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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. [1] 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. [2] It is also as same as art. III rule 2 of

[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. [3] 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.[4] 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

Under Chinese Law, there are two stages of the rules. At the first stage, the cargo interests shall prove that the cargo damage or the cause of the cargo damage happens during the time period when the carrier is in charge of the cargo. At the second stage, the carrier shall prove that the cargo damage is due to any excepted peril.

Meanwhile, at the second stage, the carrier shall also prove that it has discharged the obligations of taking care of the cargo. If the carrier fails to discharge the burden of proof or the cargo interests prove that the carrier is in breach of such duty and obligations, which has causative connection with the cargo damage, the carrier can still not be relieved of the liabilities.

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

[3] China Maritime Law Article 48

[4] 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.*, [5] 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*,[6] 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.

货损索赔的法定举证责任规则

这并不是一个新的法律问题，但考虑到其重要性，我们认为仍有必要回顾中国法对此问题的规定。尤其是我们注意到英国最高法院于 2018 年 12 月在 *Volcafe Ltd. and Others v. Compania Sud Americana De Vapores SA* 一案[7]处理了同样的问题。这表明澄清货损索赔中的举证责任规则在两个法域具有同样的重要性，尽管两个法域的货损索赔举证责任规则并不完全相同。

一、承运人的适航和管货义务

中国立法者在制定关于承运人的责任和义务的规则时参考了 1924 年的《海牙规则》和 1978 年的《汉堡规则》。《中华人民共和国海商法》（以下简称《海商法》）对承运人适航的要求与《海牙规则》第 3 条第 1 款规定相同，均规定承运人在船舶开航前和开航当时，应当谨慎处理，使船舶处于适航状态，妥善配备船员、装备船舶和配备供应品，并使货舱、冷藏舱、冷气舱和其他载货处所适于并能安全收受、载运和保管货物。[8]《海商法》关于承运人管货义务的规定与《海牙规则》第 3 条第 2 款相同，均规定承运人应当妥善地、谨慎地装载、搬移、积载、运输、保管、照料和卸载所运货物。[9]并且，《海商法》关于承运人可以对货物的灭失或损坏免责的事由也与 1924 年《海牙规则》第 4 条第 2 款的规定完全相同。[10]但是，《海商法》规定承运人依赖免责事由主张免除赔偿责任的，应当举证证明货损是由列明的免责事由导致，但火灾除外。

二、货损索赔的法定举证责任

中国法下，货损举证责任的规则可分为两个阶段。第一阶段，货方须证明货损或者货损原因发生在承运人掌管货物期间；第二阶段，承运人应当证明货损是因免责事由造成的。此外，在第二阶段，承运人还需要证明其已履行管货义务，如果承运人不能完成举证责任，或者收货人能够证明承运人有管货过失，且与货损之间存在因果关系，则承运人不能免除赔偿责任。

在第一阶段，贷方通常可以通过主张

[7] [2019] 1 Lloyd's Rep 21
[8] 《海商法》第 47 条
[9] 《海商法》第 48 条
[10] 《海商法》第 51 条

货物装运时表面状况良好但卸货时发现货损完成举证。货方不需要证明承运人做出了任何导致货损的疏忽大意的行为。而在第二阶段，如果货方能够证明承运人在履行管货义务方面存在过错，或者承运人不能证明其已经履行了管货义务，但货损仍不可避免地发生，则承运人仍应当对货损承担责任。

上述举证责任规则的法律依据是《海商法》第四章第二节承运人的责任第四十六条。该条规定，除非本节另有规定外，在承运人掌管货物期间，承运人应当对货物的灭失或损坏负责。第 2 节第五十条列出了承运人能够主张免责的 12 项免责事由。

最高人民法院近期的两个案例确认了上述举证规则。在鸿一粮油资源股份有限公司与上海时代航运有限公司一案[11]，该案涉及对大豆货物短量的索赔。本案的焦点问题之一是原告方货主和被告方承运人之间举证责任的分配问题。最高人民法院认为，发生货物灭失、损坏或者迟延交付的情况下，货主仅需要证明货物的灭失、损坏或者迟延交付发生在承运人掌管货物期间，货主不需要证明承运人做出了任何疏忽大意的行为，当承运人依赖《海商法》第五十一条规定的免责事由免除其责任时，若货主证明承运人的存在任何过错行为，则不能免除承运人的责任。

在最高人民法院审理的白长春花船务公司与中国太平洋财产保险有限公司重庆分公司一案中[12]，关键问题之一是大豆是否因固有缺陷即大豆所含水分超出正常值发生损坏。最高人民法院认为，承运人未能举证证明大豆的损坏原因是其固有特性，原因是承运人依据的两份《专家意见》是由不具有从事中国进出口货物残损检验资质的专家撰写的学术文章，支撑其观点的数据主要源于他人的研究成果。并且，两份《专家意见》未能证明涉案货物水分含量与货损之间存在因果关系，也未能证明涉案货物水分含量不符合国家标准或对长途运输和储存有不利影响。另外，有证据表明承运人在保管货物方面确实存在过错。承运人未对空气温度、湿度、货舱平均温度、空气露点和货舱平均露点进行完整地记录，也未对在不同气候和天气条件下的船舶内外露点进行记录。

三、英国法和中国法的区别

英国法在这个问题上和中国法不完全相同。在 *Volcafe Ltd. and Others v.*

[11] （2016）最高法民申 1109 号

[12] （2018）最高法民申 2411 号

Compania Sud Americana De Vapores SA 一案，英国最高法院认为，原则上讲，货物装船时表面状况良好但卸货时存在损坏的，承运人有责任证明货损并不是因其违反《海牙规则》第 3 条第 2 款的管货义务造成。在此阶段，中国和英国的举证责任规则相同。在第二阶段，英国最高法院认为承运人须举证证明货损的发生不是由于其违反《海牙规则》第 3 条第 2 款规定的义务造成，或者举证证明货损是因免责事由导致。如果承运人能够证明货物的灭失或损坏的发生与《海牙规则》第 3 条第 2 款规定的管货义务无关，承运人则无需再依赖免责事由免除其责任。中国法并不像英国法采用二选一的做法，上述两个最高人民法院案例表明承运人既要证明货损的发生是免责事由造成，同时还要证明其并未违反管货义务。承运人如果不能在这两个方面完成举证责任，则仍需承担赔偿责任。

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. [13] 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.[14]

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-Branch on the Insurance Clause of Ocean Fishing Vessels of China Continent Insurance Co. Ltd. The insurance clause covers the total or partial loss of the insured vessels caused due to (1) grounding and other fortuitous accidents, (2) latent

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)*, [15] 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

[15] [2018] UKSC 26

judgment

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.

