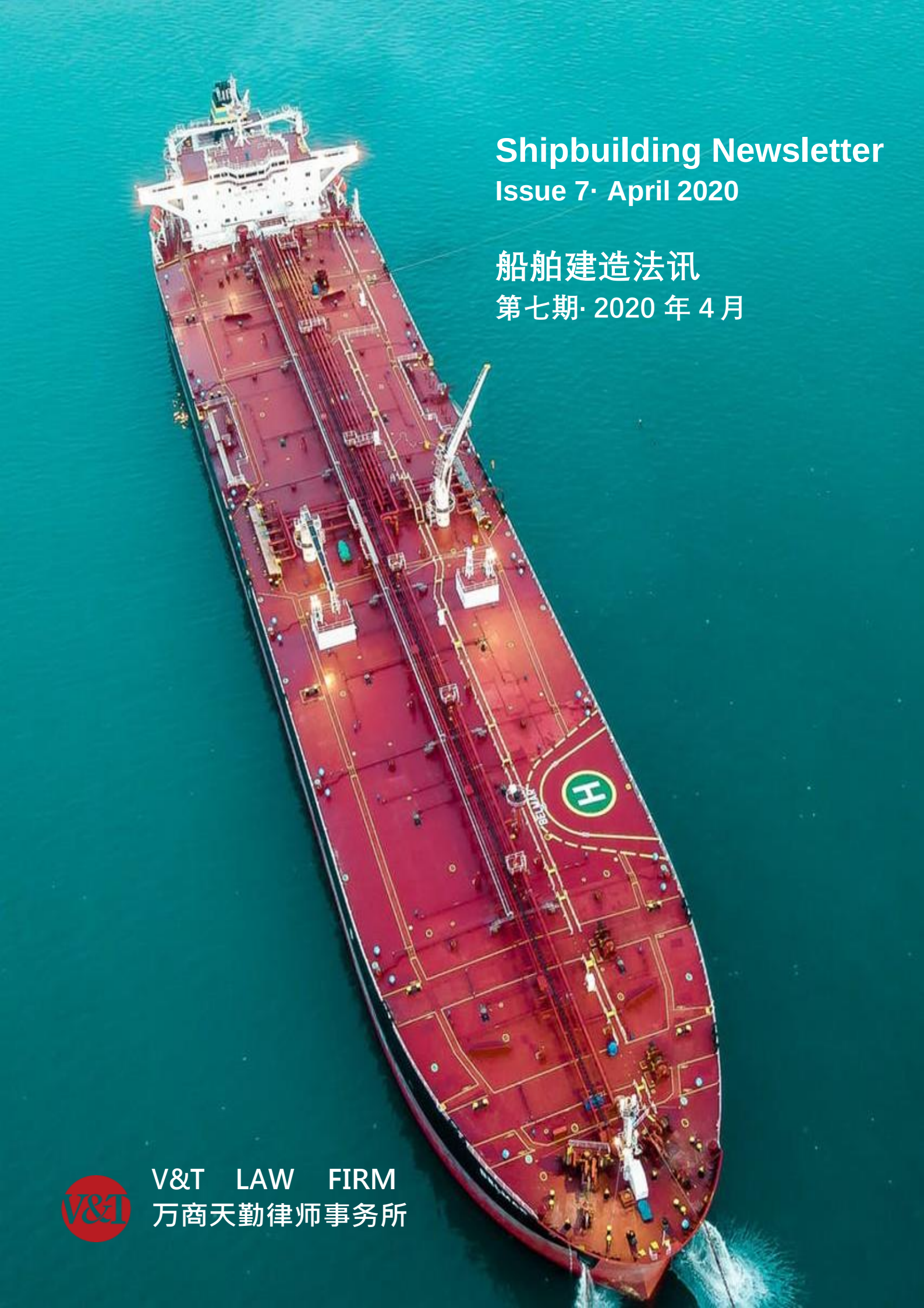

Shipbuilding Newsletter

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船舶建造法讯

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V&T LAW FIRM
万商天勤律师事务所

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如有任何问题，欢迎联络团队成员

船舶是否处于可交付状态及船东拒绝接船的赔偿责任问题

近日，中国某船厂赢得了造船合同纠纷香港仲裁一案的胜利，这对国内船厂而言是非常积极的消息。该案焦点问题包括：1. 船厂交付的船舶是否处于可交付状态（Deliverability of Vessel）；2. 如何确定船东因拒绝接船应向船厂承担的违约损害赔偿金额。这两个问题是造船合同履行中常见的问题，仲裁庭对这两个问题的裁决对于船厂和船东避免履行造船合同风险有一定的帮助。

第一个焦点问题是对“船舶缺陷是否影响船舶营运(Deficiency of Affecting Trading of Vessel)”的理解。仲裁庭多数意见认为判断“船舶缺陷是否影响船舶营运”的标准是看缺陷程度的大小（Matter of Degree）。对此，仲裁庭举例说明如果船舶缺陷可能导致租船人要求船东降低租金才肯接船，那么该缺陷不应被视为是影响船舶营运的缺陷（a trivial deficiency or issue which might make a charterer unwilling to hire the Vessel without some discount in the price）；而如果船舶缺陷使得租船合同条款发生重大变化，并由此导致租船人不同意立即租用该船舶，除非缺陷得以解决，那么该缺陷则很可能构成影响船舶营运的缺陷（a defect would make a material difference to the Vessel’s terms of hire such that a reasonable charterer would not agree to the immediate use of the vessel pending the resolution of such defect）。

第二个焦点问题是关于补偿原则与减损原则的适用。基于该两项原则，仲裁庭多数意见认为船东违约拒绝接船的，其赔偿责任应根据已建造完成船舶在造船合同解除之时的市场价值与船东未支付的船舶尾款金额之间的差额确定，如果尾款金额超过船舶市场价值，船东应赔偿船厂该差额以及合同约定的利息，而如果

尾款金额低于船舶的市场价值的，船东无需赔偿船厂，而船厂应将二者之间的差额返还给船东。

背景

事实背景

1. 根据造船合同的约定，交船期最后一天是 2016 年 6 月 28 日。在此之前，船舶在海试中被发现存在右舷的主推进器存在漏油的情况，船舶进坞修理之后再次进行海试。船厂于 2016 年 5 月 30 日通知船东，称船舶已经按照造船合同及规格书的约定和要求完成设计、装备和建造。尽管如此，船厂在发出通知之后继续对船舶作了一些工作并多次推迟交船，直至 2016 年 6 月 28 日交船(making a final tender of delivery)。

