1 Lloyd’s Rep 21
2 China Maritime Law Article 47
Hague Rules 1924 that the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.  

Moreover, it makes no difference to art. IV rule 2 of Hague Rules 1924 that the carrier is not liable for the loss or damage due to the miscellaneous list of the excepted causes. But, China Maritime Law specifies that in order to rely on the excepted peril, the carriers shall bear the burden of proving that the cargo damage is caused by any one of the listed excepted reasons save for fire.

2. Legal burden of proof in cargo damage claim

The first stage is usually done by the cargo interests that the cargo shipped in apparent good order or condition but discharged damaged. The cargo interests do not need to show that the carrier committed any negligence causing the cargo damage. As for the second stage, if the cargo interests prove that the carrier has committed fault in exercising due care of the cargo, or if the carrier fails to prove that he has exercised due care of the cargo, nonetheless the cargo damage has still inevitably happened, the carrier is liable for the damage.

The above rules are based upon China Maritime Law Charter 4 Section 48 and China Maritime Law Article 51.
2 Carrier’s responsibility Article 46. The article provides that during the period when the carrier is in charge of the goods, the carrier shall be liable for the loss of or damage to the goods, except as otherwise provided for in this Section. Section 2 Article 51 lists 12 categories of excepted causes for which the carrier can claim no liability.

The Chinese Supreme People’s Court cases re-affirmed the above rules in recent two cases. In Hongyi Grain and Oil Resources Co., Ltd. v. Shanghai Times Shipping Co., Ltd., it concerns the claim for shortage of a soya bean cargo. One of the issues in this case is the distribution of burden of proof between the plaintiff cargo owner and the defendant carrier. The Chinese Supreme People’s Court held that where it happens cargo loss, damage or delay in delivery, the cargo interests merely bear the burden to prove that the loss, damage or delay occurs during the period when the carrier is in charge of the cargo. The cargo interests are not required to prove that the carrier commits any negligence. Where the carrier relies on the excepted causes provided in Article 51 of the Maritime Law, the carrier cannot be exempted from liability if the cargo interests prove that the carrier committed any fault.

In white Periwinke Shipping S.A. v. CPIC Chongqing Branch, the critical issue is whether the soya bean cargo was damaged due to the inherent vice, i.e. the moisture of the cargo is above the normal standard. The Chinese Supreme People’s Court held that the carrier fails to discharge the burden of proof that the cause of the damage is the inherent characteristic because the two expert opinions relied on by the carrier are academic articles written by the experts who are not qualified to do the import and export cargo damage survey in China, and the data supporting their views are mainly derived from research results of others. Moreover, the expert opinions do not establish the causative connection between the moisture of the soya bean and the cargo damage and also not establish that the moisture of the soya bean cargo is not in compliance with

5 (2016) zuigaofaminshen No. 1109

6 (2018) zuigaofaminshen No. 2411
national standard or has adverse effect on long distance transportation and storage. In addition, there are evidence showing that the carrier had fault in taking care of the cargo. The carrier didn’t keep a complete record of the air temperature, moisture, and average temperature of cargo holds, air dew point and average dew point of cargo holds. The carrier also didn’t keep the record of dew point inside and outside of the ship in different climate and weather conditions.

3. Distinction between the English law and the Chinese law

It seems that the English law on this issue is not entirely the same as the Chinese Law. In Volcafe Ltd. and Others v. Compania Sud Americana De Vapores SA, the English Supreme Court held that in principle, where the cargo was shipped in apparent good order and condition but is discharged damaged, the carriers bear the burden of proving that it was not due to its breach of the obligation in art. III rule 2 of Hague Rules to take reasonable care. At this stage, the two jurisdictions adopt the same rules. At the second stage, the English Supreme Court held that the carrier must show either that the damage occurred without fault in the various respects covered by art. III rule 2, or that it was caused by excepted peril. If the carrier can show that the loss or damage to the cargo occurred without a breach of the carrier’s duty of care under art. III rule 2, he will not need to rely on an exception. The Chinese Supreme People’s Court does not apply such alternative rule as the English Supreme Court does. The above two cases indicate that the carrier must prove not only that the cargo damage was due to the excepted peril but that the damage occurred without the carrier’s fault of taking care of the cargo. The carrier would not be relieved of the liabilities if failing in proving either of the two aspects.
Insurer’s Liability for the Loss of an Insured Vessel Caused by Combined Operation of Causes

The Chinese Supreme Court made it clear in the recent re-trial case of Qu Rongmo v. China Continent Insurance Co. Ltd. Weihai Sub-Branch and Shidao Sub-Branch that where the loss or damage of a vessel is caused due to combined operation of covered perils and non-covered perils, the hull and machinery insurer shall be liable to the insured according to the apportionment of those perils’ efficiency to the loss or damage of the insured vessel. The principle as established by the judgment is compared with the English law principle that when a loss arises through a combination of two concurrent proximate causes, one covered and the other excluded, the exclusion will take precedence and the insurer will be entitled to decline cover.

1. The Facts and Judgment

“Lu Rong Yu 1813” and “Lu Rong Yu 1814” are sister ocean fishing vessels both owned by Qu Rongmo. They are insured by China Continent Insurance Co. Ltd, Shidao Sub-

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13 (2017) zuigaofaminzai No. 413
14 ATLASNAVIOS-NAVEGACAO LDA v NAVIGATORS INSURANCE CO LTD AND OTHERS (THE “B ATLANTIC”) [2018] UKSC 26
defects of hull and machinery, and (3) negligence of the master, chief officer, seafarers, pilot and repairer. Meanwhile, the insurance clause excludes the insurer’s liability for the loss, damage and liability of the insured vessels caused due to the negligence or willful conduct of shipowner or shipowner's representative, among others.

During the closed fishing season, the two fishing vessels were repaired at a local fishing terminal. The main engine of “Lu Rong Yu 1813” was removed out of the vessel for repair and the tail shaft of “Lu Rong Yu 1814” was changed with two screws not being fixed. In order to avert typhoon Miley, Qu Rongmo together with one master, one chief engineer and one bosun started the engine of “Lu Rong Yu 1814” to tow alongside “Lu Rong Yu 1813” towards another fishing terminal about four miles away. During the shifting, the engine room of “Lu Rong Yu 1814” was flooded resulting in the electric generator and the steering engine out of work. Afterwards, the two vessels were anchored waiting for salvage, but anchor cables broke and anchors dragged resulting in the vessels out of control. Consequently, the two vessels were grounded and then actually and totally lost. Qu Rongmo claimed insurance indemnity of the full insured amount of the two vessels against the insurance company but the claim was rejected by the insurance company.