保险人对多个原因共同作用造成被保险船舶损失的赔偿责任问题

在近期最高人民法院审理的曲荣模与中国大地财产保险股份有限公司威海中心支公司、石岛中心支公司船舶险保险合同纠纷再审一案中，最高人民法院明确了当被保险船舶的损失或损坏是由承保风险、非承保风险、免责事由共同造成的，船壳险保险人应按照承保风险在所有风险中所占的比例向被保险人承担相应的赔偿责任。[16]该原则与英国海上保险法赔偿原则不同，英国法下当损失是由两个近因（Proximate Causes）共同造成，其中一个近因是除外风险的，保险人有权拒绝赔偿。[17]

一、事实和判决

“鲁荣渔 1813”轮和“鲁荣渔 1814”轮是曲荣模所有的姐妹船渔船。该两条船由中国大地财产保险股份有限公司石岛支公司承保，保险合同约定采用《中国大地财产保险股份有限公司远洋渔船保险条款》（以下简称《保险条款》）。承保范围涵盖由以下原因导致的船舶全损或部分损失：(1) 搁浅或者其它意外事故；(2) 船壳和机器的潜在缺陷；(3) 船长、大副、船员、引水员或修理人员的疏忽。同时，《保险条款》排除了保险人对于因船舶所有人或其代理人的过失或者故意行为导致的被保险船舶的损失、损坏和责任的赔偿责任。

在禁渔期，两艘渔船在当地的渔码头进行修理。“鲁荣渔 1813”轮的主机被吊出舱维修，“鲁荣渔 1814”轮更换了艉轴，尚有两个螺丝没有固定。为了躲避台风“米雷”，曲荣模和一名船长、一名轮机长、一名水手长发动“鲁荣渔 1814”轮主机在“鲁荣渔 1813”轮旁边进行牵引，驶向四海里外的另一个渔码头。移泊过程中，“鲁荣渔 1814”轮机舱进水导致发电机和舵机失灵。而后，两船抛锚等待救援，但是因锚缆断裂发生走锚，船舶进入失控状态。结果，两船搁浅并实际全损。曲荣模向保险公司就两船的全部保险金额主张保险赔偿，但该主张被保险公司拒绝。

[16] (2017)最高法民再 413 号

[17] ATLASNAVIOS-NAVEGACAO LDA v NAVIGATORS INSURANCE CO LTD AND OTHERS (THE “B ATLANTIC) [2018] UKSC 26

一审青岛海事法院认定，两船的损失是由搁浅导致，搁浅是《保险条款》约定的承保的风险。一审法院还认定，尽管两船配备船员不足，但这不构成曲荣模的重大过失。因此，一审法院判定保险公司应就两船的全部保险金额向曲荣模承担赔偿责任。

二审山东省高级人民法院撤销了一审法院作出的判决。二审法院认定，在“鲁荣渔 1813”轮失去动力、“鲁荣渔 1814”轮配员不足、两船通讯设备失灵、台风“米雷”正在靠近码头的情况下，曲荣模贸然指令船员对两船进行移泊。很明显，曲荣模指令对两船进行移泊存在过失，该过失与事故的发生存在因果关系。事故的发生是由船舶所有人的过失和台风共同导致的，缺少这两个原因中的任何一个，该事故就不会发生。考虑到很难确定这两个原因中哪个是直接、有效和起决定作用的，二审法院判决保险公司对被保险人承担 50%的保险金额的赔偿责任。

最高人民法院撤销了二审法院作出的判决。最高人民法院认为，二审法院认定事实和适用法律均存在错误。第一，台风“米雷”对本次事故和损失有直接和重要的影响；第二，当曲荣模下达指令对两船进行移泊时，他应当考虑到“鲁荣渔 1813”轮没有动力并且“鲁荣渔 1814”轮尚未完成修理。这种情况下，台风期间移泊约四海里非常困难并且有风险。曲荣模和另外 3 名船员无法保障两船在移泊期间的安全航行。因此，曲荣模本应对两船配备充足的船员，但他并未这样做；第三，两船移泊期间船员存在过失。因为船员未能对船舶进行应有的照看，没有对“鲁荣渔 1814”轮主机采取防水排水措施，这导致“鲁荣渔 1814”轮主机失灵，因此导致事故的发生。综上，最高人民法院认为，本次事故是由台风、船舶所有人的过失和船员的过失共同导致的，其中台风是本次事故的主要原因。

《保险条款》约定，台风和船员过失属于承保风险，但船舶所有人的过失被排除在承保风险之外。根据《中华人民共和国保险法》第十七条第二款的规定，订立保险合同时，保险人未向被保险人提醒或者明确说明免责条款的，该免责条款对被保险人不具有约束力。尽管曲荣模承认保险合同有效，但其对免责条款的效力提出异议。考虑到保险人未能举证证明其曾向曲荣模详细说明上述免责条款，最高人民法院认定该免责条款对曲荣模不具有约束力。考虑到三个原因对事故发生的作用，最高人民法院判决保险公司向被保险人承担 75%的保险金额的赔偿责任。

二、与英国海上保险法的比较

中国保险法没有近因（Proximate Causes）原则的概念。本案的判决结果表明，中国法院倾向于采纳保险人按照承保风险在所有风险中所占比例对被保险人承担赔偿责任的原则。这与英国海上保险法的原则不同。

在 *ATLASNAVIOS-NAVEGACAO LDA v NAVIGATORS INSURANCE CO LTD AND OTHERS (THE "B ATLANTIC")* 一案，[18]英国最高法院重申了已确立的英国海上保险法的原则，即当损失是由两个近因共同造成，其中一个是承保风险，另一个是除外风险的，保险人有权拒绝赔偿。不过即使存在该原则，英国法院的做法似乎仍将是试图寻找造成损失的单一近因，并且只会在最极端的案件中认定存在多个近因。

三、判决带来的其它启示

当订立保险合同时，保险公司应当提醒被保险人或者向被保险人明确说明责任免除条款。否则，正如最高人民法院在上述案件中作出的判决，这些责任免除条款不能对被保险人产生约束力，除非被保险人承认其效力。

此外，上述案件涉及到但并未在前述及的一个法律问题是船舶在码头之间的移泊是否构成"开航"。这个问题之所以产生，是因为保险人主张，当两艘渔船开始移泊时，两船均不适航，一船没有主机，另一船配员不足，并且曲荣模对此知情。根据《中华人民共和国海商法》第二百四十四条的规定，除非保险合同另有约定，若损失是因被保险船舶开航时不适航导致并且被保险人对此知情的，保险人对该损失不承担赔偿责任。但最高人民法院未接受该项保险人的该项抗辩主张。最高人民法院认为，《中华人民共和国海商法》第二百四十四条的规定的开航应指船舶离港，开始预定航次的航行，而不包括船舶在港内移泊。在航运实践中，船舶从锚泊、系岸、搁浅状态转换到非锚泊、非系岸、非搁浅状态，属于在航（Underway），但并非所有在航状态的开启均属于上述法律规定的开航（Commencement of the Voyage）。曲荣模在涉案两船靠港修理期间，为避台风而安排船舶港内移泊，并非安排船舶离港开始预定航次的航行，该类港内移泊不属于《中华人民共和国海商法》第二百四十四条第一款第一项规定的"船舶开航"。

[18] [2018] UKSC 26

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")[19], but adopted the main provisions of the 1976 Convention in its Maritime Law and Maritime Procedure Law. Article 4 of the 1976 Convention *Conduct barring limitation* is entirely incorporated into China Maritime Law.[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:[21]

(1) Liable person's personal act or omission

The first requirement is to identify the liable person's any causative act or omission to the loss. The critical element of this requirement is the reference of *personal*. This is particularly important in that the

[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.
[20] Article 209 of PRC Maritime Law
[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[22], 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 conducts 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 on shore 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

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

[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.*,[25] 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

[25] (2016) Huminzhong No. 24

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.

