

## About YPSN

The YPSN monthly newsletter aims to provide you with the latest developments affecting our members in shipping in Hong Kong and broader China.

If you are interested in registering as a member, sponsoring an event or suggesting activities for YPSN to organize, please feel free to get in touch with us on [youngprofessionals.shipping@gmail.com](mailto:youngprofessionals.shipping@gmail.com)

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## A TOUGH YEAR GONE, ANOTHER ABOUT TO START

Last week was a difficult week for the market, coming at the end of a difficult year. Teekay, a true leader in the maritime industry, slashed its dividend to preserve cash and saw its share price halved as a result. The following day the share price jumped 20% but it is still down 40% on the week and 75% over the past three months. Other MLP stocks fell in the aftermath of Teekay. Dry bulk shares have taken a pounding over the whole year. Most are now only a fraction of what they were at the start of the year. Dry bulk rates are now creeping along OPEX and sometimes below and with more vessels to be delivered the signs are not good for the year ahead. The idle containership fleet is now higher than it has been since the financial crisis and it looks as though it may worsen. The anomaly in the market is the tanker trade which is attracting record high freight rates in some sectors and the year ahead looks set to continue to offer great cash flow and profitability as long as the oil price remains low.

The Fed increased US interest rates last week for the first time in a decade. They will likely continue to increase rates over the year ahead. Commodities are priced in dollars and a stronger dollar is not good for commodities. The day after the interest rate rise the price of oil hit a new low, Asian currencies continued to weaken against the dollar and what should have been a positive sign of the world's largest economy getting stronger turned into a dose of bad news and in fact bad medicine for the global economy.

We have written about the macro-economic issues which are outflanking shipping many times this year in Marine Money Asia. A slowing Chinese economy, the migrant problem in Europe which is threatening the cross border policy and free trade, the docile state of the European economy, the geopolitical situation in the Middle East with the US and Russia agreeing to disagree on the way forward and much more. Too many ships has taken a back seat as the reason for a depressed shipping market. Too little demand has taken its place.

2016 will be a tough year. There are many reports to choose from but the below give a flavor of what is in store. Happy New Year.

The latest **Moore Stephens** shipping confidence survey shows that confidence in the shipping industry has dropped to 5.6 on a 1-10 scale. This compares to 5.9 recorded in August 2015 and 6.8 in May 2008.

The reasons are well known – oversupply of ships and excess shipbuilding, slowing demand. Interestingly brokers were the most pessimistic of the categories surveyed at 4.6. Richard Greiner of Moore Stephens remarked that the tanker market

is producing comparatively good earnings currently but its fortunes are too closely linked to the price of oil for anybody to accurately predict how long it will last. Mr Greiner continued that the survey showed expectations of improved rates over the next 12 months in the three main tonnage categories covered by the survey are down. In the case of the dry bulk sector, such expectations are at their lowest since August 2012 and in the container ship market a lower figure can only be found in October 2008.

The survey also suggested that major investment is less likely in 2016 with this scale reducing from 5.3 to 5.2 on the scale, 47% of respondents expecting finance costs to increase, and performance over the year ahead is most likely going to be affected by demand trends, competition, and port congestion.

In a **Macquarie Wealth Management** report on commodities the headlines were the three Ds - destocking, divestment and desperation. Not a happy outlook for 2016 after 2015 saw a steady decline in commodity prices. Macquarie state simply that supply is way ahead of demand in the market for metals, agriculture and other commodities, as China's growth remains weak, and there will be no turnaround any time soon.

The report states that they are currently projecting 2016 demand for all major metals and bulk commodities remaining well below 10-year norms. With financial markets taking an increasingly negative view on the long-term health of the industry, pressures on metals and bulk commodity producers seem set to get worse. It continues that most commodities are in over-supply, and with weak economic growth expected – most notably in China – that's unlikely to change. Macquarie expects global industrial production to expand by only 2.3% in 2016 which is not enough to meaningfully boost demand growth for metals and states that essentially nowhere in the world is seeing enough commodity-intensive growth to cause price hiking bottlenecks for material availability. They continue that the current low price environment is likely a duration event which means that although we may be close to the bottom, the bottom can persist for a long time, and certainly through 2016. The D which we all wanted to hear about – demand – does not feature highly in the report.