It was determined by the first instance court that the loss of the two vessels was caused due to the grounding, which falls into the perils covered by the insurance clause. It was also determined by the court that while the vessels were under equipped with seafarers, it does not constitute great negligence of Qu Rongmo. Therefore, the first instance court judged that the insurance company shall be liable to Qu Rongmo for the full insured amount of the two vessels.

The second instance court reversed the first instance judgment. It was determined by the second instance court that in the circumstances where “Lu Rong Yu 1813” has no power, “Lu Rong Yu 1814” was under equipped
with seafarers, the communication equipment of the two vessels were out of work and typhoon Miley was approaching to the terminal, Qu Rongmo recklessly ordered seafarers to shift the vessels. Clearly, Qu Rongmo was negligent in ordering the shifting of the vessels which has a causative connection to the occurrence of the accident. The accident happened due to the combination of the concurrent operating of shipowner’s negligence and typhoon. In the absence of any one of the two causes, the accident would not have happened. Considering that it was difficult to determine which one of the two causes is the immediate, efficient and decisive cause, the second instance court judged that the insurance company shall be liable to the insured for 50% of the insured amount.

The Supreme People’s Court reversed the second instance judgment holding that it made mistakes both in facts and law. Firstly, typhoon Miley has the immediate and material effect on the accident and the loss. Secondly, when Qu Rongmo ordered to shift the two vessels, he should have borne in mind that “Lu Rong Yu 1813” lacked power and the repair of “Lu Rong Yu 1814” was not completed yet. In such circumstances, shifting for about 4 miles during typhoon would be very difficult and risky. Qu Rongmo together with other 3 seafarers were unable to look after the safe navigation of the two vessels during such shifting. Accordingly, Qu Rongmo should have equipped the vessels with sufficient seafarers but he did not do so at all. Thirdly, there also exists negligence of seafarers during the shifting of the vessels. This is because the seafarers failed to take due care of the vessels by taking water proof and draining measures of the main engine of “Lu Rong Yu 1814”, which resulted in the loss of power of “Lu Rong Yu 1814” and consequently contributed to the happening of the accident. The Supreme People’s Court held that the accident was caused due to the combination of the typhoon, shipowner’s negligence and seafarer’s negligence, among which typhoon is the main cause.
The insurance clause specifies that typhoon and seafarer’s negligence are covered perils while the shipowner’s negligence is excluded peril. According to the PRC Insurance Law, where the insurer does not remind insured of or specify to the insured the liability exclusion clause when making insurance contract, the liability exclusion clause is null and void and shall not be binding upon the insured. Qu Rongmo challenged the validity of the liability exclusion clause although he admitted that the insurance contract is valid. In view that the insurer failed to produce proof that it has specified to Qu Rongmo the said liability exclusion clause, the Supreme People’s Court held that the clause is not binding upon Qu Rongmo. Considering the efficiency of each of the three causes in the happening of the accident, the Supreme People’s Court judged that the insurance company shall be liable to the insured shipowner for 75% insured amount.

2. Compare with English law on Concurrent Proximate Causes

Chinese insurance law has no principle of proximate causes. The judgment of this case indicates that the Chinese Court is inclined to adopt the principle of apportionment of concurrent causes of the loss. This is compared with the English insurance law principle.

In ATLASNAVIOS-NAVEGACAO LDA v NAVIGATORS INSURANCE CO LTD AND OTHERS (THE “B ATLANTIC”), the UK Supreme Court re-affirmed the established principle of English insurance law that when a loss arises through a combination of two concurrent proximate causes, one covered and the other excluded, the exclusion will take precedence and the insurer will be entitled to decline cover. However, it seems likely that the English court will continue to try to find a single proximate cause of a loss and will only deem there to have been concurrent causes in the most extreme examples.

3. Other enlightenments of the
The insurance company shall remind the insured or specify to the insured the liability exclusion clause when entering into an insurance contract. Otherwise, as judged by the Chinese Supreme Court in the above case, such clause is null and void and shall not be binding upon the insured unless the insured admits its validity.

Meanwhile, one legal issue involved in the case which is not discussed above is whether shifting between terminals constitutes the commencement of a voyage. This issue arises because the insurer argued that at the beginning of shifting of the fishing vessels between the two terminals, the two vessels were unseaworthy, one without the main engine and the other under equipped with seafarers, with the privity of Qu Rongmo. According to Article 244 of Chinese Maritime Law, unless it is provided otherwise in the insurance contract, the insurer shall not be liable for the loss caused attributable to the unseaworthiness of the insured vessel at the commencement of a voyage with the privity of the insured. But this argument was not accepted by the Supreme People’s Court. The Supreme People’s Court specified that the “commencement of a voyage” does not include the shifting of a vessel between terminals. Commencement of a voyage as provided by Article 244 refers to a ship departing a port and commencing an intended voyage but not refers to shifting within the port. A ship is underway when it changes from anchored, fastened and grounded situation into de-anchored, de-fastened and de-grounded situation. But, the change of the said situations shall not be regarded as commencement of a voyage uniformly. The owner of the two fishing ships arranged to shift the ships between two terminals in order to avoid typhoon but not to commence the intended voyage. Such kind of shifting shall not be regarded as commencing a voyage as provided by Article 244 of Chinese Maritime Law.
Defeating the Right to Limit Liability is Still Very Difficult though Not Impossible

China did not join the Convention on Limitation of Liability for Maritime Claims 1976 (the “1976 Convention”)\textsuperscript{19}, but adopted the main provisions of the 1976 Convention in its Maritime Law and Maritime Procedure Law. Article 4 of the 1976 Convention \textit{Conduct barring limitation} is entirely incorporated into China Maritime Law.\textsuperscript{20} The standard of barring limitation is very high and the burden of proof on the part of the person who relies on the rules to defeat the liable party’s right to limit is very heavy. This briefing aims to introduce and analyze a few typical Mainland China, Hong Kong and English court cases to illustrate the application of the rules.