突破海事赔偿责任限制权利尽管不是不可能 但仍然非常困难

中国没有加入《1976 年海事赔偿责任限制公约》（以下简称《1976 年公约》[26]但《中华人民共和国海商法》（以下简称《海商法》和《中华人民共和国海事诉讼特别程序法》（以下简称《海诉法》）吸收了《1976 年公约》的主要条款内容。《1976 年公约》的第 4 条“排除限制责任的行为”被《海商法》完全采纳。[27]突破责任限制的标准非常高，依赖《1976 年公约》第 4 条突破责任人责任限制权利的举证责任也非常重。本文旨在介绍并分析一些中国内地、香港以及英国法院的典型案例来说明突破责任限制的适用规则。

1. 突破责任限制的法律适用规则

主张打破责任人责任限制的当事人需要举证证明：[28]

1. 引起赔偿请求的损失是由于责任人本人的作为或者不作为造成的；*并且*
2. 责任人故意或知道损失可能发生的情况下草率地作为或不作为。

（1）责任人本人的作为或者不作为

条件（1）要求引起损失的任何作为或者不作为是由责任人本人所为。条件（1）适用的关键是明确“本人”的内涵。这点特别重要，因为大部分海上事故是由于船员的疏忽大意造成的。船员的疏忽大意能否归咎于直接或者间接雇用该名船员的船东？此外，船东或者其他享有海事赔偿责任限制的主体多数情况下是公司而不是自然人，所以如果船东公司的内部人员出现过错，船东公司是否会因此丧失享受海事赔偿责任限制的权利？

在最高人民法院审理的江苏省中油泰富石油集团有限公司与新鹏程航运有限公司船舶触碰损害责任纠纷案中，[29]被告所属的船舶触碰原告的码头，造成重大损失，包括码头修理费和使用

[26] 《1976 年公约》和《修正<1976 年海事赔偿责任限制公约>的 1996 年议定书》适用于中国的香港特别行政区。
[27] 《海商法》第 209 条。
[28] 《1976 年公约》第 4 条。
[29] （2014）民申字第 1777 号。

价值的损失。被告主张对触碰损失享有海事赔偿责任限制的权利。原告认为被告的行为使其丧失了享受海事赔偿责任限制的权利。最高人民法院认为，为排除被告享有的海事赔偿责任限制的权利，原告须首先举证证明被告方船东本人实施了导致触碰事故的发生并造成损失的作为或者不作为。张家港海事局制作了事故调查报告，该报告显示涉案事故系因船舶驾引人员对吹拢风对船舶的影响估计不足，未有效使用协助拖轮进行靠泊、应急操作不当未能控制好船位造成。武汉海事法院和湖北高级人民法院均认为，原告未能举证证明船员的疏忽应当归咎于被告方船东。最高人民法院支持了武汉海事法院和湖北高级人民法院的观点，并重申造成海损事故的作为或者不作为必须是责任人本人的作为或者不作为。这种观点与英国法对该问题的观点一致。

但是在中国法下，哪些自然人的作为或者不作为可以被认定为应承担责任的船东的实际过错还不是很明确。香港高等法院院就 *Floata Consolidation Ltd. v. Man Lee Hing (Hong Kong) Vehicles Ltd. and Others* (the "Floata 97")[30]一案作出的判决对前述问题的解答提供了参考。在该案中，被告方货物所有人依据《1976 年公约》(该公约在香港具有法律效力）的第 4 条向香港高等法院申请撤销准许原告责任限制的命令。该驳船的船东通过合同的方式委托第三方公司经营该驳船， 并由 Mr. Sin 实际控制该驳船。Mr. Sin 因为在货物装载、积载和绑扎中存在过错造成货损而被起诉。Mr. Sin 认罪并被罚款。被告方货主主张 Mr. Sin 的过错应当被推定为驳船船东的过错。香港高等法院驳回了被告方的主张，法院认为 Mr. Sin 不是驳船船东的雇员或者代理人，即便他是，他的作为或者不作为也不能被认定为《1976 年公约》第 4 条中船东的作为或者不作为。理由是，第一，Mr. Sin 不是该驳船船东公司的董事或者高级管理人员，第二，尽管 Mr. Sin 掌管驳船，但并不能由此得出对被告方有利的结论。每条船都有，或者说必须有人对其进行掌管，通常是船长，但这并不意味着船长的作为或者不作为是船东公司的作为或者不作为。Ng 法官引用了 Wilmer LJ 在 *Lady Gwendolen* 案[31]中的的观点："当船东如本案中一样是有限责任公司时，有必要仔细研究该公司的组织架构，以此来识别哪些人的作为或者不作为可以公平地被视作该公司的作为或者不作为。"

[30] [2016] HKCFI 622。

[31] [1965] 1 Lloyd's Rep 335。

（2）故意或者明知可能造成损失而轻率地作为或者不作为

船东或者其他责任人故意犯错的情况很少见，但是轻率时有发生。突破责任限制的第二个条件的关键是“明知损失可能发生”。在毛雪波与陈伟、嵊泗县江山海运有限公司船舶碰撞损害责任纠纷案[32]中，上海海事法院驳回了陈伟要求适用海事赔偿责任限制的要求。该案被最高人民法院评选为“2016 年十大典型海事案例”之一。该案中，陈伟是“浙嵊 97506”轮船东。“浙嵊 97506”轮与“台联海 18”轮发生碰撞。碰撞发生后，“台联海 18”轮沉没，船上 8 名船员全部失踪或死亡。经证实，碰撞发生前，“浙嵊 97506”轮屡次超航区航行，并且存在配员不足、无证驾驶的问题。这些因素直接导致了碰撞事故的发生。陈伟作为“浙嵊 97506”轮的船东，未能阻止“浙嵊 97506”轮诸多违法问题的产生甚至允许、放任这些问题的出现；事故发生时，当班人员未向海事局报告事故情况，陈伟也未指示“浙嵊 97506”轮船长留在事故现场对“台联海 18”轮的失踪船员及该船舶进行救助，这是造成“台联海 18”轮船员死亡的重要原因。综上，上海海事法院认为，陈伟的行为构成了其明知会造成“台联海 18”轮财产损失和人员死亡的情况下轻率地作为或者不作为。

2. 结论

根据中国法律，很明确的是船员的疏忽并不一定会被认定为船东在《1976 年公约》第 4 条下的实际过错。主张排除适用责任限制权利的一方需要举证证明船东本人应对损失应承担责任。但是中国法对于什么人的过错可以归咎于船东的问题还不明确，香港法院的对该问题的解决方法值得借鉴，即当船东是有限责任公司时，需要研究船东公司的组织架构来识别并确定那些人的作为或者不作为可以被认定为船东公司本身的作为或者不作为，此外，举证证明船东明知损失可能发生也同样重要。

[32]（2016）沪民终字第 24 号。

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[33]. 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[34]

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 I" 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 I" has no right to limit the liability for the claim for those costs.