In a more Asia orientated survey the **Thomson Reuters/ INSEAD Asian Business Sentiment Index**, which represents the six-month outlook at 103 firms, fell to 58 in the December quarter from 60 in September and 72 a year prior. The latest outlook is a four year low and is mostly related to slowing growth in China. A 50+ score indicates a positive view.

Of the 103 firms surveyed 21% were negative (a six year high), 42% were neutral and 37% positive. The slowdown in China's growth ranked as the chief risk for the second quarter in a row, and volatile financial markets was also a concern.

INSEAD put the results into perspective when stating that a very strong revision to the expected growth rate of China is having a bigger effect on all these numbers, across all countries, across all sectors and if you think of growth in Asia, Asia will do well, Asia will grow faster than most of the regions of the world, but it will grow at a rate very different from the previous 10 years.

Interestingly the Singaporean respondents to the survey showed the lowest business confidence in the poll and Australian respondents showed the lowest in three years. The former has China as its largest trading partner and the latter is heavily dependent on commodity prices. Of the seven shipping-related firms surveyed four gave negative responses stating a slowing China and oil prices being the major concern. This resulted in shipping being the most negative sector in the survey.

We cannot ignore the distress in the offshore market again caused by the low oil price and the evaporation of E&D expenditure in the oil business. In a report from **Wikborg Rein** it is stated that distressed companies and assets in the offshore sector could be a bargain for cash rich investors. The law firm involved in shipping and offshore states that attractive rewards are possible for investors who acquire assets currently as the sector suffers from low contract activity, low charter rates and reduced investments as a consequence of the lower price of oil. Partner Birgitte Karlsen states that currently oil service companies may be in varying stages of distress, ranging from a negative cashflow situation through to default, with a formal court-appointed debt restructuring or bankruptcy process in place. Examples of such companies are Dolphin Group which recently announced a filing for bankruptcy and Polarcus and Ultratpetrol who have both stopped interest and amortisation payments pending debt restructuring.

The trouble is widespread from the North Sea to Brazil and South East Asia. Wein Rikborg reiterate that time is of the essence as the distressed businesses either have an immediate need for assistance and funding or has already defaulted on its obligations.

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# DRY BULK MARKET ANALYSIS FOR 2015

Having reached the end of the year and over the course having analyzed all of the aspects of the market, we deem it appropriate to quote some statistics which may indeed seem familiar, but the reality of the numbers you still may find unexpected.

The global dry bulk fleet in 2015 increased by 2.4% year-on-year to 10,690 vessels from 10,439 vessels in 2014 and from 757,918 million DWT in 2014 to 777,156 million DWT in 2015 in deadweight terms.

Average daily earnings for all types of dry bulk vessels ranged as follows:

- *Capesizes in 2015 averaged at \$7,147 from \$14,668 in 2013 and \$13,683 in 2014.*
- *Panamax average daily earnings in 2015 were \$5,492 from \$9,418 in 2013 and \$7,783 in 2014.*
- *Supramax daily earnings were \$5,492 in 2015 from \$9,418 in 2013 and \$7,783 in 2014.*
- *Handysize average daily earnings in 2015 were \$5,517 from \$8,577 in 2013 and \$7,662 in 2014.*

With regards to five-year secondhand vessel prices, the numbers signify an even harsher reality. Compared to 2012 when secondhand vessel prices were already low, the following puts this year's average secondhand vessel prices in perspective.

In the end of 2012 the price of a secondhand Capesize, 180,000 DWT, was \$32.5m whereas in 2013 and 2014 it increased to \$54m and as of December this year it was \$39m. During Q4 the price had decreased by 17% compared to Q3.

In the Panamax sector, 76,000 DWT, in 2012 the price was \$18m, in 2013 it was \$25.4m, in 2014 it was \$20m and as of today the price of a secondhand Panamax vessel stood at \$14m. Prices in the last quarter of 2015 have dropped by 14%.

In the Supramax sector, 56,000 DWT, the price at the end of 2012 was \$19.5m, in 2013 it was \$24.5m, in 2014 it was \$20.5m and today it is \$13m with the Q4 average secondhand price having decreased by 5%.