1. Requirements of the Rules

The person who relies on the rules shall prove and establish by evidence that:\textsuperscript{21}

\begin{itemize}
  \item \textbf{(1) Liable person’s personal act or omission}
\end{itemize}

\textsuperscript{19} 1976 Convention and Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims apply to Hong Kong Special Administration Region only.
\textsuperscript{20} Article 209 of PRC Maritime Law
\textsuperscript{21} Article 4 of the 1976 Convention
majority of the casualty accidents happened due to seafarer’s negligence. Can the negligence be attributable to the shipowner who employs directly or indirectly the negligent master or crew members? Moreover, the shipowner or other persons who are permitted to limit the liability are almost invariably corporations rather than natural person. So, if there is any fault of someone within the shipowner company, whether the shipowner is to be blameworthy for the fault itself?

In *Jiangsu CNPC & TAFO Petroleum Corporation v. Xin Peng Cheng Shipping Pte.* (MV “Mount Tianzhu”) which is heard by the Chinese Supreme People’s Court, the vessel owned by the defendant touched the plaintiff’s jetty resulting in substantial losses including repairing costs and loss of use. The defendant claimed to limit the liability for the allision loss. The plaintiff contended that the defendant’s conduct bar its right to limit the liability. The Chinese Supreme People’s Court held that to defeat the limit of liability, the plaintiff needs to first establish by proof that the defendant shipowner itself committed the act or omission causing the allision accident to happen and the loss to result. The accident investigation report made by Zhangjiagang MSA concludes that the accident was caused due to the failure of the duty officer and pilot in assessing the effect of onshore wind on the vessel, the failure in employing tug boat to assist in berthing effectively, and the failure in taking proper emergency operation to control the vessel’s position. Wuhan Maritime Court and Hubei High People’s Court both held that the plaintiff failed to prove that the crew members’ negligence can be attributed to the defendant shipowners. The Supreme People’s Court upheld the lower courts’ holdings and reiterated that the causative act or omission must be the liable person’s *personal* act or omission. These holdings mirror the English law of this issue.

But, it is still not clear what natural person(s) ’s act or omission could be

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22 (2014) Minshenzi No. 1777
regarded to be the actual fault of the liable shipowner under Chinese law. The Hong Kong High Court’s judgment of *Floata Consolidation Ltd. v. Man Lee Hing (Hong Kong) Vehicles Ltd. and Others* (the “Floata 97”) 23 may be referred to in answering this particular question. In that case, the defendant cargo owner relied on Article 4 of the 1976 Convention which has the force of law in HK applying for setting aside the court’s decree of granting the plaintiff’s limit of liability. The operation of the carrying barge was contracted out by its owner to a third company and the person who was in charge of the carrying barge at the material time was Mr. Sin. Mr. Sin was prosecuted for an offence as the cargo was not loaded, stowed and secured properly so as to prevent loss of the cargo on board. Mr. Sin pled guilty and was fined. The defendant cargo owner contended that Mr. Sin’s fault should be regarded to be the barge owner’s constructive fault. The HK High Court dismissed the defendant’s contentions holding that Mr. Sin was not the servant or agent of the barge owner, but even if he were, his act or omission is not be regarded as the act or omission of the barge owner for the purpose of Article 4 of the 1976 Convention. First, Mr. Sin was not a director of the barge owner or part of its senior management. Secondly, while Mr. Sin was in charge of the barge, it does not conclude in favor of the defendant cargo owner. Every vessel has, or must have, someone in charge of it. Normally, it is the master but that does not make his act or omission that of the company which owns the vessel. The Justice Ng. cited what Wilmer LJ said in the case of *The Lady Gwendolen* 24 “where, as here, the shipowners are a limited company… It is necessary to look closely at the organization of the company in order to see what individual it can fairly be said that his act or omission is that of the company itself.”

(2) Deliberate act or omission or recklessness with knowledge of the loss would probably result

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23 [2016] HKCFI 622

24 [1965] 1 Lloyd’s Rep 335
It is rare that the shipowner or other liable person would commit a fault deliberately, but recklessness sometimes happens. The critical element of the second layer of the rules is the privity that the loss would probably result. In *Mao Xuebo v. Chenwei and Shengsi County Jiangshan Shipping Company Ltd.*, Shanghai Maritime Court dismissed the Defendant Mr. Chen’s application for the limit of liability. This case is selected by the Chinese Supreme People’s Court as one of the typical admiralty cases the year of 2016. Mr. Chen is the owner of MV “Zhesheng 97506”. The vessel was in collision with MV “Tailianhai 18”. After the collision accident, the latter sunk and all the 8 crew members were missing or dead. It was proved and established that before the collision accident happened, MV “Zhesheng 97506” repeatedly navigated beyond the navigation zone permitted by the authorities and was undermanned and the crew member were not equipped with driving license. Those defects directly caused the collision accident to happen. Mr. Chen, being the shipowner of the vessel, failed to prevent the vessel to commit the unlawful actions but permitted it to happen. When the collision accident happened, the officer on duty failed to report it to the MSA and Mr. Chen failed to instruct the officer on duty to stay at the accident site to save the missing crew members of MV “Tailianhai 18” and the vessel, which was a critical contributing cause of the death of the crewmembers of MV “Tailianhai 18”. Above all, Shanghai Maritime Court held that Mr. Chen’s act or omission constitutes the recklessness and it is impossible for Mr. Chen not to know that the property loss and personal death of MV “Tailianhai 18” would probably result therefore.

2. Conclusions

It is clear under Chinese law that seafarer’s negligence is not regarded to be the shipowner’s personal fault for the purpose of the Article 4 of the 1976 Convention. To break the right to limit the liability, it needs to establish by evidence that the
shipowner itself is personally blameworthy for the loss. But, it is not clear under Chinese law what person(s)’ fault can be attributed to the shipowner. Hong Kong and English courts’ approach may be referred to in addressing the issue. That is where a shipowner is a limited company, it is necessary to look closely at the organization of the company in order to see what individual it can fairly be said that his act or omission is that of the company itself. It is equally important that it needs to prove and establish that the shipowner knows the loss would probably result from such act or omission.
Dose a Shipowner have Right to Limit the Liability for the Claim for Removal and Cleaning Costs of the Wreck of Jetty?

The Chinese Supreme People’s Court held in “Zeus” case that claims for oil removal and cleaning of a sunk, wrecked, stranded or abandoned ship are NOT the claim for which a shipowner has right to limit liability. However, the rational of the judgment in “Zeus” case shall not extend to applying in the claim for the removal or cleaning costs of the wreck of jetty or other harbor works. The liable shipowner still has the right to limit the liability for such claim.