Shanghai Maritime Court and

[33] (2012) Minshenzi No.212

34 Sinopec Sales Company Shanghai Branch Luojing Petroleum Tank v. Guangdong Renke Shipping Company Ltd. (2014) Mintizi No. 191

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[35]

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

[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.

船东是否有权对清除码头残骸费用的索赔限制赔偿责任

中国最高人民法院在“宙斯”轮案中认为，针对清除和清理沉没、失事、搁浅或者被遗弃船舶的油污产生的索赔，责任人船东不能享有海事赔偿责任限制。但该案的判决思路和结果不能延伸适用于清除码头残骸或其它港口设施费用的索赔，对该等损失的索赔，责任人船东仍可主张赔偿责任限制，除非存在法定的丧失赔偿责任限制的情形。

《1976 年海事赔偿责任限制公约》(以下简称《1976 年公约》) 第 2 条 (d) 款和 (e) 款规定，有责任的船东有权就沉没、遇难、搁浅或被弃船舶(包括此种船上的任何物品)的起浮、清除、拆毁或使之无害的索赔和有关船上货物的清除、拆毁或使之无害的索赔享有责任限制。但是，公约允许《1976 年公约》的成员国对第 2 条 (d) 款和 (e) 款进行保留。中国没有加入《1976 年公约》，但参照《1976 公约》的主要条款制定了《海商法》责任限制的规则，未采纳公约第 2 条的 (d) 款和 (e) 款内容。为了恰当地解释海事赔偿责任限制制度的规则，使得法院在审判中统一适用海事赔偿责任限制制度规则一，最高人民法院制定并公布了《最高人民法院关于审理海事赔偿责任限制相关纠纷案件的若干规定》(以下简称《责任限制规定》)。但是，有责任的船东能否就清除和清理沉没、失事、搁浅或者被遗弃船舶的油污索赔主张海事赔偿责任限制仍存在争议。这一突出问题终于在著名的“宙斯”轮案[36]中得以解决。“宙斯”轮案判决的理由之一是保护公共利益，即维护航行水域安全和保护海洋环境。但是，这一理由并不能延伸适用于清除码头残骸或者其他港口设施产生的索赔，尽管清除码头残骸或者其他港口设施也涉及到公共利益。最高人民法院在最近的两个案例中再次确认了此观点。

1. “仁科 1”轮案[37]

“仁科 1”轮触碰了中国石化销售有限公司上海石油分公司罗泾油库（以下简称罗泾油库）的码头，导致码头遭受严重损坏。罗泾油库主张“仁科 1”轮船东无权就清除码头残骸、对事故地点和航道进行守望以及设立浮标的支出和费用主张海事赔偿责任限制。

[36] （2012）民申字第 212 号。

[37] 中国石化销售有限公司上海石油分公司罗泾油库 v 广东仁科海运有限公司，案号（2014）民提字第 191 号。

罗泾油库认为，《责任限制规定》明确规定责任人船东无权就沉没、遇难、搁浅或被弃船舶的起浮、清除、拆毁或使之无害的索赔和该类船上货物的清除、拆毁或使之无害的索赔享有责任限制。该规定的立法目的是为了保护公共利益，即维护航行水域安全和保护海洋环境。清除码头残骸的费用与清除船舶或者船上货物的费用本质上是一样的。因此，“仁科 1”轮船东无权就清除码头残骸的费用主张责任限制。

上海海事法院和上海市高级人民法院都支持了中国石化的观点。但是，最高人民法院撤销了上海海事法院和上海市高级人民法院的判决，驳回了罗泾油库的诉请。最高人民法院认为，对清除码头残骸费用的索赔与清除船舶油污费用的索赔不同。原因有二，一是《1976 年公约》第 2 条（d）款和（e）款仅涉及船舶（包括船上的任何物品）或船上的货物，最高人民法院制定的《责任限制规定》第 17 条规定的内容也是仅涉及船舶和船上的任何物品，不包括对清除码头残骸的费用的索赔。二是尽管清除码头残骸的索赔有时会涉及公共利益，但不能简单地认为任何与公共利益相关的海事索赔，责任人都不能限制赔偿责任。

2. “Mount Tianzhu”轮案[38]

“Mount Tianzhu”轮与江苏省中油泰富石油集团有限公司的码头发生触碰。码头利益方主张“Mount Tianzhu”轮的船东对码头残骸的清除费用不享有海事赔偿责任限制。本案的一审法院为武汉海事法院，二审法院为湖北省高级人民法院。湖北省高级人民法院没有支持码头利益方的前述主张。码头利益方向最高人民法院申请再审，最高人民法院适用了与“仁科 1”轮案相同的审判思路，认为责任人船东有权就清除码头残骸的费用享有海事赔偿责任限制。

3. 结论

很明确，中国法下船东无权就沉没、遇难、搁浅或被弃船舶的油污清除费用索赔享有海事赔偿责任限制。同时，也很明确，船东有权就清除码头残骸或者其它港口设施使其无害的费用享有海事赔偿责任限制，除非船东存在任何丧失责任限制的过失。

[38] (2014)民申字第 1777 号。

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[39] 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

[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.

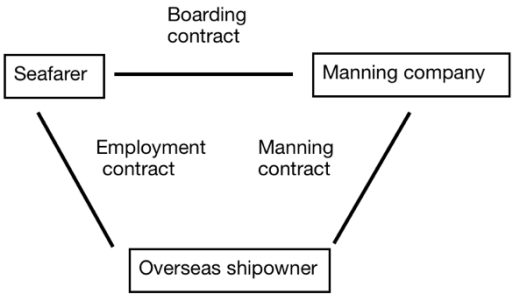
So, the requirement of a labor contract to be signed by an overseas shipowner with a seafarer does not fit into the Chinese labor law systems and is also not in compliance with the practice of seafarer working in overseas employment. Actually, the common practice is that the seafarer is to sign an employment contract with an overseas shipowner rather than a labor contract.

The boarding contract is different

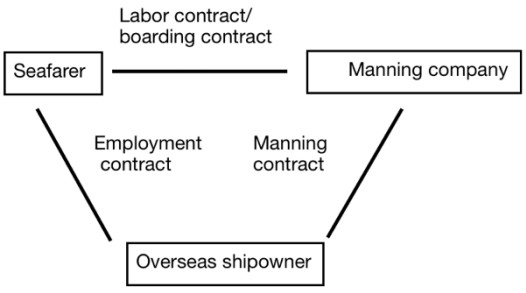
from the labor contract or employment contract. The boarding contract shall provide the rights and interest which are available to the seafarer under the manning contract, the manning company's responsibilities to manage seafarer during working on board and the emergency response responsibilities etc.

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

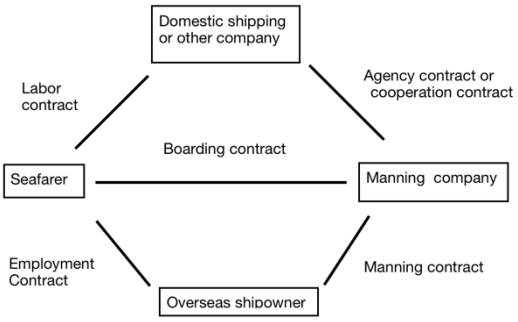
Type 1.



Type 2.