In the Handysize sector, 32,000 DWT, the price at the end of 2012 was \$15.5m, in 2013 it was \$19m, in 2014 it was \$17m and as of December this year it was \$10m, while the price during Q4 2015 has dropped by 15%.

Based on Freight Forwarding Agreements, or FFAs, the 2016 T/C Average for the Capesizes in Q1 is \$4,500, in Q2 it is \$5,150 and for the full year it is \$6,200. For Panamaxes, Q1 is at \$4,950, for Q2 it is \$5,350 and for the full year it is \$5,400. For Supramaxes, Q1 is at \$5,150, Q2 is at \$5,950 and for the full year the T/C Average stands at \$5,800. Finally in the Supramax sector, Q1 is at \$4,250, Q2 at 4,750 and for the full year it is at \$4,750.

***By G. Logothetis, CFO Finance & Research George Moundreas Com. S.A. (Translated from Greek)***

## 2015 YEAR END REVIEW - LEGAL AND REGULATORY

2015 has been an interesting year for maritime law, with new regulations entering into force and an abundance of important landmark cases. This article summarises some of the important regulatory changes and leading decisions from the Hong Kong and English courts that could potentially affect your business and concludes by looking at what's to come in 2016.

### 2015 REGULATORY CHANGES

#### 1. COMPETITION ORDINANCE (CAP. 619)

The Competition Ordinance (the "Ordinance") will enter force on 14 December 2015. Being Hong Kong's first cross-sector substantive competition law regime, all companies, including all maritime operators in all segments will be required to abide by the rules set out in the Ordinance.

The Ordinance introduces three new rules – the First and Second Conduct Rules and the Merger Control Rule. It also provides exclusions and exemptions from compliance to the Conduct Rules. The First Conduct Rule applies to competitors who enter into an agreement, or who engages in concerted activities with the object or effect of preventing, restricting, or distorting competition in the relevant market. The Second Conduct Rule targets those with substantial market power by prohibiting conduct that has as its object or effect the prevention, restriction or distortion of competition in Hong Kong. The Merger Control Rule is limited to the telecommunications sector and there is no indication that it will be extended to other industry sectors for the foreseeable future.

Around 95 percent of the container throughput in Hong Kong comes in or goes out in services that are vessel sharing alliances and other operational sharing arrangements. The impact of the Ordinance on the shipping and transportation industry is therefore likely to be significant, especially in relation to liners alliances, the use of pooling arrangements or other cooperative arrangements between the maritime operators.

Given the significant penalties that can be imposed in the event of non-compliance, the importance of being compliant should not be underestimated. Risk can be minimised by putting in place effective compliance procedures and training programmes both to ensure compliance and also on how to respond to dawn raids.

#### 2. HONG KONG IMPLEMENTS THE LIMITATION OF LIABILITY FOR MARITIME CLAIMS PROTOCOL 1996 ("LMCC 1996")

After many years in the waiting, Hong Kong finally implemented the Limitation of Liability for Maritime Claims Protocol 1996 ("LLMC 1996") into its local law from 3 May 2015. The LLMC 1996 prescribes a substantially higher tonnage limitation caps (at a 250 percent increase) for shipowners operating in Hong Kong, than under the LLMC 1976 provisions. For example, for a 9,000 tonne cellular containership, the Tonnage Limitation Cap increased from 1,586,500 SDR according to LLMC 1976 to 3,800,000 SDR. (Note: 1 SDR is worth approximately HKD 10.7 at the time of this article). Overall, the changes are to reflect inflation and the reduction in the average purchasing power of the SDR.

Shipowners have always been given a statutory right to limit their liability in accordance to the tonnage of their vessels

and limitation cap is often an important factor for shipping lawyers to take into consideration when selecting a suitable jurisdiction to set up a limitation fund. Countries in the Asia Pacific region such as Singapore remain parties of the LLMC 1976 with lower limitation limits. It is likely that there will be a shift in forum shopping as a result of these changes.

It is important for shipowners, charterers, managers and vessel operators to be aware of the increased limitation cap to ensure that contractual and insurance arrangements adequately reflect these changes.