Article 2 (d) and (e) of Convention on Limitation of Liability for Maritime Claim 1976 (the “1976 Convention”) provide that the liable shipowner has the right to limit the liability for claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ships and claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship. But, it is permitted of the state parties of the 1976 Convention to reserve Article 2 (d) and (e). China does not join the 1976 Convention but adopts the main provisions of the same save for, among others, Article 2 (d) and (e) of the 1976 Convention. To properly interpret the rules of limit of liability for maritime claims and unify the application of the rules in the judicial trial, the Chinese Supreme
People’s Court enacts and promulgates Some Provisions on the Trial of Cases Concerning Limit of Liability for Maritime Claims (the “Limit of Liability Provisions”). But, it was still controversial as to whether a liable shipowner has the right to limit liability for the claim for oil removal and cleaning of a sunk, wrecked, stranded or abandoned ship. This outstanding issue has been finally resolved by the notable “Zeus” case. One of the rationales of the “Zeus” judgment is to protect the public interest, i.e. the safety of navigation water and oceanic environment. But, it is not to extend to applying on the claim for the removal or cleaning of the wreck of a jetty or other harbor works although the latter concerns the public interest too. The Chinese Supreme People’s Court re-affirmed this viewpoint in two cases recently.

1. “Renke 1” case

MV “Renke 1” touched the jetty of Sinopec Sales Company Shanghai Branch Luojing Petroleum Tank Farm resulting in the jetty being seriously damaged. Sinopec contends that the shipowner of “Renke 1” has no right to limit the liability for the fees and costs of the removal and cleaning of the jetty wreck, the watching and monitoring of the accident site and navigation channel, and setting up buoy. What Sinopec relies on are that the Limit of Liability Provisions clearly provides that a liable shipowner has no right to limit the liability for claims in respect of the raising, removal, cleaning and rendering harmless of a ship which is sunk, wrecked, stranded or abandoned and the cargo on such ship. The law maker intends to protect the public interest, i.e. the safety of navigation water and oceanic environment. The costs of removing and cleaning the wreck of the jetty are of the same nature as those of removing and cleaning a ship or cargo on the ship. Hence, by the same token, the shipowner of MV “Renke 1” has no right to limit the liability for the claim for those costs.

Shanghai Maritime Court and Luojing Petroleum Tank v. Guangdong Renke Shipping Company Ltd. (2014) Mintizi No. 191

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33 (2012) Minshenzi No.212
34 Sinopec Sales Company Shanghai Branch
Shanghai High People’s Court both upheld Sinopec’s contentions. But, the Chinese Supreme People’s Court reversed the judgments dismissing Sinopec’s claim. The Supreme People’s Court held that the claim for the removal and cleaning costs of the wreck of jetty is not the same as the claim for the oil removal or cleaning of a ship. There are two reasons for this conclusion. The first reason is what are provided in Article (d) and (e) of the 1976 Convention only refer to a ship including anything that is on board such ship or cargo on board the ship. The Limit of Liability Provisions by the Chinese Supreme People’s Court only refers to a ship or cargo on board the ship too. It does not include the claims for the removal or cleaning of the wreck of jetty. The second reason is that while removing or cleaning the wreck of jetty sometimes concerns the public interest, it cannot simply conclude that any maritime claim which is in relation to public interest is to be unlimited for liability.

2. “Mount Tianzhu” case

MV “Mount Tianzhu” was in allision with the jetty of Jiangsu CNPC & TAFO Petroleum Corporation. The jetty interests contended that the shipowner of MV “Mount Tianzhu” has no right to limit the claim for the cleaning and destruction costs of the jetty. This case is heard by Wuhan Maritime Court as the first instance and by the High People’s Court of Hubei Province as the second instance. The High People’s Court of Hubei Province did not uphold the contention by the jetty interests. The Jetty interests applied to the Supreme People’s Court for retrial. The Supreme People’s Court applies the same approach as that of “Renke 1” case holding that the shipowner has right to limit the liability for the cleaning and destruction costs of the jetty.

3. Conclusions

It is clear under Chinese law that a shipowner has no right to limit the liability for the claim in respect of the oil removal and cleaning of a sunk, wrecked, stranded or abandoned ship. It is also clear that a shipowner has

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35 (2014) Minshenzi No. 1777
right to limit the liability for the claim in respect of the removal, cleaning and rendering harmless of the wreck of jetty or any other harbor works unless the liable shipowner commits any fault for which the shipowner cannot claim limit of liability.
Chinese Law on the Compensation for Seafarer’s Injury, Death or Illness

According to 2018 Report on Chinese Crew Development published by China Ministry of Transportation, by the end of 2018, there are about 146,000 Chinese seafarers working in overseas employment. China ranks as the second largest country of seafarers working in overseas employment. P&I Club usually covers the member’s liability for seafarer’s injury, death or illness subject to the terms and conditions of P&I rules. This article is to look into Chinese law on the compensation for the injury, death or illness of the seafarers who are working in overseas employment.

1. Overview of Chinese Law on the compensation for seafarer’s injury, death or illness

There is no a single Chinese law dealing with the compensation issue. There are miscellaneous laws, regulations and rules which are applicable to the compensation issue. They are set out below:
- Maritime Labor Convention
- Tort Law
- Labor Law
- Labor Contract Law
- Social Security Law
- Occupational Injury Security Regulations
- Seafarer Regulations
- The Chinese Supreme People’s Court’s Interpretation of Some Issues of the Application of Law in the Trial of Personal Injury Compensation Cases (the "Judicial Interpretation of
Personal Injury Compensation”)
- The Chinese Supreme People’s Court’s Interpretation of Some Issues of Determining Liability for Compensation for Mental Sufferings Caused by Civil Tort (the “Judicial Interpretation of Compensation for Mental Sufferings”)
- Administrative Regulations of Seafarer Working in Overseas Employment

Administrative Regulations of Cooperation of Overseas Employment

2. Administration of seafarer working in overseas employment

According to the Administrative Regulations of Seafarer Overseas Employment, overseas companies are NOT allowed to recruit seafares in China. They MUST contract with a Chinese company who is licensed to man a ship for the overseas shipowner with Chinese seafares. It is illegal for a company to man a ship for the overseas shipowner without the manning license. There are mandatory requirements of such manning company, among which the manning company must have a minimum paid-up registered capital of RMB 5 million, at least 100 seafares who are employed by the manning company itself and ability to pay a full amount of Renminbi 1 million of seafarer’s reserve fund. It is also required that the manning company must purchase overseas personal injury insurance for the seafarer who is manned overseas on board.