2. 船东拒绝接船，称船舶在 2016 年 6 月 28 日尚未达到交付状态，并于 2016 年 7 月 12 日通知船厂解除造船合同。而船厂于 2016 年 8 月 22 日通知船东 解除造船合同，理由是船厂违约拒绝接船并且不按照合同约定支付尾款。

3. 按照造船合同约定的仲裁条款，船东启动香港仲裁程序，要求船厂返还其已经支付的进度款以及利息，而船厂向船东提出反索赔，要求其支付违约损害赔偿金。船厂认为，船舶在合同约定的交船期最后一天处于可交付状态，船东有义务在这一天接船，而船东则认为船舶并未处于可交付状态。仲裁庭归纳案件的核心问题是，船东是否有义务在合同约定的交船期最后一天接受船厂交付的船舶，如果船东有义务接船，船东的赔偿责任。

造船合同对船舶处于可交付状态的约定和要求

关于满足规格书要求的约定

4. 造船合同第 1.1 条约定:

“The vessel shall be …designed, constructed, equipped, fit for its

intended use and purpose, and completed in accordance with the provisions of this Contract and 'Specifications'..."

合同双方对于该条款的理解及性质问题存在争议。船东认为船厂交付的船舶应满足其预期使用用途（fit for its intended use and purchase），因此，即使建造完成的船舶符合合同和规格书的约定，但如果不符合其预期使用用途，则船舶也不能被视为处于可交付状态。另外船东还主张英国货物买卖法(Sale of Goods Ordinance, "SOG")的相关规定应适用于造船合同。SOG 第 16(3)条规定，卖方出售的货物应符合其预期使用用途是合同的条件条款。

5. 仲裁庭多数意见认为：（1）对上述合同第 1.1 条的正确解释应该是，船舶的设计、建造、装备应满足其预期的使用用途，并且，船舶应按照造船合同的约定和规格书的要求完成建造；（2）满足预期使用用途的要求必须参照规格书的要求来理解，即船舶如果按照规格书的要求完成了建造，也就满足了预期使用用途的要求，否则，船厂将陷入两难的境地；（3）SOG 第 16(3)条的规定并不适用于造船合同，这是因为合同双方已通过合同第 9.4.3 条的约定明确排除了 SOG 关于条件条款的规定在造船合同中的适用；[1]（4）造船合同第 1.1 条属于中间条款(Innominate Term)而不是条件条款(Condition)，船东并不能仅仅因为船厂违反了该条约定就可以解除造船合同。

<u>关于符合船级社规范的约定及船级社未发证的影响</u>

6. 除了上述造船合同第 1.1 条关于船舶完成建造的要求外，合同第 1.3 条还约定了船舶应按照挪威船级社的要求和检验建造并签发船级社证书，另约定合同双方之间关于船舶是否满足规格书的某项要求的争议应根据船级社的决定来判断，船级社的决定对双方有约束力。由于船东在签发船级证书的问题上未配合相关工作，导致船级社从未给船舶签发正式的船级证书，仅提供了一份建造完工证书（Certificate After Completion），确认船舶已经按照船级社的规范完成建造。结合代表船厂的有关船级方面的专家证人的证言，仲裁庭多

[1] Article9.4.3 规定，"The guarantee contained as hereinabove in the Article replaces and excludes any other liability, guarantee, warranty and/or condition imposed or implied by the law customary, statutory or otherwise, by reason of the construction and sale of the Vessel by the Seller for and to the Buyer."

数意见认为该完工证书应被视为船级社接受在交船期的最后一天船舶符合船级社的规范要求。不过仲裁庭认为这仅为船舶处于可交付状态的必要但不充 分条件，因为规格书可能对船舶是否处于可交付状态另有要求。

关于船舶缺陷是否影响船东接船的约定

7. 造船合同第 6.5 条约定，海试后如果船舶存在任何缺陷或者未决问题，而该等缺陷或未决问题如果不是非常重要的，比如不影响船舶的营运(Not affect the trading of the vessel)，那么船厂有权利交船，或强制交船，船东则有义务接船，但船厂应承担费用尽快纠正船舶的缺陷，或者如果纠正这些缺陷将影响船厂按期交船的，则船厂可选择或者按照履行质量担保义务的方式来处理这些缺陷，或者补偿船东由船东自己安排纠正这些缺陷而产生的费用。

8. 合同双方对于上述条款的解释存在争议。船东认为，上述合同第 6.5 条的约定不明确，应适用对船厂不利解释的原则，并认为“影响船舶营运”是指影响船舶在公开的租船市场下能够立即交付或使用，且“affect”指某些目标客户可能会因船舶瑕疵而不租船或者要求租金折扣。船厂则认为，若船舶有缺陷，但该缺陷能被纠正，且解决之后船舶仍然能营运，则此时该缺陷不能被认为是“affect”。

9. 对此，仲裁庭多数意见认为，船舶的营运是否会受到影响取决于该瑕疵的程度大小问题。如果船舶的重大缺陷（material defect）会导致租船合同条款有 很大的不同，以至于一个理性的租家不会同意立即将该船舶投入商业营运， 除非这些缺陷得到纠正，则该缺陷将被认定为是影响船舶的营运，且根据造 船合同第 10.1.6 条的约定，船东可以根据第 6 条约定拒绝接受船舶。但是， 若船舶瑕疵的程度轻微（minor defect）且不影响交船后船舶的营运，那么船 厂有权利在纠正缺陷的前提下交船。

仲裁庭就第一个问题的结论

10. 根据上述对造船合同条款的解释和分析，仲裁庭多数意见认为：船厂的义务

是在交船期最后一天之前交付一艘按照造船合同及规格书的要求设计、建造和装备的船舶；如果船厂交付船舶之时，船舶存在任何缺陷，而该等缺陷影响船舶的营运，则船东有权拒绝接船。判断“船舶缺陷是否影响船舶营运”取决于缺陷程度的大小（matter of degree）。对此，仲裁庭举例说明如果船舶缺陷可能导致租船人要求船东降低租金才肯接船，那么该缺陷不应被视为是影响船舶营运的缺陷（a trivial deficiency or issue which might make a charterer unwilling to hire the Vessel without some discount in the price）；而如果船舶缺陷使得租船合同条款发生重大变化，并由此导致租船人不同意立即租用该船舶，除非缺陷得以解决，那么该缺陷则很可能构成影响船舶营运的缺陷（a defect would make a material difference to the Vessel's terms of hire such that a reasonable charterer would not agree to the immediate use of the vessel pending the resolution of such defect）。