### REGULATORY CHANGES TO LOOK OUT FOR IN 2016

#### 1. CHAPTER VI REGULATION 2 AMENDMENTS TO SOLAS REGULATIONS

The amendments to Chapter VI Regulation 2 of SOLAS will become effective on 1 July 2016. This amendment imposes a mandatory requirement on the shipper of a packed container to verify and provide the container's gross verified weight to the ocean carrier and port terminal representative prior to it being loaded onto a ship flagged by one of the 162 contracting states of SOLAS.

Once implemented, they should reduce the safety hazards mis-declared container weights present for ships, their crews, the cargoes loaded on board and workers in port facilities handling containers.

The effectiveness of the new requirements will ultimately depend on how rigorously they are enforced; the denial of loading onto a ship if no verified gross mass has been obtained will be key. It is therefore important for carriers and shippers alike to consider how these changes will affect their business. Carriers and owners should think about incorporating necessary clauses in their documentation to allocate responsibility for the payment of any costs associated with these new obligations. It is of course preferable to ensure that responsibility for adhering to the new regulations and the costs of the same are clearly allocated between the parties to the carriage contracts.

China's Ministry of Transportation has been conducting a trial run at Shenzhen's Yantian Port since September, and will issue regulations and guidance on the implementation of the amendments in the first half of next year. It is likely that Hong Kong will take the same position as the Mainland-Chinese ports.

#### 2. INTERNATIONAL GOAL-BASED SHIP CONSTRUCTION STANDARDS FOR BULK CARRIERS AND OIL TANKERS (GBS)

The basic idea of GBS was for the IMO to play a larger role in determining the standards to which new ships are built in order to reduce the risks of structural failure,

which will eventually have an effect on possible pollution to the marine environment. In short, the GBS establishes certain procedures to be followed in order to verify that the design and construction of bulk carriers and/or oil tankers conform to the adopted GBS.

Essentially, the GBS consists of five tiers: (1) the goals of being safe and environmentally friendly; (2) functional requirements to be satisfied in order to reach those goals; (3) verification that the individual recognised associations' rules and regulations for ship design and construction conform to the goals and functional requirements; (4) detailed rules and regulations developed by IMO, National Administrations or Classification Societies that conform to the goals and functional requirements; and (5) industry practices and standards. Currently, only Tier 1, 2 and 3 are mandatory.

In relation to Tier 3, there are two stages of verification involved. First is a self-assessment of the rules by the individual recognised associations (such as classification societies) and submitting them to IMO for verification. The IMO will then appoint experts to carry out an audit of the rules, self-assessment and the supporting documentation. The outcome of the audits will be submitted to the MSC 96 in May 2016 and, if approved by the MSC, those construction rules by the individual recognised associations will be applied to bulk carriers and oil tankers to be built on or after 1 July 2016.

A total of 13 classification societies have submitted GBS verification requests and if approved, it will effectively limit the survey and certification of oil tankers and bulk carriers to these 13 societies. Those looking to build new oil tankers and bulk carriers in and outside Hong Kong should therefore expect that after 1 July 2016, there may be new construction rules in place for bulk carriers and oil tankers and variation in construction costs as a result.

#### 3. CONTRACTS (RIGHTS OF THIRD PARTIES) ORDINANCE (CAP. 623)

On 26 November 2014 the Hong Kong legislature finally passed the bill for the Contracts (Rights of Third Parties) Ordinance (Cap. 623) ("Ordinance"). The bill is to enter into force on 1 January 2016.

The aim of the Ordinance is to reform the age-old privity of contract principle. Traditionally, privity of contract prevents a person who is not a party to the contract to exercise any terms of the contract. With the introduction of the Ordinance, a third party may enforce a term of the contract if (1) the contract expressly provides for it; or (2) if a term of the contract "purports" to confer a benefit on the third party. For the second alternative limb to apply, the court will consider, on the proper construction of the contract, whether the contracting parties did or did not intend to confer a benefit on the third party. In other words, contracting parties are free to contract out the effect of the Ordinance.

All commercial contracts governed by Hong Kong law, including charterparties, contracts of affreightment, contracts of carriage and management agreements signed after 1 January 2016 will be caught under this Ordinance. It is expected, however, that most contracts will contain an opt-out clause to prevent the application of the Ordinance, similar to those governed by English law. Clear wording is required if parties do wish to confer third party rights in their contracts. It is therefore recommended for all Hong Kong businesses to review their standard terms and conditions in light of this new Ordinance. *MSC.393(95) Amendments to the IMSBC Code*.