So far, Anglo-Eastern Univan Group and Wallem Group have respectively set up joint venture companies in China who have obtained the license to man seafares for overseas shipowner.

3. Contractual relationships among seafarer, manning company, overseas shipowner or any other third company

It is required by the Administrative Regulations of Seafarer Overseas Employment that the manning company shall ensure that a labor contract is signed with the seafarer by

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39 The shipowner includes the registered owner, operator and manager of a ship
any one of the manning company, the overseas shipowner or a domestic company. It is also required that the manning company shall sign a manning contract with the overseas shipowner and a boarding contract with the seafarer before working on board.

A question arises from such requirement that a labor contract shall be signed by the overseas shipowner with the seafarer. Under Chinese law, a labor contract is distinct from an employment contract in that the nature of the two types of contracts are different, the rights and obligations of the employer and the employee under the two types of contracts are different and the laws governing the two types of contracts are different.

One of the differences relating to manning seafares is that the employer who has the labor contract relationship with the seafarer shall be responsible to pay for the social security inclusive of occupational injury security of the seafarer while there is no such a requirement of the employer in the employment contract relationship. Meanwhile, it is specifically provided in the Labor Contract Law that it deals with the labor contract relationship between a domestic employer and employee. It is also specifically provided in Social Security Law and Occupational Injury Security Regulations that a domestic company is responsible to pay for social security of the employee. These provisions indicate that the Labor Contract Law, Social Security Law and Occupational Injury Security Regulations are NOT applicable to an employment contract between the overseas shipowner and Chinese seafarers.

So, the requirement of a labor contract to be signed by an overseas shipowner with a seafarer does not fit into the Chinese labor law systems and is also not in compliance with the practice of seafarer working in overseas employment. Actually, the common practice is that the seafarer is to sign an employment contract with an overseas shipowner rather than a labor contract. The boarding contract is different
from the labor contract or employment contract. The boarding contract shall provide the rights and interest which are available to the seafarer under the manning contract, the manning company’s responsibilities to manage seafarer during working on board and the emergency response responsibilities etc.

The followings are common contractual relationships among manning company, seafarer, overseas shipowner and domestic company:

**Type 1.**

- **Seafarer**
- **Manning company**
- **Employment contract**
- **Manning contract**
- **Overseas shipowner**

**Type 2.**

- **Seafarer**
- **Manning company**
- **Labor contract/boarding contract**
- **Employment contract**
- **Manning contract**
- **Overseas shipowner**

- **Type 3.**

In practice, the contract names may not be necessarily the same as the above names. It needs to identify the nature of an individual contract by reading and examining the contents of the contracts in order to determine the rights, duties and obligations of each party to the contract.

4. **Liability for seafarer’s injury, death or illness**

The seafarer or his family members can claim compensation for his injury, death or illness against the overseas shipowner, manning company or domestic shipping company or other third company if it occurs during the employment period or due to the employment work.

- **Shipowner’s liability**
Seafarer’s claim against overseas shipowner is on basis of the employment contract relationship or de facto employment relationship. The shipowner’s liability for compensation is regardless of whether the shipowner commits negligence or not. The injury, death or illness may be caused due to the negligence by any third party other than the overseas shipowner. For example, it may happen due to ship collision or due to the shipyard’s negligence in design or construction. The seafarer can select to claim against the shipowner or the negligent third party. If against the shipowner, the shipowner can have a recourse claim against such negligent third party.

According to the “Judicial Interpretation of Personal Injury Compensation”, the claimable damages, costs and expenses and the calculations of each claimable item are as follows:

(1) Hospital and medical expenses
(2) Nursing, traffic, accommodation, food allowance and nutrition expenses
(3) Loss of income
(4) In the case of disability: save 1, 2 and 3, damages for disability, disability aids expenses, living costs of dependent, rehabilitation expenses, follow-up medical treatment expense and nursing expenses
(5) In the case of death: save 1, 2 and 3, damages for death, living costs of dependent, funeral expenses, traffic and accommodation expense and loss of income for attending funeral
(6) Damages for mental suffering

The expenses shall be necessary, reasonable and supported by invoice, voucher or other proof.

The damages for the disability is calculated by reference to disability grade and average disposable income of urban resident or average net income of rural resident of the area where the court hearing the claim is located.\(^1\) The damages for disability is calculated for 20 years. If

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\(^1\) China has Hukou system. There are two categories of Hukou: urban Hukou and rural Hukou.
it is proved by the seafarer that the disposable income of the urban or the net income of rural area where he lives is higher than that of the area where the court is located, the higher shall apply. Individual city usually updates the average disposable income every year.

The living costs of the seafarer’s dependent is calculated by reference to the disability grade and the average consumption expenditure of urban resident or rural resident of the court hearing the claim. Likewise, each city usually updates the average consumption expenditure every year. The calculation of the living costs of juvenile is calculated up to 18 years old. As for adult dependent who has no working capability and income resource, the living costs is calculated for 20 years. But, if the dependent is elder than 60 years old, it is reduced by one year for each year beyond 60 years old and if elder than 75 years old, it is calculated for 5 years only.

The damages for death is calculated by reference to the disposable income or net income of the area where is court is located for 20 years. Likewise, if it is proved that the disposable income or net income of the urban or rural area where he lives is higher than that of the area where the court is located, the higher shall apply. But, if the dead seafarer is elder than 60 years old, it is reduced by one year for each year beyond 60 years old and if elder than 75 years old, it is calculated for 5 years only.

The mental sufferings is claimable by the seafarer or the family members of dead seafarer. According to the “Judicial Interpretation of Compensation for Mental Sufferings”, the amount of the damages of mental sufferings is to be determined by court at discretion by reference to the elements of negligence, seriousness of mental sufferings, financial capability of liable party and living standard of the area where the court hearing the case is located.

Each household has a Hukou book recording such category. It depends on the category of the Hukou of the seafarer to determine the compensation, i.e. adopting the disposable income of urban resident or net income of rural resident. But if it is established by proof that the seafarer lives in urban area and has income from urban job, the compensation is calculated by reference to urban resident’s disposable income although the seafarer has rural Hukou.
According to our experience, Chinese court would generally uphold RMB 50,000 to RMB200,000 damages depending upon the individual claim situation.