11. 船东声称，船厂交船时船舶存在若干缺陷，但是，经过审理后仲裁庭多数意见认为船东并未能够举证证明大多数缺陷，即使证明了存在部分缺陷，那些缺陷也不构成影响船舶营运。仲裁庭认为，船舶营运问题一定要按照规格书的要求来判断，如果符合规格书的要求使得船舶无法营运，船厂也并不应该因此向船东承担赔偿责任，因为船东已经同意从船厂购买一艘符合规格书约定的船舶。

船东因违约拒绝接船应承担的违约损害赔偿金额

12. 针对赔偿金的数额问题，船厂主张船东应支付造船合同约定的最后一期进度款扣除船厂迟延交船违约金后的金额 2455 万美元，以及合同约定的 5%利息；或者根据普通法计算的违约损害赔偿金。直至双方进行仲裁之日，船厂并未将船舶转售。

13. 根据普通法，违约损害赔偿金的计算应适用补偿原则与减损原则。补偿原则是指违约一方应支付守约一方损害赔偿金，以使得守约一方处于如果合同得以正常履行时应处于的地位。减损原则是指守约一方应采取合理措施减少因违约方违约而造成的损失。仲裁庭多数意见认为，船厂主张的船东应赔偿其

最后一期进度款扣除船厂迟延交船违约金后的金额，违反了减损原则。理由是：

（1） 造船合同第 11 条约定，当船东违约拒绝接船的，船厂有权：a. 在船 东持续违约 30 日后，选择解除造船合同；并 b.保留船东已经支付的 进度款，同时主张所有尚未支付的进度款即刻到期并且应由船东支付； 并 c. 船厂应将出售船舶所得款项首先用于偿还出售船舶所产生的费 用、支付船厂造船成本、赔偿船厂合理的利润损失，之后如有盈余， 应返还给船东但不包括利息；如果出售船舶所得款项不够偿还、支付 或赔偿前述项目的，船东应立即给予船厂赔偿。

（2） 前述合同第 11 条并未约定船厂可以不履行减损义务。船东违约拒绝接船并且不支付最后一期进度款的，船厂有权要求船东支付的赔偿金额应按照建造完成船舶在合同解除之日的市场价值确定：如果船舶毫无价值或几乎毫无价值，则船东应支付全部或大部分最后一期进度款，而如果船舶有一定的市价，则船东应履行减损义务出售船舶。

（3） 根据前述合同第 11 条的约定，船厂可以选择出售或不出售船舶，如果选择出售，那么船厂有权用出售所得款项偿还、支付或赔偿前述项目，并要求船厂赔偿不足部分；如果船厂选择不出售，那么在向船东提出索赔时，船厂无权拒绝给予船东船价收益。

14. 综上所述，仲裁庭多数意见认为，根据合同约定，最后一期进度款金额为 2487.5 万美元，扣除船厂应支付给船东的迟延交船违约金 47 万美元，船东应支付给船厂的最后一期进度款金额为 2455 万美元。 仲裁庭多数意见采纳了船厂出具的船价评估报告，认定在船厂解除造船合同之时，船舶的市价为 2000 万美元。因此，仲裁庭裁定船东应赔偿船厂违约损害赔偿金金额为 455 万美元，以及该金额自合同解除之日起按照年利率 5%计算的利息。

结论和建议

15. 对船舶的预期使用目的的理解应按照造船合同和规格书的具体内容进行解释。

当船厂按照造船合同和规格书的约定和要求设计、装备、建造船舶，船东则无权主张船舶不符合其预期使用目的，除非造船合同对何为预期使用目有明确具体的约定和要求。

16. 船舶存在缺陷并不必然影响船厂交船的权利，换言之，船东也并不能仅仅因为船舶存在缺陷而拒绝接船，除非船东能够举证证明缺陷足以影响船舶的营运。判断是否影响船舶营运的标准是要看缺陷的程度大小。在该案中，仲裁庭所举的例子是如果船舶缺陷可能导致租船人要求船东降低租金才肯接船，那么该缺陷不应被视为是影响船舶营运的缺陷（a trivial deficiency or issue which might make a charterer unwilling to hire the Vessel without some discount in the price）；而如果船舶缺陷使得租船合同条款发生重大变化，并由此导致租船人不同意立即租用该船舶，除非缺陷得以解决，那么该缺陷则很可能构成影响船舶营运的缺陷（a defect would make a material difference to the Vessel's terms of hire such that a reasonable charterer would not agree to the immediate use of the vessel pending the resolution of such defect）。

17. 船东违约拒绝接船的，船厂可以选择转售或不转售船舶，如果选择转售的，船厂应将出售船舶所得款项首先用于偿还出售船舶所产生的费用、支付船厂造船成本、赔偿船厂合理的利润损失，之后如有盈余，应返还给船东但不包括利息；如果出售船舶所得款项不够偿还、支付或赔偿前述项目的，船东应立即给予船厂赔偿。如果船厂选择不转售，那么在向船东提出索赔时，船厂无权拒绝给予船东船价收益。

The Issues of Deliverable State of Vessel and Shipowner's Liability for Unlawful Rejection of Vessel

Recently, one of the Chinese shipyards won a Hong Kong Arbitration case in respect of shipbuilding contract disputes. Definitely, this is a positive news for domestic shipyards. The critical issues of this case include: 1. Whether the vessel is in the deliverable state? and 2. How to calculate the damages which the shipowner is liable to the shipyards due to its unlawful rejection of the vessel? These two issues can be found commonly in the performance of a shipbuilding contract. The shipyards and shipowners may benefit from this arbitration award in avoiding the risks of performing the shipbuilding contract.

The first issue is in respect of the interpretation of the "deficiency of affecting trading of vessel". The majority arbitrators believe whether or not the trading of the vessel is affected by a deficiency or issue must be a matter of degree. For example, if a trivial deficiency or issue which might make a charterer unwilling to hire the vessel without some discount in the price, such a deficiency or issue could not be regarded as affecting trading of vessel. However, if a defect would make a material difference to the vessel's terms of hire such that a reasonable charterer would not agree to the immediate use of the vessel pending the resolution of such defect, then the defect could be regarded as affecting trading of vessel.

The second issue is relating to the application of the principles of compensation and mitigation. According to these two principles, the majority arbitrators hold that the extent of the buyer's liability to pay the full or any amount of the final instalment would instead depend on the value of the vessel as at the date of termination of the shipbuilding contract. If the amount of the final instalment is higher than the market value of the ship at the time of termination, the shipowner shall pay the credit and the interest to the yard. Otherwise, the shipowner does not need to pay any compensation, instead, the shipyard shall

return the credit to the buyer.