IMO's Maritime Safety Committee adopted the Resolution MSC.393(95) specifying forthcoming amendments to the International Maritime Solid Bulk Cargoes ("IMSBC") Code in July 2015. While mandatory compliance with the amended IMSBC Code requirements will commence in 1 January 2017, contracting governments to the SOLAS Convention may choose to apply the amendments in whole or in part on a voluntary basis from 1 January 2016.

The IMSBC Code is usually updated every two years in order to reflect changes in the nature and variety of solid bulk cargoes presented for shipment and advances in expert understanding regarding the safest ways to carry established solid bulk cargoes.

The main additions include:

- New provisions added that requires cargo information to include whether or not cargo is harmful to the marine environment;
- A new section 14 on prevention of pollution by cargo residues from ships;
- A new sub-section 3.1.2 addressing fire safety risk assessments on self-unloading bulk carriers with internally installed conveyor systems within the ship's structure;
- New sections to address specially constructed or fitted cargo ships for confining cargo ship and specially constructed cargo ships for dry powdery cargoes;
- New section to address the management of solid bulk cargo residues;
- Deletion of the words "specially constructed or fitted cargo" or "specially fitted or constructed ships" in 11 of the 19 cargo schedules;
- New schedules for new cargoes such as Iron Ore Fines; and
- A new Appendix 5 added, listing the Bulk Cargo Shipping Names of those cargoes included in Appendix 1 in English, Spanish and French.

Vessels must therefore comply with the amended IMSBC Code requirements by 1 January 2017 or earlier if required by the vessel's flag state or National Authorities at a port of call. We recommend vessel owners and other related parties to think about incorporating necessary clauses in their documentation to allocate responsibility for the payment of any costs associated with these new obligations. It is of course preferable to ensure that responsibility for adhering to the amended regulations and the costs of the same are clearly allocated between the parties to the carriage contracts.

It remains to be seen whether there will be an early implementation of these amendments in Hong Kong. The question of when these amendments will be implemented is currently under consideration by the Marine Department but it is anticipated that they will publish a notice as to the timeframe of implementation of these amendments early next year.

## INTERESTING CASES OF 2015

### 1. THE DEFAULT APPLICABLE PROCEDURAL LAW FOR CROSS-BORDER ARBITRATION

In *Shagang South-Asia (Hong Kong) Trading Co. Ltd v Daewoo Logistics Corp.* [2015] EWHC 194 (Comm), the owners chartered a vessel to charterers by a fixture note with a clause stating that **"ARBITRATION: ARBITRATION TO BE HELD IN HONG KONG. ENGLISH LAW TO BE APPLIED" and "OTHER TERMS/CONDITIONS AND CHARTER PARTY DETAILS BASE ON GENCON 1994 CHARTER PARTY"**. The English High Court held that where a clause provides for an 'arbitration to be held' in a given jurisdiction, there is an implied choice that the laws of that place will be the curial law – that is, the law governing the procedure or conduct of the arbitration – and further, that this implied choice is not lightly displaced.

### 2. RIGHT TO ENFORCE ARBITRAL AWARD VIA VESSEL ARREST IN HONG KONG NOW CONFIRMED

In *The Alas* [2014] 6 HKC 239, the High Court of Hong Kong held that a ship could still be arrested despite the plaintiff having already obtained an arbitration award arising from the same claim. This created an indirect method for enforcing unsatisfied arbitral awards by way of pleading the underlying cause of action as a fresh *in rem* claim under one of the grounds listed in section 12A of the High Court Ordinance (Cap. 4). There is otherwise no jurisdiction to directly enforce an arbitral award under section 12A. The "no bar" rule was held to apply, which states that *in personam* and *in rem* causes of action do not merge so long as the *in personam* judgment (i.e. award) remains unsatisfied.

Unsurprisingly, this decision was appealed by Owners. However, on 9 July 2015, the Court of Appeal refused leave to appeal in *The Alas* [2015] HKCU 1584. It can now be said with certainty that it is possible to obtain post-award security through vessel arrest in Hong Kong provided that the award remains unsatisfied and that the arrest application is framed as seeking security for the underlying *in rem* cause of action rather than an action to explicitly enforce the arbitral award.