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.[40] The damages for disability is calculated for 20 years. If

[40] 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,
(2) The manning company fails to buy and pay for overseas personal injury insurance for seafarer,
(3) The manning company fails to fulfill other mandatory duties and obligations to man the seafarer for the overseas shipowner.

In above circumstance (1), if the manning company has a labor contract with the seafarer, the manning company shall pay for the occupational injury security for the seafarer. Then, if it occurs injury, death or illness, the seafarer can have the benefit of the occupational injury security. In such circumstance, 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 man 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".

外派海员人身伤亡或疾病的赔偿问题

根据中华人民共和国交通运输部发布的《2018 年中国船员发展报告》，截至 2018 年底，约有 146,000 名中国海员接受外派在海外工作，中国成为世界排名第二的海员外派大国。船东互保协会通常会根据协会规则的条款和条件承保其会员对海员人身伤亡或者疾病的责任。本文将分析中国法适用情况下外派海员人身伤亡或者疾病的赔偿问题。

一、中国法下外派海员人身伤亡或疾病赔偿问题综述

中国法没有专门的某部法律解决海员的人身伤亡、疾病的赔偿问题。以下中国法律、法规、条例和规则涉及到该赔偿问题：

1. 《海事劳工公约》
2. 《侵权责任法》
3. 《劳动法》
4. 《劳动合同法》
5. 《社会保险法》
6. 《工伤保险条例》
7. 《船员条例》
8. 《最高人民法院关于审理人身损害赔偿案件适用法律若干问题的解释》（以下简称《人身损害赔偿司法解释》）
9. 《最高人民法院关于确定民事侵权精神损害赔偿责任若干问题的解释》（以下简称《精神损害赔偿司法解释》）
10. 《海员外派管理规定》
11. 《对外劳务合作管理条例》

二、外派海员的管理

根据《海员外派管理规定》，境外公司不得在中国招收海员，其必须与有为外国船东[41]配员资质的海员外派机构签订合同。公司未取得海员外派资质而为境外船东外派船员的行为是违法的。《海员外派管理规定》对海员外派机构规定了强制性要求，包括实缴的注册资本不低于 500 万元人民币、自有外派海员 100 人以上、具有足额交纳 100 万元人民币海员外派备用金的能力。《海员外派管理规定》还要求海员外派机构必须为外派海员购买境外人身意外伤害保险。

迄今为止，Anglo-Eastern Univan

[41] 船东包括船舶登记所有人、船舶经营人和船舶管理人。

Group （中英船管）和 Wallem Group（华林集团）已经分别在中国设立了具有海员外派资质的合资公司。

三、海员、海员外派机构、境外船东或者任何第三方公司之间的合同关系

《海员外派管理规定》规定，海员外派机构应当保证海员外派机构、境外船东或者国内的公司中的任意一方与外派海员签订劳动合同。《海员外派管理规定》还规定，海员外派机构应当与境外船东签订船舶配员服务协议，海员上船工作前与海员签订上船协议。

前述规定产生了一个问题，即境外船东应当与海员签订劳动合同。中国法下，劳动合同和雇佣合同是两类不同的合同：二者的性质不同，雇主和雇员在两类合同下的权利和义务不同，这两类合同的适用法律也不同。

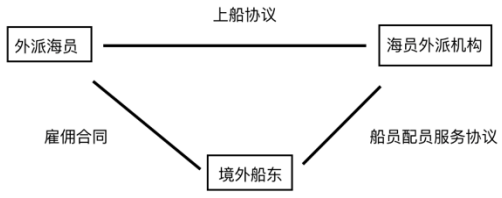
与外派海员相关的一个差别是，与海员存在劳动合同关系的雇主应当负责为海员购买社会保险包括工伤保险，但对雇佣合同中的雇主则无此要求。同时，《劳动合同法》明确规定，该法适用于境内的用人单位与劳动者之间的劳动合同关系。《社会保险法》和《工伤保险条例》亦明确规定，境内的公司有责任为劳动者购买社会保险。这些条款表明，《劳动合同法》、《社会保险法》和《工伤保险条例》都不适用于境外船东和中国海员之间的雇佣合同关系。

因此，要求境外船东与外派海员签订劳动合同并不符合中国的劳动法体系，也与海员外派的实践不相符。现实中通常的做法是，外派海员与境外船东签订雇佣合同而非劳动合同。

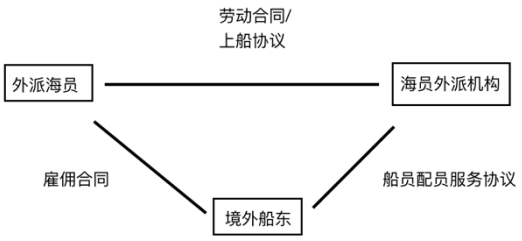
上船协议与劳动合同或者雇佣合同亦有不同。上船协议应当规定船舶配员服务协议中涉及外派海员利益的所有条款、海员外派机构对外派海员工作期间的管理和服务责任以及外派海员在境外发生紧急情况时海员外派机构对其的安置责任等。

以下为海员外派机构、海员、境外船东和境内公司之间通常的几类合同关系：

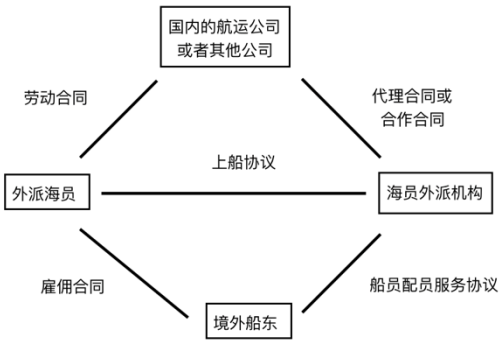
1.



2



3.



实践中，合同的名称可能与上述图表中的名称不同。为了确定合同各方的权利、责任和义务，我们需要通过查看、分析具体合同的具体内容来识别某个合同的性质。

四、外派海员伤亡或疾病的责任

如果海员的伤亡或疾病发生在其被雇佣期间或者是因其工作导致，海员可以因其伤亡或疾病向境外船东、海员外派机构或者境内航运公司或者其他第三方公司主张索赔。

（一）船东责任

海员向境外船东主张索赔的依据是雇佣合同关系或者事实上的雇佣合同关系。船东的赔偿责任与船东是否存在过失无关。海员的伤亡或疾病可能因境外船东之外的任何第三方导致。比如说，可能是由船舶碰撞导致或者是由船厂在设计和建造船舶中的疏忽导致。海员可以选择向境外船东或者有过失的第三方主张索赔，如果向境外船东主张索赔，境外船东有权向有过错的第三方追偿。

根据《人身损害赔偿司法解释》，船员可索赔的损失、花费和费用以及可索赔的各个项目的计算如下：

1. 医疗费
2. 护理费、交通费、住宿费、住院伙食补助费、必要的营养费
3. 误工费
4. 受害人因伤致残的，除上述 1、2、3 内容之外，还要赔偿残疾赔偿金、残疾辅助器具费、被扶养人生活费、康复费、后续治疗费和护理费
5. 受害人因伤致死的，除上述 1、2、3 内容之外，还要赔偿死亡补偿费、被扶养人生活费、丧葬费、受害人亲属办理丧葬事宜支出的交通费、住宿费和误工损失
6. 精神损害赔偿金