Background

Factural Background

1. According to the Shipbuilding Contract (hereinafter "Contract"), the shipyard (hereinafter "the Yard") shall deliver the Vessel by the drop-dead date of 28 June 2016. Before the delivery, the Yard held a sea trial, however, the Vessel had to be dry-docked due to a leaking starboard main azimuth thruster in the middle of the trial. After the maintenance, the trial was resumed later. On 30 May 2016, the Yard sent the Shipowner a notice claiming that the Vessel had been completed in conformity with the Contract including the Specifications. But further work was done to the Vessel thereafter and the Yard postponed handing over the Vessel on a number of occasions until it made a final tender of delivery on 28 June 2016.

2. The Shipowner refused to accept the Vessel, contending that it was not in a deliverable state. Instead, on 12 July 2016, the Shipowner wrote to the Yard giving notice of rescission and termination. By letter dated 22 August 2016, the Yard in turn wrote to the Shipowner that it was terminating the Contract on account of the Shipowner's breach and its failure to pay the final instalment of the Contract price.

3. According to the Arbitration Clauses (Article XII) included in the Contract, the Shipowner commenced the Hong Kong arbitration proceedings. By way of remedy, the Shipowner claims a refund of its pre-paid instalments of the Contract price plus interest while the Yard claims damages at common law for the Shipowner's breach of the Contract. In short, the Yard argues that the Vessel was in a deliverable state on the drop-dead day and the Shipowner shall accept the Vessel; however, the Shipowner denies it. The

central issue in this arbitration is whether, under the terms of the Contract (including the Specifications), the Shipowner was obliged to accept delivery of the Vessel on the drop-dead date. If the answer is yes, then how to determine the Shipowner's liability for damages?

The requirements of deliverability of the Vessel by the Contract

The requirement of satisfying the conditions by the Specifications

4. According to the Article 1.1 of the Contract:

   "the vessel shall be … designed, constructed, equipped, fit for its intended use and purpose, and completed in accordance with the provisions of this Contract and 'Specifications'…"

   There is a dispute among the parties as to the interpretation of this article. The Shipowner contended that the Yard's obligation under the Contract was to deliver a Vessel that was fit for its intended use and purpose. What's more, in the Shipowner's views, if compliance with the Specifications and Contract rendered the Vessel's design, construction or equipment unfit for its intended use and purpose, the Yard would be in breach of the Contract. In addition, the Shipowner also maintained that SOGO (Sale of Goods Ordinance) was applicable since SOGO s.16(3) supported that the requirement for the vessel to be fit for its intended use and purpose was a distinct condition of the Contract.

5. In the majority's view,

   1) The correct explanation of the Article 1.1 is that "the Vessel shall be designed, constructed and equipped for its intended use and purpose" and the Vessel's completion shall be done in accordance with the terms of the Contract and Specifications.
   2) The Vessel's fitness for its intended use and purpose must be

understood by reference to the Specifications, which means the completion of the Vessel required by the Specification can meet the condition of "fit for intended use and purpose", otherwise, the Yard would fall into the Catch-22 position.

3) SOGO s.16(3) could not be applied since it was excluded by Article IX.4.3 of the Contract.
4) Article 1.1 is an innominate term rather than a condition term, therefore, the Buyer could not terminate the contract due to the Yard's breach of this term.

The requirement of the Classification Society and the impact of non-certification

6. Despite of the article 1.1 of the Contract, article 1.3 also regulates that the Vessel "shall be constructed in accordance with the rules and regulations…and under the special survey of DET NORSKE VERITAS [DNV]". Article 1.3 further provides that "Decisions of the Classification Society as to compliance or non-compliance with the classification rules and regulations shall be final and banding upon both parties hereto." However, due to the Shipowner's lack of cooperation, DNV never issued a formal certificate of classification in relation to the Vessel but only provided a Certificate After Completion to confirm compliance with class rules and regulation. By reference to the experts witness' statement adduced in the arbitration, the majority held that the Statement After Completion should be treated as equivalent to DNV's acceptance that the Vessel complied with class rules and regulations for relevant notations as at the drop-dead date. To be noticed, while compliance with Classification Rules and Regulations is necessary, it may not be sufficient, because the Contract and Specifications may impose other obligations which the Yard has to meet for the Vessel to be in a deliverable state.

Whether the defect in the Vessel will affect the Shipowner's acceptance

7. Article 6.5 stipulated that "…at the time of delivery of the Vessel, there are deficiencies or outstanding issues in the Vessel, such deficiencies and/or issues should be resolved in such way that if the deficiencies or issues are of non-material importance (i.e., do not affect the trading of the Vessel), the Yard shall be nevertheless entitled to deliver the Vessel or tender the Vessel for delivery and the Shipowner shall be nevertheless obliged to take delivery of the Vessel provided that:

   (1) the Yard shall for its own account remedy the deficiencies or issues and fulfil the requirements as soon as possible, or

   (2) if elimination of such deficiencies and/or issues will affect scheduled delivery of the Vessel, then the Yard shall have the option to choose either treat such items as warranty items, or indemnify the Buyer for any actual and direct cost in association with remedying these outstanding deficiencies and/or issues elsewhere than the Seller's shipyard as a consequence thereof."

8. There is a dispute between the two parties over the interpretation of the above terms. The Shipowner submitted that any ambiguity in Article VI.5 should be construed contra proferentem, i.e. interpretation against the Yard. What's more, it also insisted that the meaning of the expression "affect the trading of the Vessel" in Article VI.5 was about "affect the immediate deployment or delivery under a conventional PSV charter on the open market of the Claimant's choosing". In addition, the Buyer pointed out that the word "affect" in the phrase suggests that the trading of the Vessel would be affected, that is, some likely target customers may decline, be less likely, or require a discount to charter the Vessel for use. However, in the Yard's view, any outstanding issue is to be determined by reference to whether the Vessel could be put to commercial use pending resolution of that issue.

9. The majority believes that whether or not the "trading" of the Vessel is

affected by a deficiency or issue must be a matter of degree. To the extent that a defect would make a material difference to the Vessel's terms of hire such that a reasonable charterer would not agree to the immediate use of the Vessel pending the resolution of such defect, the defect may more readily be characterized as one that would "affect the trading of the Vessel". Furthermore, based on Article X.1.6 of the Contract, the Buyer has the right to reject the vessel in accordance with Article VI. However, if the deficiencies or issues (minor defect) would not affect the trading of the Vessel, the Yard would be entitled to tender the Vessel subject to remedying the deficiencies.