### 3. BILLS OF LADING: KEYS TO A FLOATING WAREHOUSE OR A CUMBERSOME, OUTDATED SYSTEM?

In *Glencore International AG v. MSC Mediterranean Shipping Company SA and MSC Home Terminal NV (MSC Katrina)* [2015] EWHC 1989 (Comm), the Claimants (shipper), brought their claim against the Defendants (carrier), in relation to two containers of cobalt that were "misappropriated" at Antwerp Port.

The ERS was used. This system was designed to replace the need for the carrier to issue paper delivery orders or to release cargo in return for bills. Instead, on receipt of a bill of lading, the carriers would email the shipper's agents a "release note" containing a computer-generated four digit PIN. The shipper's agents would then be able to use the PIN to take delivery of the cargo from the carriers during a set timeframe.

The shipper then sent their agents the relevant bills of lading. The bills expressly stated that they were to be exchanged **"for the Goods or a Delivery Order"**. In June 2012, the shipper's agents lodged one of the bills of lading with the carriers and, later that month, carriers emailed the shipper's agents a release note for three containers. When attempting to collect the cargo, however, it was discovered that two containers had already been collected by a third party.

The shippers argued that, as per the express terms of the bills of lading, the carriers should only have delivered the cargo on the presentation of either a bill of lading or a delivery order.

The Court found in favour of the shippers. The Judge held that a "Delivery Order" had to be considered in the correct context, which was that of a bill of lading contract. Within that context, the Judge held that it must be assumed that the parties had been referring to the document commonly called a **"ship's delivery order"** as defined by s.1(4) of the Carriage of Goods by Sea Act 1994 ("COGSA"); that being a document which contains an undertaking to deliver the goods by the carrier to the person identified as the receiver of the goods. A PIN could thus not constitute a "Delivery Order".

Secondly, the Judge held that the **"carriers were not obliged to use the ERS and it was not used by all: this in itself shows that business requirements never dictated its use"**. Thirdly, it was held that the bills of lading contracts had not been varied by mutual agreement.

This case illustrates that a carrier has a fundamental obligation to deliver cargo to the holder of the bill of lading or to the party with a valid delivery order containing an undertaking as to delivery. If a carrier does wish to make use of the ERS, as opposed to the traditional paper-based system, it would be advisable to ensure that sufficient provision is made for the use of release notes and electronic PINs within the terms of the bills of lading.

This decision is currently subject to appeal.

### 4. CONTRACT FOR THE SALE OF GOODS HELD NOT TO BE A CONTRACT OF SALE WITHIN THE SCOPE OF SALE OF GOODS ACT 1979 IF THERE IS A CREDIT PERIOD AND A RETENTION OF TITLE CLAUSE, COUPLED WITH AN EXPRESS (OR EVEN

In *PST Energy 7 Shipping LLC and (2) Product Shipping & Trading S.A. v. (1) O.W. Bunker Malta Ltd and (2) ING Bank N.V.* [2015] EWCA Civ 1058, O.W. Bunker Malta Ltd. ("OWBM") supplied bunkers to Res Cogitans pursuant to a contract incorporating the OW Group's standard terms and conditions. Those terms include a ROT clause under which property in the bunkers was not to pass to the Owners until they had made payment in full, coupled with a right to use the bunkers for the vessel's propulsion from the moment of delivery. The agreed credit period was 60 days.

The Court of Appeal accepted that the language of a bunker supply contract suggested **"that the parties were thinking in terms of a sale and purchase of the bunkers that were to be supplied under the contract"**, but also ruled that it is necessary to identify carefully the obligations which the parties have undertaken to determine whether the contract falls within the scope of SOGA.

The Court held that the essential nature of the contract was an agreement under which bunkers are to be delivered to the Owners as bailees with a licence to use them for the propulsion of the vessel, coupled with an agreement to sell any bunkers remaining at the date of payment, in return for a money consideration which in commercial terms can properly be described as the price. In the Court's view, the Owners did not contract for the transfer of property in the whole of the bunkers, and only contracted for the delivery of a quantity of bunkers which they had an immediate right to use but for which they would not have to pay until the expiry of the credit period.