- Manning company's liability

The manning company’s liability to the seafarer may arise on basis of the following situations:

(1) The manning company has a labor contract with the seafarer, the manning company does not need to pay any compensation to the seafarer separately save the emergency response expenses. But, if the manning company fails to pay for the occupational injury security for the seafarer, the manning company shall be liable to the seafarer for such expenses, costs and damages as the seafarer could have had from the benefit from the occupational social security.

In circumstances (2), whether the manning company shall be liable to the seafarer for what the seafarer could have been paid from the insurance is uncertain under Chinese law. In our view, it needs to look into the reason of the manning company’s failure. If it is the manning company’s negligence which deprives the seafarer of the insurance indemnity, we believe that the manning company shall be liable to the seafarer for what he could have had from the insurance indemnity.

In circumstances (3), if the manning company’s failure to fulfil the duties and obligations cause any loss or
damage to the seafarer, we are of the view that the manning company shall be liable to the seafarer for the loss or damage caused to the seafarer.

- Domestic shipping or other company’s liability

The seafarer may have a labor contract with a domestic shipping or other company. The manning company may the seafarer for the overseas shipowner with the approval of the domestic shipping or other company’s approval according to their internal agreement. If so, the domestic shipping or other company shall pay for the occupational injury security for the seafarer. The seafarer can have the benefit of the occupational injury security without a separate claim against the domestic shipping or other company. But, if the domestic shipping or other company fails to pay for the occupational injury security, the seafarer can have a claim against the domestic shipping or other company for what he could have had from the benefit of the occupational injury security.

5. Conclusions

As to the liability for the injury, death or illness of the seafarer working in overseas employment, it needs to first identify the nature of the contractual relationship between the seafarer and the manning company, overseas shipowner, domestic shipping company or other company, and then properly apply the law governing each individual contract. It is common practice that the seafarer has an employment contract relationship with an overseas shipowner or de facto employment contract relationship. In such a relationship, the overseas shipowner’s liability shall be determined pursuant to the “Judicial Interpretation of Personal Injury Compensation”.

26
Update on Iran Sanctions by the US and Advice on Risk Control

1. Background

(1) US withdrawal from Iran Nuclear Deal

- On 8 May 2018, the US President Donald Trump decided to cease the participation of the United States in the Joint Comprehensive Plan of Action of July 14 2015 (JCPOA) known normally as Iran Unclear Deal as reached between Iran and China, France, Russia, UK, US, EU and Germany on 14 July 2015 in Vienna, and re-impose all sanctions on Iran as expeditiously as possible but in no case later than 180 days from 8 May 2018.

(2) Executive Order 13846

- On 6 August 2018, the President issued the Executive Order 13846. As the 180-days window time would expire on 5 November 2018, the US will re-impose the toughest sanctions targeted on the critical sectors of Iran including Energy, Shipping, Shipbuilding and Finance as from 5 November 2018. The re-imposed sanctions are to counter Iran’s development of nuclear weapon.

- The main contents of Executive Order 13846 relate to Non-US entities and individuals who committed sanctionable activities, Sanctionable Activities, Categories of Sanctions and Law-enforcing Department of Sanction, etc.
(3) Significant Reduction Exceptions (SREs)

- On 5 November 2018, the US government announced it would grant temporary sanctions waivers (Significant Reduction Exceptions, “SREs”) allowing for the continued importation of Iranian-origin oil, which would otherwise be prohibited under various secondary sanctions authorities to China, India, Italy, Greece, Japan, South Korea, Taiwan, and Turkey. The SREs are 180 days from 5 November 2018, and are subject to renewal by the US President. That the US government gave the waiver is because the receiving countries demonstrated the significant reductions in Iranian oil importation prior to 5 November 2018.

- On 22 April 2019, in order to give the economic pressure to Iran, Trump Administration announced that it would not reissue the SREs that have allowed energy companies in the exempted countries to purchase Iranian oil after SREs have expired on 2 May 2019, since Iran could obtain the capital for the nuclear weapon and atomic bomb project through such oil revenues.

2. Non-US Entities and individuals

Following non-US entities and individuals who committed sanctionable activities

- Shipping companies
- Shipowner
- Operator
- Manager
- Insurer
- Financial Institution
- Bunker Suppliers
- Traders
- Executive officer, leader or any person who is in control of foregoing entities

Definition:

- Entities: partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;
3. Sanctionable Activities

“Sanctionable Activities” mainly refers to the situations which are regulated in Section 3 of Executive Order 13846:

(1) Knowingly engaged in a significant transaction for the purchase, acquisition, sale, transport, or marketing of petroleum, or petroleum products, or petrochemical products from Iran;

(2) Knowingly provide significant support to or engaged in significant transactions with Iranian entities and individuals on OFAC’s List of Specially Designated Nationals and Blocked Persons (SDN List), such as the National Iranian Oil Company (NIOC), the National Iranian Tanker Company (NITC), and the Islamic Republic of Iran Shipping Lines (IRISL);

(3) Providing bunkering services to vessels transporting petroleum or petroleum products or petrochemical products;

(4) Knowingly own, operate, control, or insure a vessel that transports crude oil exported from Iran after the expiration of any applicable significant reduction exception could be subject to secondary sanctions under the Iran Sanctions Act.

Definition:
- Knowingly: with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known of the conduct, the circumstance, or the result.

- Significant transaction: the Treasury Department may consider:
  (1) the size, number, frequency, and nature of the transaction(s);
  (2) the level of awareness of management of the transaction(s) and whether or not the transaction(s) are a part of a pattern of conduct;
  (3) the nexus between the foreign financial institution involved in the transaction(s) and a blocked Islamic Revolutionary Guard Corps individual or entity or
(4) the impact of the transaction(s) on the goals of the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA);

(5) whether the transaction(s) involved any deceptive practices;

(6) other factors the Treasury Department deems relevant on a case-by-case basis.

4. Categories of Sanctions

(1) List of Specially Designated Nationals and Blocked Persons ("SDN List")

- If the Secretary of State determine that the activities of an entity or individual meet the criteria for the imposition of sanctions under the Executive Order 13846, those entities or individuals can be added into OFAC SDN List. For example, on 25 September 2019, the Secretary of State determined that 6 Chinese entities and 5 officers of the foregoing entities meet criteria for the imposition of sanctions under Executive Order 13846 and added the same into the OFAC SDN List.

(2) Correspondent and Payable-Through Account Sanction:

- The Secretary of the Treasury may prohibit the opening, and prohibit or impose strict conditions on the maintaining, in the United States of a correspondent account or a payable-through account by such foreign financial institution.