上述费用应当是必要、合理的，并且有发票、收据或者其它证据加以证明。

残疾赔偿金参照受害人伤残等级、受诉地法院所在地城镇居民人均可支配收入或者农村居民人均纯收入计算。[42] 残疾赔偿金按 20 年计算。如果外派海员能够证明其居住地的城镇居民人均可支配收入或者农村居民人均纯收入高于法院所在地，则应当适用较高的标准。个别城市经常会每年更新该城市的人均可支配收入。

外派海员的被扶养人的生活费，根据扶养人丧失劳动能力的程度，按照受诉法院所在地的城镇居民人均消费性支出和农村居民人均年生活消费支出计算。同样的，每个城市经常每年更新该城市的城镇居民人均消费性支出。未成年人的生活费计算至 18 岁。没有劳动能力和收入来源的成年人，计算 20 年。被扶养人超过 60 岁的，年龄每增加一岁减少一年；75 周岁以上的，按 5 年计算。

死亡赔偿金按照受诉法院所在地的城镇居民人均可支配收入或者农村居民人均纯收入标准，按 20 年计算。同样的，如果能够证明海员住所地的城镇居民人均可支配收入或者农村居民人均纯收入高于受诉法院所在地，则应适用更高的标准。但是，如果死亡的海员年龄高于 60 周岁，则其年龄每增加一岁减少一年，75 周岁以上的，按 5 年计算。

精神损失由海员或者死亡的海员的家属索赔。根据《精神损害赔偿司法解释》的规定，精神损害赔偿的数额由法院根据侵权人的过错程度、精神损害的严重程度、责任人的经济能力、受诉法院所在地的平均生活水平确定。根据我们的经验，在权利人主张索赔的情况下，中国法院通常会支持人民币 5 万至 20 万的精神损害赔偿。

（二）海员外派机构的责任

在下列情况下，海员外派机构可能需要对海员承担责任：

1. 海员外派机构与海员签订了劳动合同；
2. 海员外派机构没有为海员购买境外人身意外伤害保险；

[42] 中国有户口系统。户口分两种：城镇户口和农村户口。每个家庭有一个户口本记录户口种类。确定赔偿数额需要依据外派海员户口的种类，即根据户口的种类来确定采用城镇居民人均可支配收入或者农村居民人均纯收入来计算损失。但是，如果有证据证明该外派海员居住在城镇区域并且可以从城镇的工作获得收入，赔偿金额就要依据城镇居民人均可支配收入来计算，尽管该外派海员的户口为农村户口。

3. 海员外派机构违反了其向境外船东外派海员应履行的其他强制性责任或义务。

在上述 1 的情况下，如果海员外派机构与海员签订了劳动合同，海员外派机构应当为海员购买工伤保险。如果海员出现人身伤亡或者疾病，该海员可以享受工伤保险的利益。这种情况下，除了应急响应的费用，海员外派机构不需要向海员支付任何赔偿。但是，如果海员外派机构没有为海员购买工伤保险，海员外派机构应当按照工伤保险待遇的项目和标准承担该海员的花费、费用和损失。

在第 2 种情况下，中国法下海员外派机构是否应按照工伤保险待遇的项目和标准向海员承担责任还不明确。我们认为，需要调查海员外派机构没有为海员购买境外人身意外伤害保险的原因。如果是因海员外派机构的疏忽导致海员不能享受保险补偿，我们认为海员外派机构应当按照工伤保险待遇的项目和标准向海员承担责任。

在第 3 种情况下，如果海员外派机构未履行其责任和义务的行为导致了海员的损失或损害，我们认为海员外派机构应当对其导致的海员的损失或损害负责。

（三）境内的航运公司或者其他公司的责任

海员可能与境内的航运公司或者其他公司签订了劳动合同。海员外派机构向境外船东外派海员应当与该境内的航运公司或者其他公司达成内部协议并取得他们的同意。这样的话，该境内的航运公司或者其他公司应当为海员购买工伤保险。海员不需要向国内的航运公司或者其他公司索赔即可享受工伤保险的利益。但是，如果该境内的航运公司或者其他公司没有为海员购买工伤保险，该海员可以按照工伤保险待遇的项目和标准向国内的航运公司或者其他公司索赔。

五、结论

关于外派海员人身伤亡或疾病的责任问题，需要首先识别并确定海员、海员外派机构、境外船东、境内的航运公司或者其他公司之间的合同关系的性质，然后正确适用调整各个合同的法律。通常情况下海员与境外船东之间成立雇佣合同关系或者事实上的雇佣合同关系。在这种关系下，境外船东的责任应当根据《人身损害赔偿司法解释》来判定。

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

blocked Iran-linked financial institution;

(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 Oder 13846 and added the same into the OFAC SDN List.

(2) Correspondent and Payable-Through Account Sanction ;

- The Secretary of the Treasure 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 Sectary 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.

伊朗制裁最新进展及避险措施建议[43]

一、背景

（一）美国退出《伊核协定》

2018 年 5 月 8 日，美国总统特朗普决定退出由中国、法国、美国、俄罗斯、英国、德国与伊朗于 2015 年 7 月 14 日签署的《关于伊朗核计划的全面协议》，即通常所称的《伊核协定》，并且无论如何不晚于自 2018 年 5 月 8 日起 180 天之内重新启动对伊朗的制裁。

（二）13846 号美国总统行政命令

2018 年 8 月 6 日，美国总统特朗普签署第 13846 号总统行政命令，宣布自 2018 年 11 月 5 日起，即退出《伊核协定》起 180 天缓冲期过后，美国将重新启动对伊朗的最严厉制裁，这些制裁将针对伊朗的关键行业领域，包括能源、航运、船舶建造和金融。美国此举的主要目的是要给予伊朗经济制裁，以限制其发展核武器。

13846 号总统行政命令主要内容 :可被制裁的实体和个人、可被制裁的行为、制裁的类别、实施制裁的机构等。

（三）大幅减量豁免（Significant Reduction Exceptions, “SREs”）

2018 年 11 月 5 月，特朗普政府给予 8 个国家和地区暂时大幅减量豁免，允许这些被豁免的国家和地区继续从伊朗进口石油而不受制裁，这 8 个国家和地区包括中国、印度、意大利、希腊、日本、韩国、台湾和土耳其。豁免为期 180 天，期满后，总统将决定是否继续给予豁免。特朗普政府给予大幅减量豁免是考虑到这些国家和地区在 2018 年 11 月之前的 6 个月已大幅减少从伊朗进口石油。

2019 年 4 月 22 日，特朗普政府宣布，考虑到中国、印度、韩国、日本和土耳其继续大量进口伊朗石油，这些石油收入帮助了伊朗获得核武和原子弹计划的资金，为了给予伊朗经济压力，特朗普政府决定 2019 年 5 月 2 日大幅减量豁免到期后，将不再继续给予大幅减量豁免。

二、可能受到制裁的航运业实体和个人

[43] 本文内容主要依据：13846 号美国总统行政命令、美国财政部海外资产办公室于 2019 年 9 月 4 日发布的致石油运输行业的咨询公告、美国财政部关于伊朗制裁问题更新简报。