Conclusions of the Arbitral Tribunal for the first issue

10. According to the interpretation and analysis of the terms in the Contract, the majority of the Tribunal holds that the Yard's obligation is to deliver, by the Contract's drop-dead date at the latest, a Vessel that complied with the Contracts and the Specification in terms of design, construction and equipment. If there were defects in the Vessel at the time of delivery, and such defects would affect the trading of the Vessel, the Shipowner would have the right to reject the Vessel. Besides, whether or not the Vessel is affected by the defects must be a matter of degree. In this regard, the Tribunal gives examples that if a trivial deficiency or issue might make a charterer unwilling to hire the Vessel without some discount in the price is not a defect affecting the trading of the Vessel, then this deficiency or issue shall not be treated as the one which would affect the trading of the Vessel; but, if a defect would make a material difference to the Vessel's terms of hire such that a reasonable charterer would not agree to the immediate commercial use of the Vessel pending the resolution of such defect, the defect may more readily be characterized as one that would " affect the trading of the Vessel".

11. The Shipowner asserted that several defects were in the vessel at the time of delivery. But the Majority of the Tribunal holds that the Shipowner did not fully prove the existence of most of the alleged defects. In addition, though few of the defects were in the Vessel, they did not affect the trading of the Vessel. Besides, the Tribunal also believes that whether the trading of the Vessel is affected shall be judged according to the requirements of the Specification. If the Vessel is complied with the requirements of the Specification but its trading is affected, the Yard shall not be liable for it, because the Shipowner has already agreed to purchase a vessel complied with the requirements of the Specification.

The calculation of damages for the Shipowner's unlawful rejection of the Vessel

12. In relation to the amount of compensation, the Yard claims US$24.55 million (that is, the final installment less liquidated damages for delay of delivery of the Vessel) plus contractual interest at 5% per annum. In the alternative, the Yard claims damages at common law. The Yard still retains the Vessel which has not been re-sold by the date of the arbitration.

13. According to common law, the principles of compensation and mitigation of loss shall be applied in the calculation of damages for breach of contract. The principle of compensation means that the default party should pay the compensation to the innocent party so that the innocent party could be in the position as if the contract has been performed normally. The principle of mitigation of loss means that the innocent party shall take reasonable measures to reduce the losses caused by the default party's breach of contract. The opinion of the majority believes that the Yard's claim that the Shipowner shall compensate the final installment less the liquidated damages for delay of delivery of the Vessel violated the principle of mitigation of loss. The reasons are:

1) Article XI of the Contract provided that should the Shipowner default in acceptance of the Vessel, the Yard may: (a) rescind the Contract after the default of the Buyer continues for a period of 30 days; (b) retain any installment or installments already paid by the Buyer and declare all unpaid installment(s) of the Contract Price to be forthwith due and payable; (c) the amount of the re-sale received by the Yard shall be applied firstly to all reasonable expenses attending such sale, the payment of all costs and expenses of construction of the Vessel, the compensation to the Yard for a reasonable loss of profit, and the Shipowner shall obtain the balance (if any); if the proceeds of sale are insufficient to pay such costs, expenses and loss of profit as aforesaid, the Shipowner shall promptly pay the deficiency to the Yard.
2) Article XI of the Contract didn't provide that the Yard has no duty to mitigate. If the Shipowner makes default to reject the Vessel and does not pay the final installment, the amount of compensation shall be calculated according to the market valuation of the Vessel at the date of rescinding the contract. If the Vessel is worthless or almost worthless, the Shipowner shall pay the whole or most of the amount of the final installment to the Yard. Otherwise, the Yard shall re-sell the Vessel in basis of mitigation principle.
3) Under Article XI of the Contract, the Yard has an option whether or not to sell the Vessel. If it opts to sell the Vessel, it can recoup all reasonable its losses from the sale proceeds and seek to recover any shortfall from the Shipowner. On the other hand, if it opts not to re-sell the Vessel, the Yard has no right to deny credit to the Buyer for the value of the Vessel upon claiming the Yard's loss.

14. In summary, the majority of the Tribunal holds that, according to the Contract, the amount of the final installment payable by the Buyer was US$24.55 million (that is, the final installment provided in the Contract,

US$24.875 million less liquidated damage for delay of delivery of the Vessel of US$470 thousand). The majority also accepts the vessel valuation assessment report submitted by the Yard and determines that the market price of the Vessel was US$20 million at the time of the Yard's termination of the Contract. Therefore, the Tribunal decides that the Shipowner should pay the Yards the amount of US$4.55 million, together with simple interest thereon at 5% per annum from the date of the termination (28 June 2016).

Conclusions and Suggestions

15. The meaning of the intended purpose of a vessel shall be interpreted in accordance with the specific content of the shipbuilding contract and specifications. When a shipyard designs, equips, and construct a vessel in accordance with the requirements of the shipbuilding contract and specifications, the shipowner does not have the right to claim that the vessel is not fit for its intended use, unless there are clear and specific agreements and requirements in respect of the "intended use" in the shipbuilding contract.

16. Defects in a vessel do not necessarily affect the right of the shipyard to deliver the vessel. The Shipowner cannot refuse to accept the vessel simply because the vessel is defective, unless the Shipowner can prove that such degree of the defect is so material that it will affect the trading of the vessel. Whether or not the trading of the vessel is affected by a deficiency must be a matter of degree. In this case, the example given by the Tribunal is that if a trivial deficiency or issue which might make a charterer unwilling to hire the vessel without some discount in the price, the deficiency or issue should not be considered as one which will affect the trading of the vessel; if a defect would make a material difference to the vessel's terms of hire such that a reasonable charterer would not agree to the immediate use of the vessel pending the resolution of such defect, the defect may more readily

be characterized as one that would affect the trading of the vessel.

17. If the Shipowner makes a default to reject the vessel, the shipyard has an option to re-sell the vessel or not. If it opts to sell the vessel, the amount of the sale received by the shipyard shall be applied to all reasonable expenses attending such sale, the payment of all costs and expenses of construction of the vessel, the compensation to the shipyard for a reasonable loss of profit, and the Shipowner shall obtain the balance (if any) without any interest; if the proceeds of sale are insufficient to pay such costs, expenses and loss of profit as aforesaid, the Shipowner shall promptly pay the deficiency to the shipyard. If the shipyard opts not to re-sell the vessel, it has no right to deny credit to the Shipowner for the value of the vessel upon claiming the shipyard's loss.