(3) Secondary Sanction: if the Secretary of State determined that the activities of an entity or individual meet the criteria for the imposition of sanctions under the Executive Order 13846, it will have the right to enforce the secondary sanction:

(i) prohibit any United States financial institution form making loans or providing credits to the sanctioned person totaling more than USD10,000,000 in any 12-month period;

(ii) prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in
which the sanctioned person has any interest;

(iii) prohibit any transfer of credit or payment between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person;

(iv) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of the sanctioned person, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in;

(v) prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person;

(vi) restrict or prohibit imports of goods, technology, or services, directly or indirectly, into the United States from the sanctioned person;

(vii) impose on the principal executive officer or officers, or persons performing similar functioned and with similar authorities, of a sanctioned person the sanctions described in subsections (a)(i) - (a)(vi) of section 5, as selected by the President or secretary of the Treasury, as appropriate.

Example: On 25 September 2019, the sanctioned Chinese entities and executive officers mentioned in 4(1) sustained the secondary sanctions subject to section 5(a)(ii) to (vi) of Executive Order 13846. However, on 24 October 2019, OFAC issued a General License K towards one of the sanctioned entities in order to authorize the transactions and activities including off-loading non-Iranian crude oil to be maintained or winded down by 20 December 2019. To be noticed, the blocking sanctions apply only to these listed entities and any entities in which they own, individually or in the aggregate, a 50 percent or greater interest.
Additionally, the sanctions do not apply to these entities' ultimate parent. Similarly, sanctions do not apply to parent company's other subsidiaries or affiliates, provided that such entities are not owned 50 percent or more in the aggregate by one or more blocked persons. U.S. persons, therefore, are not prohibited from dealing with parent company, its non-blocked subsidiaries, or non-blocked affiliates to the extent the proposed dealings do not involve any blocked person, or any other activities prohibited pursuant to any OFAC sanctions authorities. Similarly, non-US persons do not face sanctions risk for engaging in transactions with parent company, its non-blocked subsidiaries, or non-blocked affiliates.

(4) The Secretary of State shall deny a visa to, and the Secretary of Homeland Security shall exclude from the United States, any alien that the Secretary of State determines is a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person.

(5) Civil Enforcement Actions subject to US jurisdiction, in most cases, the sanctioned entities will reach a settlement with OFAC.

(6) Criminal Penalties subject to US jurisdiction

5. Law-enforcing agency

- the Secretary of State, the Secretary of the Treasure and OFAC

6. Safety measures

- in order to avoid triggering the Iran Sanctions, it is advised to prevent from following situations:

(1) Falsifying Cargo and Vessel Documents: Complete and accurate shipping documentation is critical to ensuring all parties to a transaction understand the parties, goods, and vessels involved in a given shipment. Bills of lading, certificates of origin, invoices, packing lists, proof of insurance, and lists of last ports of call are examples of documentation that typically accompanies a shipping transaction. Shipping companies
have been known to falsify vessel and cargo documents to obscure the destination of petroleum shipments.

(2) Ship to Ship (STS) Transfers: STS transfers are a method of transferring cargo from one ship to another while at sea rather than while located in port. STS transfers can conceal the origin or destination of cargo.

(3) Disabling Automatic Identification System (AIS): AIS is a collision avoidance system, which transmits, at a minimum, a vessel's identification and selects navigational and positional data via very high frequency (VHF) radio waves. While AIS was not specifically designed for vessel tracking, it is often used for this purpose via terrestrial and satellite receivers feeding this information to commercial ship tracking services. Ships meeting certain tonnage thresholds and engaged in international voyages are required to carry AIS at all times, consistent with applicable requirements; however, vessels carrying petroleum from Iran have been known to intentionally disable their AIS transponders or modify transponder data to mask their movements. This tactic can conceal the cargo's Iranian origin, or create uncertainty regarding the location of Iranian vessels and obfuscate STS transfers of Iranian cargo.

(4) Vessel Name Changes: The owners of vessels that have engaged in illicit activities are known to change the name of a vessel in an attempt to obfuscate its prior illicit activities. For this reason, it is essential to research a vessel not only by name, but also by its International Maritime Organization (IMO) number.

- Advise towards safety measures

(5) Insurance: There is sanctions risk related to the provision of underwriting services or insurance or reinsurance to certain Iranian energy- or maritime-related persons
or activity. In particular, persons who knowingly provide underwriting services or insurance or reinsurance to any Iranian person on the SDN List, such as NIOC, NITC, or IRISL are exposed to sanctions. Additionally, transactions involving the designated entity Kish Protection & Indemnity Club (aka Kish P&I), a major Iranian insurance provider, are considered sanctionable activity. The United States is not alone in its concerns with Kish P&I. Many countries’ flagging registries do not accept vessels insured by Kish P&I to their registries.

(6) Verifying Cargo Origin:
Individuals and entities receiving petroleum or petroleum products shipments should conduct appropriate due diligence to corroborate the origin of such goods when transported or delivered by vessels exhibiting deceptive behaviors or where connections to sanctioned persons or locations are suspected. Testing samples of the cargo’s composition can reveal chemical signatures unique to Iranian oil fields. Publicizing cases where certificates of origin are known to be falsified can deter efforts to resell the goods to alternative customers.

(7) Strengthening Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Compliance:
Financial institutions and companies are strongly encouraged to employ risk mitigation measures consistent with Financial Action Task Force standards designed to combat money laundering, and terrorist and proliferation financing. This includes the adoption of appropriate due diligence policies and procedures by financial institutions and non-financial gatekeepers and promoting beneficial ownership transparency for legal entities, particularly as related to the scenarios outlined above.

(8) Monitoring for AIS Manipulation: Ship registries,
insurers, charterers, vessel owners or port operators should consider investigating vessels that appear to have turned off their AIS while operating in the Mediterranean and Red Seas and near China. Any other signs of manipulating AIS transponders should be considered red flags for potential illicit activity and should be investigated fully prior to continuing to provide services to, processing transactions involving, or engaging in other activities with such vessels.

(9) **Reviewing All Applicable Shipping Documentation:** Individuals and entities processing transactions pertaining to shipments potentially involving petroleum or petroleum products from Iran should ensure that they request and review complete and accurate shipping documentation. Such shipping documentation should reflect the details of the underlying voyage and reflect the relevant vessel(s), flagging, cargo, origin, and destination. Any indication that shipping documentation has been manipulated should be considered a red flag for potential illicit activity and should be investigated fully prior to continuing with the transaction. In addition, documents related to STS transfers should demonstrate that the underlying goods were delivered to the port listed on the shipping documentation.