Significantly, the Court of Appeal held that the licence to use the bunkers was coupled with an agreement to sell any quantity remaining at the date of payment in return for the agreed price. Since the contract provided for the transfer of property in any remaining bunkers, it was to that extent a contract for the sale of goods to which SOGA applies. This was a departure from the reasoning of the arbitrators and Males J in the Commercial Court, both of whom rejected a hybrid contract analysis.

Section 12(1) of SOGA provides that it is an implied condition of a contract for the sale of goods that the seller has the right to sell the goods or will have such right at the time when property is to pass. An inability to transfer property in the goods at the agreed time is usually regarded as amounting to a breach of condition and a total failure of consideration, as a result of which the seller cannot recover the contract price. The Court of Appeal concluded nonetheless that the transfer of property in the remaining bunkers was not an essential subject matter of the contract unless (contrary to all expectations) the quantity remaining represented such a large proportion of the quantity originally delivered that there could be said to have been a total failure of consideration.

This decision made in the context of a standard form bunker supply contract has wide reaching consequences for the manufacturing, petrochemical, building supplies and any other industry where consumable goods are sold on credit terms, together with a ROT clause and a right to use the goods pending payment.

Given the considerable importance of this decision for the maritime sector and other industries where consumable goods are sold on credit, it has already been appealed to the Supreme Court. Leave is still awaited for the right to appeal to the Supreme Court. That decision is expected to come out shortly. If so, we hope we will be reporting the final decision

on this important case for the Maritime Industry in the End of Year review for 2016.

If you have any questions on the above, please do not hesitate to contact the authors listed below or your usual Ince contact.



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# SAILORS' SOCIETY HONG KONG TREK 2015



To all who joined the Sailors' Society Hong Kong Trek 2015, all of you have made an incredible effort in both finishing the trek and raising funds for the Seafarers, which is really impressive. I hope all of you enjoyed it and would continue to support Sailors' Society's forthcoming events. Thank you!

## AWARD & FINAL RECORD

**Team Hiking Award – Champion: “Happy Feet” (Gulf Oil Marine Ltd.)  
Team No. 33**

**Team Hiking Award – Second Runner-up: “Wallem Walker” (Wallem  
Shipmanagement Limited) Team No. 18**

**Team Hiking Award – First Runner-up: “ReedSmith Richards Butler”  
(ReedSmith Richards Butler) Team No. 28**

**Champion Fundraiser Award: “Latitude Brokers” (Latitude Brokers Hong  
Kong Limited) Team No. 16**

### FUND-RAISING

We are glad to announce the funds raised are at least a staggering HKD 567,000! We are still waiting for the fund to be transmitted so expect that it should be more than this figure. The funds raised will go to help seafarers and their families around the world and we will make sure we keep you updated regards to how these funds have made a difference. Thank you so much! If you have any question about transmitting, please kindly contact Sophie Bridge [SBridge@sailors-society.org](mailto:SBridge@sailors-society.org).

## EDITOR'S NOTE

*Dear YPSN members,*

It has been my great pleasure being your Editor of the YPSN newsletter over the last two years.

When we started the newsletter in January 2014, YPSN comprised of around 800 members. Over the two years of issuing our monthly publication, YPSN membership has grown to over 1000 with new members continuing to join every month.

For the last two years we have relied on third-party contributions including articles, reports, market analyses, event promotions and advertising which have kept our newsletter relevant and informative. I would like to thank all the people, companies and associations that have contributed content to our newsletter and hope they continue to do so.

From January 2016, I will be handing over my duties as YPSN Editor as I will be permanently relocating to Singapore and taking on the role of Business Development Manager at Marine Money Asia Pte Ltd. I am confident that under our new Editor the newsletter will continue to improve and provide you with the latest developments affecting our members in shipping in Hong Kong and broader China.

If you are interested in registering as a member, sponsoring an event or suggesting activities for YPSN to organize, please feel free to get in touch with us on [youngprofessionals.shipping@gmail.com](mailto:youngprofessionals.shipping@gmail.com).

*With thanks,*

*Andrew Bryan Oates*