如何通过合同条款合理解决交船延误导致的规则规范适用的问题？

一、 问题的提出

（一）造船合同中的规则规范

造船合同通常会约定船舶建造应符合规格书中列明且船旗国要求的法律、规则、规范等（Rules and Regulations，以下简称“规则规范”），并明确约定适用的规则规范是在造船合同签订时（contract singing date）已经颁布（published）、批准（ratified）并生效（effective）。考虑到与船舶建造有关的规则规范可能时有发生修订或补充的情况，船东通常会要求规则规范还应包括在签订造船合同时已经发布并批准，且确定在造船合同约定的交船日之前生效并强制适用的修订或补充（以下简称“修订或补充”）。前述规则和规范及其修订和补充均应是在造船合同签订时已经颁布并批准，对于如何适用那些在合同签订之后颁布和批准且船舶交付之前生效并强制适用的规则规范及其修订和补充，造船合同中的变更条款通常会做出相应的约定。

若发生交船延误，船舶不能在合同约定的交船日（Delivery Date）前交付的，船厂是否应遵守延误期间生效并强制适用的修订或补充？另，交船延误可能是造船合同约定的允许的延误（Permissible Delay），也可能是因船厂自身的原因（Non-Permissible Delay）造成，这对于解决前述问题是否应有所不同？

（二）因受新冠肺炎疫情影响，船舶交付延误从而导致 GBS 标准适用的问题

以近期发生的一些船厂因新冠肺炎全球大流行（CONVID-19 Pandemic）而可能无法按期交船为例，《海上人命安全公约》规则 II-1/3-10（散货船和油船目标建造标准 GBS）强制适用于 2020 年 7 月 1 日后交付的散货船和油船，对于那些原计划在 7 月 1 日之前交付但因受疫情影响不能在 7 月 1 日前交付的船舶，船东与船厂可能将面临因 GBS 强制适用于 7 月 1 日之后交付的船舶而引发的造船成本变动、交船时间推延等一些列的问题。如果船厂和船东未在造船合同中对前述情况和后果（风险和费用分摊）做出安排和约定，双方可能发生争议。

（三）IMO 关于不可预见延迟豁免 GBS 适用的《指南》

针对上述问题，国际海事组织（IMO）于 2020 年 4 月 3 日发布《新冠肺炎-有关不可预见延迟交船的指南》（Coronavirus (COVID-19) – Guidance Concerning Unforeseen Delays in the Delay of Ships, Circular Letter No.4302/Add.7，以下简称“《指南》”），要求成员国主管机关（Administration）在适用 GBS 时应考虑因新冠肺炎疫情大流行而造成的不可预见延迟交船的情况。按照《指南》的要求，成员国主管机关可以视个案的具体情况（case-by-case principle）同意并接受，原计划于 2020 年 7 月 1 日之前交付但因船厂和船东不能控制的不可预见的原因导致不能在 7 月 1 日之前交付的船舶（unforeseen delay beyond control of shipbuilder and owner），视为在 7 月 1 日之前交付，换言之，《海上人命安全公约》规则 II-1/3-10（散货船和油船目标型建造标准）可不适用于这些船舶。

因受疫情影响 IMO 推迟召开会议，在正式审议并做出豁免 GBS 适用问题决定之前，IMO 以指南的方式发布了上述要求。

二、 合同条款解决方案

考虑到兼顾船厂与船东的利益，我们建议造船合同中可以约定，因船厂自身原因造成的船舶交付延误，延误期间生效并强制适用的修订或补充，船厂应准守，换言之，由此可能发生的造船成本增加以及交船延迟等后果由船厂承担；允许的

延误期间生效并强制适用的补充或修正，双方应按照变更处理，即因强制适用修订或补充而可能发生的造船成本变动和交船迟延等，双方协商解决，如不能解决，按照合同争议解决条款处理。具体措辞如下：

"The Rules and Regulations include all compulsory amendments and additional rules or circulars which having been published and ratified on the date of signing this Contract as firm and obligatory on or before XXX which date shall, however, be extended by any delay in delivery of the Vessel (other than Permissible Delay, in which case the Parties shall act in accordance with the provisions of the Article of Change)."

关于上述修订或补充生效并强制适用的时间，我们建议在合同中明确约定一个确定的日期（X 年 X 月 X 日），而不是用"交船日期（Delivery Date）"来表述。这是因为造船合同约定的交船日期通常不是确定不变的，往往合同还会约定交船日期因允许的延误而顺延，因此，如果用交船日期来表述，当发生允许的延误情形时，船厂则要准守延误期间生效并强制适用的修订或补充，这对船厂而言是不公平的。此外，我们还建议不要使用"船舶交付（"Delivery of Ship）"来表述。这是因为，船舶交付不发生任何延误的情况并不常见，而如上述交船延误可能是允许的延误，也可能是船厂自身的原因造成的延误，不区分这两种不同的情况而统一适用修订或补充，对于船厂而言同样是不公平的。以下是前述两种对船厂而言不利的典型合同措辞：

"Classification, Rules and Regulations:

The VESSEL shall comply with following rules, regulations and requirement of the Authorities in force as of the date of this Contract signing, and all mandatory rules and regulations, with amendments, which have already been ratified up to this Contract signing date and come into effect prior to the Delivery Date of the Vessel…

Delivery date:

The VESSEL shall be delivered safely afloat by the SELLER to the BUYER

at the Shipyard on or before XXX, except that, in the event of delays in the construction of the VESSEL or any performance required under this Contract due to causes which under the terms of this Contract permit extension of the date for delivery, the aforementioned date for delivery of the VESSEL shall be extended accordingly.

The aforementioned date, or such later date to which delivery is extended pursuant to such terms, in herein called the 'Delivery Date'."

"The requirements of the Classification Society and the Flag State and other authorities and regulatory bodies referred to in the Specifications with which the Vessel must comply shall also include (1)…; and (2) additional rules, amendments or circulars thereof which have been announced as of the date of signing of the Contract as to become effective prior to delivery of the Vessel and with which it will be mandatory for the Vessel to comply on delivery."

三、 结论及建议

综上所述，针对在船舶交付延误期内生效并强制适用的修订或补充适用的问题，为避免合同履行争议，同时兼顾船舶建造合同双方的利益，我们建议在合同中约定，允许的延误期间生效并强制适用的修订或补充，双方应按照合同中变更条款约定处理；非允许的延误期间生效并强制适用的修订或补充，船厂应遵守；同时，双方应约定采用确定的日期来表述修订或补充适用的时间，而不是用"交船日期"或"船舶交付"的描述。

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Circular Letter No.4204/Add.7
3 April 2020

To: All IMO Member States
Intergovernmental organizations
Non-governmental organizations in consultative status

Subject: **Coronavirus (COVID-19) – Guidance concerning unforeseen delays in the delivery of ships**

1 The Secretary-General, having received communications from Member States regarding the difficulties faced by shipbuilders, equipment suppliers, shipowners, surveyors and service engineers in respect of the timely delivery of ships due to the COVID-19 pandemic, and taking into account that the current situation is due to unforeseen circumstances beyond the control of the shipbuilder and the owner, wishes to draw the attention of Member States and international organizations to the following unified interpretations approved by the Maritime Safety Committee:

.1 *Unified interpretation of the application of regulations governed by the building contract date, the keel laying date and the delivery date for the requirements of the SOLAS and MARPOL Conventions* (MSC-MEPC.5/Circ.8, approved on 1 July 2013), set out in annex 1; and

.2 *Unified interpretation of "unforeseen delay in the delivery of ships*" (MSC.1/Circ.1247, approved on 6 November 2007), set out in annex 2.