(10) **Knowing Your Customer (KYC):** As a standard practice, those involved in the maritime petroleum shipping community, including vessel owners and operators, are advised to conduct KYC due diligence. KYC due diligence helps to ensure that those in the maritime petroleum shipping community are aware of the activities and transactions they engage in, as well as the parties, geographies, and country-of-origin and destination of the goods involved in any underlying shipments. This includes not only researching companies and individuals, but also the vessels, vessel owners, and operators.
involved in any contracts, shipments, or related maritime commerce. Best practices for conducting KYC on a vessel include researching its IMO number, which may provide a more comprehensive picture of the vessel’s history, travel patterns, ties to illicit activities, actors, or regimes, and potential sanctions risks associated with the vessel or its owners or operators.

(11) Clearing Communication with International Partners: Parties to a shipping transaction may be subject to different sanctions regimes depending on the parties and jurisdictions involved, so clear communication is a critical step for international transactions. Discussing applicable sanctions frameworks with parties to a transaction can ensure more effective compliance.
On 23 October 2019, China Maritime Safety Administration (the “State MSA”) published “Implementation Scheme of Sulphur 2020 Limit” formally (the “Scheme”). This Scheme mainly provides for the requirements of using and loading vessel’s fuel oil and the alternative measures, reporting information about using and loading vessel’s fuel oil, disposal of non-compliant fuel oil, record of bunker supply unit and supervision measures.

1. **Legal Basis of the Scheme**

The legal basis of the Scheme are as follows:

(1) Law of the People’s Republic of China on the Prevention and Control of Atmospheric Pollution

(2) Regulation on the Prevention and Control of Vessel-induced Pollution to the Marine Environment

(3) International Convention for the Prevention of Pollution from Ships (MARPOL)

(4) Implementation Scheme of the Domestic Emission Control Areas for Atmospheric Pollution from Vessels

2. **The requirements of using and loading vessel’s fuel oil and the alternative measures (see the chart below)**
3. The requirements of reporting information about using and loading vessel's fuel oil

(1) From 1 January 2020, if the Chinese registered international sailing vessel cannot obtain compliant fuel oil for using, or load non-compliant fuel oil, it shall immediately report it to the maritime administrative institution of the port of registry and submit the Fuel Oil Non-Availability Reporting (FONAR) to the competent authorities of the next foreign port or the Chinese maritime administrative authorities if the next port is a Chinese port. The copy of the FONAR shall be kept on board for 36 months for inspections.

(2) From 1 January 2020, if the foreign registered international sailing vessel cannot obtain compliant fuel oil for using or load non-compliant fuel oil, it shall submit the FONAR to the maritime administrative institution of the next Chinese port before arriving in the Chinese jurisdiction waters.

(3) From 1 January 2020, if the quality of the fuel oil loaded by Chinese registered international sailing vessel does not meet the requirement set out in Regulation 14 or 18 of Annex VI of MARPOL, it shall report the information

<table>
<thead>
<tr>
<th>Starting time</th>
<th>The areas that the international navigation vessels enter into</th>
<th>The requirement of sulphur content of fuel oil</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 From 1 January 2020</td>
<td>the jurisdiction waters of People’s Republic of China</td>
<td>&lt;0.50% m/m (use)</td>
</tr>
<tr>
<td>2 From 1 January 2020</td>
<td>the Inland River Control Areas for Atmospheric Pollution from Vessels</td>
<td>&lt;0.10% m/m (use)</td>
</tr>
<tr>
<td>3 From 1 January 2022</td>
<td>the coastal emission control area in Hainan waters</td>
<td>&lt;0.10% m/m (use)</td>
</tr>
<tr>
<td>4 From 1 March 2020</td>
<td>the jurisdiction waters of People’s Republic of China</td>
<td>&lt;0.50% m/m (load)</td>
</tr>
<tr>
<td>5 If the alternative measures adopted by international sailing vessels meet the equivalent requirements which are set out in Regulation 4 of the Annex VI of the MARPOL, the requirements stipulated in 1, 2, 3 and 4 of this part may be waived.</td>
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<tr>
<td>6 From 1 January 2020</td>
<td>the vessel shall not discharge the hype around open loop exhaust gas cleaning systems wash water in the Domestic Emission Control Areas for Atmospheric Pollution from Vessels (“DECAs”).</td>
<td></td>
</tr>
</tbody>
</table>
of non-compliant fuel oil to the maritime administrative institution of the port of registry immediately. The report shall include the information of the fuel loading port, fuel supply unit and fuel test report etc.

(4) The Chinese Maritime Safety Administration shall submit the verified FONAR and the information about non-compliant fuel oil loaded by Chinese registered vessels to the IMO regularly.

4. The requirements of disposal of non-compliant loaded fuel oil

(1) From 1 March 2020, if the international sailing vessel loads non-compliant fuel oil within the Chinese jurisdiction waters, it may discharge the non-compliant fuel oil according to the measures settled in Guidance for Port State Control on Contingency Measures for addressing non-compliant fuel oil (MEPC.1/Circ.881, IMO), or with the approval of the maritime administrative institution of the local port, it may keep the non-compliant fuel oil on board and provide a commitment of non-use of this fuel oil within the sea areas under Chinese jurisdiction.

(2) It shall be according to the regulations set out in the Regulations of the People's Republic of China on the Prevention and Control of Marine Environment Pollution Caused by Ships and Related Operations and the Regulations of the People's Republic of China on the Administration of the Prevention and Control of the Pollution of inland Waters by Ship to discharge the non-compliant fuel oil of international sailing vessel, report the discharge to the local maritime administrative institution and implement the safety and pollution prevention measures.

5. Record of bunker supply unit

The bunker supply unit shall update and record relevant information in time.

6. Supervision

The maritime administrative institutions shall actively exercise the functions of supervision and inspection in accordance with relevant regulations.
Shipping Team Members

Victoria Wei
Partner
Mobile: 139 1796 4305
E-Mail: victoria.wei@vtlaw.cn

Vincent Ying
Partner
Mobile: 135 2459 2000
E-Mail: yingsongbo@vtlaw.cn

Claire Song
Lawyer
E-Mail: songchen@vtlaw.cn

Luke Huang
Legal Assistant
E-Mail: luke.huang@vtlaw.cn

Christina Le
Legal Assistant
E-Mail: christina.le@vtlaw.cn