以下航运业实体和个人

- 航运公司
- 船东
- 船舶管理人
- 经营人
- 保险人
- 金融机构
- 供油商
- 贸易商
- 上述公司的高管、负责人或拥有控制权的人

定义

实体：指合伙、联营、信托、合资企业、公司、集团、集团内部组织，及其它任何类型的组织。

三、受到制裁的行为

受到制裁的行为主要是指第 13846 号总统行政命令第三部分规定的会被制裁的情形：

（一）明知的情况下购买、取得、销售、运输或经销来自伊朗的石油、石油产品，石化产品;

（二）明知的情况下与特别指定国民名单上（Specially Designated Nationals List, “SDN List”）的实体或个人进行重大交易或向其提供重大的支持；比如伊朗国家石油公司（NIOC），伊朗油轮公司（NITC），伊朗伊斯兰共和国航运公司等；

（三）向运输伊朗石油的船舶提供供油服务的服务商，也会面临被制裁的风险；

（四） 对于在重大减量豁免失效后仍从伊朗运送石油的船舶，如果非美国实体或个人在明知的情况下拥有、运营、控制或承保该船舶，则该等非美国实体或个人将会面临次级制裁。

定义

明知：就行为或行为后果而言，是指实际知情或应该知情；

重大交易：美国财政部将考虑以下因素来判断是否构成重大交易：

（1）交易量、规模、次数、实质；

（2）对交易管理的认知程度，并且交易是否形成某一交易模式的一部分；

（3）境外金融机构与特别国民名单上的实体或个人的关系；

（4）交易行为对于实现全面伊朗制裁、问责和撤资法案 (CISADA)的影响；

（5）交易是否存在欺骗性行为；

（6）财政部认为个案应考虑的其它因素。

四、 制裁类别

（一）被列入特别指定国民名单（SND List）

如果美国国务卿认定某一实体或个人的行为符合第 13846 号行政命令规定的制裁情形，则该等实体和个人可能被列入特别指定国民名单。如 2019 年 9 月 25 日，美国国务卿认定 6 家中资企业及该等公司的 5 名公司高管的行为符合 13846 号行政命令规定的制裁情形，因此将其列入特别国民名单。

（二）外国金融机构代理账户或通汇账户制裁

美国财政部可以禁止受到制裁的外国银行在美国开立代理账户或保有通汇账户，或对开立代理账户或保有通汇账户施加严格的条件。

（三）次级制裁（Secondary Sanction），如果美国国务卿认为外国实体或个人存在 13846 号总统行政命令第三部分规定的被制裁的行为，则有权对该实体和个人实施次级制裁，具体表现为：[44]

1. 禁止任何美国金融机构向受制裁的实体或个人在 12 个月内提供总额超过 1000 万美元的贷款；
2. 禁止在美国管辖领域内进行任何以外币结算的交易，如果受制裁的实体或个人对该交易存在利益；
3. 禁止任何金融机构之间或通过金融机构进行信用转让或付款，如果该等转让或付款受到美国管辖，并且涉及到受制裁实体或个人的利益；
4. 受到制裁的实体和个人的所有位于美国的资产及资产之上的利益、进入美国的资产及资产之上的利益、以及落入美国人占有或控制的资产及资产上的利益，将被禁止转移、出口、撤销或做任何处置；
5. 禁止任何美国人向被制裁的实体或个人进行投资，或者购买被制裁实体或个人重大金额的股权或债务工具；
6. 限制或禁止进口被制裁实体或个人的商品、技术、服务进入美国，不论是直接进口还是间接进口；
7. 由总统或财政部长对被制裁人的高管或执行类似职能的人实施 13846 号行政命令中第 5 部分(i)-(vi)项描述的制裁。

例子：2019 年 9 月 25 日被美国制裁的上述中资公司及公司高管受到以上

[44] 以下制裁是 13846 号行政命令中第 5 部分第(i)-(vi)项描述的制裁类别，这些制裁通常被称为次级制裁（secondary sanctions）。

第 2 项-6 项的次级制裁。不过，美国财政部于 2019 年 10 月 24 日向其中一家中资企业给予临时豁免(General License)，豁免其在 2019 年 12 月 20 日之前了结其业务，包括卸载非伊朗原油。需要注意的是，该制裁只适用于被列于 SDN 清单上的实体及其单独或合计拥有 50%或以上权益的任何实体，不适用于该等实体的最终母公司。另外，该制裁同样不适用于母公司的其他子公司或关联公司，但前提是一个或多个 SDN 清单个人/实体合计拥有不超过 50%或以上子公司或关联公司的权益。美国的实体/个人可以与其母公司及未被列于 SDN 清单的子公司或关联公司进行交易，前提是该交易不涉及被列于 SDN 清单的个人/实体，且不涉及 OFAC 禁止的任何其他活动。同样，非美国的实体/个人与此类母公司及其未被列于 SDN 的子公司或关联公司进行交易不会面临制裁风险。

（四）对于那些国务卿认为担任被制裁实体的公司高管或负责人或对被制裁实体拥有控制权的个人，如果这些人是外国自然人，则国务卿将拒绝签发签证，国土安全部将不允许其入境，例如上述中资公司的高管受到该项制裁。

（五）民事处罚：罚款（受美国司法管辖前提下），通常被制裁企业会与美国财政部海外资产控制办公室达成和解；

（六）刑事处罚：判刑（受美国司法管辖前提下）。

五、制裁执法部门

美国国务卿、美国财政部、海外资产控制办公室 （OFAC）。

六、避免伊朗制裁的措施和建议

为防止触碰伊朗制裁红线，建议避免发生以下情形：

（一）**伪造货物和船舶文件**：完整和准确的运输文件对于确保所有交易主体了解某一特定货物运输所涉当事人、货物、船舶至关重要。货物运输通常会有提单、原产地证书、发票、装箱单、保险凭证、挂靠过的港口清单这些文件。曾经发生过航运公司伪造船舶和货物文件，以混淆石油运输的目的地的情况。

（二）船到船的过驳作业：过驳作业是在海上将货物从一船转运到另一船，而不是在港口操作。过驳作业能够掩盖货物的原产地和目的地。

（三）停用船舶身份自动识别系统 AIS：AIS 系统是避碰装置，通过甚高频无线电波传输船舶的身份以及航行和方位数据。尽管 AIS 并不是设计用来跟踪船舶，但其经常用来跟踪船舶，具体是通过陆上和卫星接收装置将数据和信息提供给商用船舶跟踪服务商。达到一定吨位的国际航行船舶应配备船舶自动识别系统装置，不过，曾发生从伊朗运输石油的船舶故意停止使用 AIS 系统，或修正应答数据，以屏蔽其运行轨迹。这样操作能够掩盖货物来自伊朗，或造成伊朗船舶船位的不确定性，混淆伊朗货物的过驳作业。

（四）更改船名：船舶从事违法行为，曾发生其所有人变更船名，以混淆其之前的非法行为。为此，不仅要查船名，还有查 IMO 号。

建议采取以下避险措施：

（一） 保险：向特定的伊朗能源、海运，或与其相关的人或行为提供承保、保险或再保险，存在被制裁的风险。尤其是明知的情况下，向 SDN 名单上的主体或个人，如 NIOC, NITC 或 IRISL 提供承保、保险或再保险，面临被制裁的风险。另外，与 AKA Kish P&I，一家主要的伊朗保险公司，进行交易的，被视为是可被制裁的行为。除美国外，其它国家的船舶登记机构也不接受 Kish 保赔协会承保船舶的登记。