2 Reference is made, in particular, to paragraph 3.3 of MSC-MEPC.5/Circ.8, which states that:

".3 regardless of the building contract signing date or keel laying date, if a ship's delivery date occurs on or after the delivery date specified for a particular set of regulation amendments, then, that set of regulation amendments applies except in the case where the Administration has accepted that the delivery of the ships was delayed due to unforeseen circumstances beyond the control of the shipbuilder and the owner*. The delivery date means the completion date (day, month and year) of the survey on which the certificate is based (i.e. the initial survey before the ship is put into service and certificate issued for the first time) as entered on the relevant statutory certificates.

* Refer to Unified Interpretation of "Unforeseen delay in the delivery of ships" (MSC.1/Circ.1247 and MARPOL Annex I, Unified Interpretation 4)."

3 Reference is also made, in particular, to MSC.1/Circ.1247, as footnoted in paragraph 3.3 of MSC-MEPC.5/Circ.8. While the provisions therein concern the application of SOLAS regulation II-1/3-2 (Corrosion prevention of seawater ballast tanks in oil tankers and bulk carriers), a very similar situation is now arising with regard to the application of SOLAS regulation II-1/3-10 (Goal-based ship construction standards for bulk carriers and oil tankers) which will become effective for ships delivered on or after 1 July 2020.

4 MSC.1/Circ.1247 sets out that a ship for which the building contract (or keel laying) occurred, and the scheduled delivery date of which is before the date specified in the regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in the regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances. It proceeds to stress the importance that ships accepted by the Administration under the provisions of the circular should also be accepted as such by port States and recommends practices for Administrations to follow when considering an application for such a ship.

5 Attention is further drawn to document MSC 102/7/5, submitted by China and IACS to MSC 102, which states inter alia that, with regard to the consequences of the pandemic, shipbuilders and their associated supply chains were significantly impacted which has led to difficulties in resuming normal production and different degrees of delay in the delivery of ships under construction; and that there would be a significant impact on ships originally scheduled to be delivered before 1 July 2020, which were not designed and constructed in accordance with the requirements of SOLAS regulation II-1/3-10. The document, contains in the annex a proposed unified interpretation of SOLAS regulation II-1/3-10 concerning the term "unforeseen delay in the delivery of ships", which is set out in annex 3 of this circular letter for easy reference, reflecting the practice of MSC.1/Circ.1247. Due to the postponement of MSC 102, the Maritime Safety Committee will not be in a position to decide on the proposed unified interpretation before 1 July 2020.

6 The Secretary-General would be grateful if steps could be taken to bring the information in this circular letter to the attention of the appropriate authorities. Member States are invited to consider the application of the two annexed unified interpretations to ships the delivery of which is now delayed beyond 1 July 2020.

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ANNEX 1

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MSC-MEPC.5/Circ.8
1 July 2013

UNIFIED INTERPRETATION OF THE APPLICATION OF REGULATIONS GOVERNED BY THE BUILDING CONTRACT DATE, THE KEEL LAYING DATE AND THE DELIVERY DATE FOR THE REQUIREMENTS OF THE SOLAS AND MARPOL CONVENTIONS

1 The Marine Environment Protection Committee, at its sixty-fifth session (13 to 17 May 2013), and the Maritime Safety Committee, at its ninety-second session (12 to 21 June 2013), approved the unified interpretation of the application of regulations governed by the building contract date, the keel laying date and the delivery date for the requirements of the SOLAS and MARPOL Conventions prepared by the Sub-Committee on Flag State Implementation, as set out in the annex, with a view to providing more specific guidance for application of the relevant requirements of the SOLAS and MARPOL Conventions.

2 Member Governments are invited to use the annexed interpretation when applying relevant provisions of the SOLAS and MARPOL Conventions and to bring it to the attention of all parties concerned.

3 This circular supersedes MSC-MEPC.5/Circ.4.

ANNEX

UNIFIED INTERPRETATION OF THE APPLICATION OF REGULATIONS GOVERNED BY THE BUILDING CONTRACT DATE, THE KEEL LAYING DATE AND THE DELIVERY DATE FOR THE REQUIREMENTS OF THE SOLAS AND THE MARPOL CONVENTIONS

1 Under certain provisions of the SOLAS and MARPOL Conventions, the application of regulations to a ship is governed by the dates:

.1 for which the building contract is placed on or after dd/mm/yyyy; or

.2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after dd/mm/yyyy; or

.3 the delivery of which is on or after dd/mm/yyyy.

2 For the application of such provisions, the date on which the building contract is placed for optional ships should be interpreted to be the date on which the original building contract to construct the series of ships is signed between the shipowner and the shipbuilder provided:

.1 the option for construction of the optional ship(s) is ultimately exercised within the period of one year after the date of the original building contract for the series of ships; and

.2 the optional ships are of the same design plans and constructed by the same shipbuilder as that for the series of ships.

3 The application of regulations governed as described in paragraph 1, above, is to be applied as follows:

.1 if a building contract signing date occurs on or after the contract date specified for a particular set of regulation amendments, then, that set of regulation amendments applies;

.2 only in the absence of a building contract does the keel laying date criteria apply, and if a ship's keel laying date occurs on or after the keel laying date specified for a particular set of regulation amendments, then, that set of regulation amendments applies; and

.3 regardless of the building contract signing date or keel laying date, if a ship's delivery date occurs on or after the delivery date specified for a particular set of regulation amendments, then, that set of regulation amendments applies except in the case where the Administration has accepted that the delivery of the ships was delayed due to unforeseen circumstances beyond the control of the shipbuilder and the owner[*]. The delivery date means the completion date (day, month and year) of the survey on which the certificate is based (i.e. the initial survey before the ship is put into service and certificate issued for the first time) as entered on the relevant statutory certificates.

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[*] Refer to Unified Interpretation of "Unforeseen delay in the delivery of ships" (MSC.1/Circ.1247 and MARPOL Annex I, Unified Interpretation 4).