（二）核实货源：不论是个人还是公司，接收石油或石油产品的，应进行谨慎的调查，核实货物的来源，尤其是当运输船舶表现出存在欺骗行为，或怀疑与被制裁的人存在关系。对石油或石油产品的成分样品化验能显示出伊朗油田产出石油的独特行。公布伪造货物原产地证书的案件，能够阻却将货物转售给其他客户。

（三）加强反洗钱/为恐怖主义提供资金支持的合规要求：强烈鼓励金融机构和公司采取降低风险的措施，以符合 Financial Action Task Force standards 标准，该标准用来反洗钱，防止为恐怖主义和核扩散提供资金支持。包括由金融机构和看护系统采取适当的尽调政策和程序，扩大最终所有人的透明度，尤其是以上描述的各种情形有关。

（四）监督操纵自动识别系统：船舶登记机关、保险人、租家、船舶所有人或港口运营人应考虑调查那些在地中海、红海或中国附近航行船舶看似关闭自动识别系统的船舶。

对任何有操纵自动识别系统接受讯号迹象的船舶，应考虑对提出警示，对任何存在违法行为可能性的船舶，在继续向其提供服务、与其进行交易之前，应对其进行调查。

（五） 审阅所有航行文件：有可能牵涉参与从伊朗运送石油或石油产品运输的交易的个人和实体，应该确保他们要求并且审阅全部完整的和准确的航运文件。这些航运文件应该能够反映航次的细节，反映船舶、船旗、货物、原产地、目的地。如有迹象表明船舶文件被修改，应警示有潜在的违法行为，应在继续进行交易前进行调查。此外，与过驳作业有关的文件应该能够显示货物被交给了航行文件上列明的港口。

（六）知道你的客户：对于那些从事海运石油运输的人而言，包括船舶所有人、经营人，标准做法是，对你的客户进行尽调。客户尽调能够帮助确保那些海运石油公司了解他们从事的行为和交易，以及当事人、地理区域、原产地、目的地。最好的办法是调查船舶的 IMO 号，这可以提供一个更为全面的船舶历史，航行模式、是否存在违法行为、与船舶或其所有人运营人有关的潜在的制裁风险。

（七） 与国际交易伙伴进行清晰的沟通：因航运交易的参与主体和司法管辖不同，将会面临不同的制裁制度，所以对于国际交易而言，清晰的沟通是是关键。应与交易伙伴进行清晰的沟通，才能确保满足合规要求。

Implementation Scheme of Sulphur 2020 Limit Published by MSA

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)

	Starting time	The areas that the international navigation vessels enter into	The requirement of sulphur content of fuel oil
1	From 1 January 2020	the jurisdiction waters of People's Republic of China	<0.50%m/m (use)
2	From 1 January 2020	the Inland River Control Areas for Atmospheric Pollution from Vessels	<0.10%m/m (use)
3	From 1 January 2022	the coastal emission control area in Hainan waters	<0.10% m/m (use)
4	From 1 March 2020	the jurisdiction waters of People's Republic of China	<0.50% m/m (load)
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.		
6	From 1 January 2020, 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").		

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

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.

中国海事局发布《2020 年全球船用燃油限硫令实施方案》

2019 年 10 月 23 日，国家海事局正式公告发布了《2020 年全球船用燃油限硫令实施方案》（以下简称《限硫令实施方案》），该方案主要规定了船舶使用、装载燃油和替代措施要求、船舶使用和装载燃油信息报送要求、船舶装载不合规燃油处置要求、供油单位备案以及监督管理等内容。

一、法律依据

《限硫令实施方案》的法律依据包括：

1.《中华人民共和国大气污染防治法》

2.《防治船舶污染海洋环境管理条例》

3.《国际防止船舶造成污染公约》

4.《船舶大气污染物排放控制区实施方案》

二、船舶使用、装载燃油和替代措施要求

(见下表)

三、船舶使用和装载燃油信息报送要求

1. 2020 年 1 月 1 日起，中国籍国际航行船舶 无法获取合规燃油导致船舶使用或者装载 不合规燃油的，下一港为国外港口的，应当 立即向船籍港海事管理机构报告，并向下一 港主管机关提交《合规燃油不可获得报告》； 下一港为我国港口的，应当向该港口的海事 管理机构提交《合规燃油不可获得报告》。 《合规燃油不可获得报告》副本应当在船保 留 36 个月以备检查。

2. 2020 年 1 月 1 日起，外国籍国际航行船舶无法获取合规燃油导致船舶使用或装

	起始时间	国际航行船舶进入区域	燃油的硫含量要求
1	自 2020 年 1 月 1 日起	中华人民共和国管辖水域	<0.50%m/m （使用）
2	自 2020 年 1 月 1 日起	我国内河船舶大气污染物排放控制区	<0.10%m/m （使用）
3	自 2022 年 1 月 1 日起	我国船舶大气污染物排放控制区海南水域	<0.10% m/m（使用）
4	自 2020 年 3 月 1 日起	中华人民共和国管辖水域	<0.50% m/m （装载）
5	国际航行船舶采用的替代措施满足《国际防止船舶造成污染公约》附则 VI 第 4 条所述等效要求的，可以免除上述第 1、2、3、4 项的要求。		
6	自 2020 年 1 月 1 日起，船舶不得在我国船舶大气污染物排放控制区内排放开式废气清洗系统洗涤水。		

载不合规燃油，下一港为我国港口的，应当在到达我国管辖水域前向该港口的海事管理机构提交《合规燃油不可获得报告》。

3. 2020 年 1 月 1 日起，中国籍国际航行船舶发现加装燃油的品质不符合《国际防止船舶造成污染公约》附则 VI 第 14 条或第 18 条要求的，应当立即向船籍港海事管理机构报告不合规燃油信息，包括燃油加装港口、燃油供给单位和燃油检测报告等相关信息。

4. 中华人民共和国海事局定期向国际海事组织报送经确认的船舶《合规燃油不可获得报告》和中国籍国际航行船舶加装的不合规燃油信息。

四、船舶装载不合规燃油处置要求

1. 2020 年 3 月 1 日起，国际航行船舶在我国管辖水域违规装载不合规燃油的，应按照国际海事组织《关于解决不合规燃油紧急措施的港口国监督指南》（MEPC.1/Circ.881），可采取卸载不合规燃油的措施，或者经所在港的海事管理机构同意，将不合规燃油留存船上并提供不在我国管辖水域使用不合规燃油承诺书。

2. 国际航行船舶卸载不合规燃油的，应当按照《中华人民共和国船舶及其有关作业活动污染海洋环境防治管理规定》、《中华人民共和国防治船舶污染内河水域环境管理规定》中有关船舶油料供受作业的规定，向作业地海事管理机构报告，并落实安全与防污染措施。

五、供油单位备案

供油单位应当及时将各相关信息更新并备案。

六、监督管理

各级海事管理机构应当根据各项规定，积极行使监督检查的职能。

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