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Ref.: T4/3.01

MSC.1/Circ.1247
6 November 2007

UNIFIED INTERPRETATION OF "UNFORESEEN DELAY IN DELIVERY OF SHIPS"

1 The Maritime Safety Committee, at its eighty-third session (3 to 12 October 2007), approved a unified interpretation of the term "unforeseen delay in the delivery of ships", as set out in the annex, with a view to harmonizing the interpretation of the provisions for the application scheme in SOLAS regulation II-1/3-2 (Corrosion prevention of seawater ballast tanks in oil tankers and bulk carriers), as amended by resolution MSC.216(82), with the unified interpretation to regulation 1.28 of Annex I to the MARPOL Convention.

2 Member Governments are invited to use the annexed interpretation when applying the relevant provisions of SOLAS regulation II-1/3-2, and to bring it to the attention of all parties concerned.

ANNEX

INTERPRETATION OF SOLAS REGULATION II-1/3-2 CONCERNING THE TERM "UNFORESEEN DELAY IN DELIVERY OF SHIPS"

1 For the purpose of defining the category of a ship under SOLAS regulation II-1/3-2, a ship for which the building contract (or keel laying) occurred, and scheduled delivery date was, before the dates specified in this regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in this regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances.

2 It is important that ships accepted by the Administration under the provisions of paragraph 1 above should also be accepted as such by port States. In order to ensure this, the following practice is recommended to Administrations when considering an application for such a ship:

.1 the Administration should thoroughly consider applications on a case-by-case basis, bearing in mind the particular circumstances. In doing so in the case of a ship built in a foreign country, the Administration may require a formal report from the authorities of the country in which the ship was built, stating that the delay was due to unforeseen circumstances beyond the control of the builder and the owner;

.2 when a ship is accepted by the Administration under the provisions of paragraph 1 above, the delivery date annotated on the Passenger Ship Safety Certificate, Cargo Ship Safety Construction Certificate or Cargo Ship Safety Certificate should be footnoted to indicate that the ship is accepted by the Administration under the unforeseen delay in delivery provisions of this interpretation; and

.3 the Administration should report to the Organization on the identity of the ship and the grounds on which the ship has been accepted under the unforeseen delay in delivery provisions of this interpretation.

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ANNEX 3

DRAFT INTERPRETATION OF SOLAS REGULATION II-1/3-10 CONCERNING THE TERM "UNFORESEEN DELAY IN DELIVERY OF SHIPS"
(MSC 102/7/5, annex)

1 For the purpose of defining the category of a ship under SOLAS regulation II-1/3-10, a ship for which the building contract (or keel laying) occurred, and scheduled delivery date was, before the dates specified in this regulation, but where the delivery has been subject to delay beyond the specific date due to unforeseen circumstances beyond the control of the builder and the owner, may be accepted by the Administration as a ship delivered before the date of delivery specified in this regulation. The treatment of such ships should be considered by the Administration on a case-by-case basis, bearing in mind the particular circumstances.

2 It is important that ships accepted by the Administration under the provisions of paragraph 1 above should also be accepted as such by port States. In order to ensure this, the following practice is recommended to Administrations when considering an application for such a ship:

.1 the Administration should thoroughly consider applications on a case-by-case basis, bearing in mind the particular circumstances. In doing so in the case of a ship built in a foreign country, the Administration may require a formal report from the authorities of the country in which the ship was built, stating that the delay was due to unforeseen circumstances beyond the control of the builder and the owner;

.2 when a ship is accepted by the Administration under the provisions of paragraph 1 above, the delivery date annotated on the Cargo Ship Safety Construction Certificate or Cargo Ship Safety Certificate should be footnoted to indicate that the ship is accepted by the Administration under the unforeseen delay in delivery provisions of this interpretation; and

.3 the Administration should report to the Organization on the identity of the ship and the grounds on which the ship has been accepted under the unforeseen delay in delivery provisions of this interpretation.

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通函 No.4204/Add.7
2020 年 4 月 3 日

致： 所有国际海事组织成员国
政府间组织
非政府间组织

关于： **新冠肺炎 – 有关不可预见延迟交付船舶的指南**

1. 秘书长已经收到来自成员国政府关于船厂、设备供应商、船东、检验人、工程师所面临的因新冠肺炎大流行导致及时交付船舶困难的消息，同时考虑到目前的情况是由于船厂和船东不能控制的无法预见情形所导致，秘书长因此希望成员国政府和国际组织注意到以下经海上安全委员会批准的统一解释：

.1 *按照造船合同日期、铺龙骨日期、交船日期适用《海上人命安全公约》和《防污公约》*（海上安全委员会通函 MEPC.5/Circ.8，2013 年 7 月 1 日批准）*的相关要求，对有关规则的统一解释，*见本通函附件 1；并且

.2 *关于"船舶交付不可预见的延迟"的统一解释*（海上安全委员会通函 MSC.1/Circ.1247，2007 年 11 月 6 日批准），见本通函附件 2。

2. 尤其要参照海上安全委员会通函 MSC-MEPC.5/Circ.8 的第 3.3 段，其记载：

.3 当船舶交付发生在某一套规则修正案所特别指明的船舶交付之日或之后，不论造船合同签订日期或铺龙骨日期，如果管理机构同意并接受因船厂和船东不能控制的不可预见的情形造成船舶交付迟延，*则该套修正案不适用。船舶交付日期指船舶证书所依据的完成检验的日期（即船舶投入使用之前初次检验且首次发证），并且是在相关法定证书上登记的日期。

* 是指关于"船舶交付不可预见的延迟"的统一解释（通函 MSC.1/Circ.1247 和《防污公约附件 1，统一解释 4》）

3. 还要参照海上安全委员会通函 MSC-MEPC.5/Circ.8 第 3.3 段脚注中特别提到的通函 MSC.1/Circ.1247。尽管该通函是关于《海上人命安全公约》规则 II-1/3-2 （防止油船和散货船的海水压载水舱受到侵蚀），现在发生了非常类似的情况，关于适用《海上人命安全公约》规则 II-1/3-10（散货船和油船目标型建造标准），该规则对于 2020 年 7 月 1 日或之后交付的船舶生效。

4. 海上安全委员会通函 MSC.1/Circ.1247 记载，当一艘船舶的建造合同日期（或铺龙骨日）和计划交船日期发生在规则特别指定的日期之前，但是，由于船厂和船东不能控制的不可预见的情形导致船舶交付延迟的，管理机构可以接受该船舶是在规则特别指定的日期之前交付。管理机构应以个案处理为原则，考虑到个案的具体情况。规则还强调了管理机构按照通函规定同意并接受的船舶应被港口国接受，并且建议管理机构在考虑是否接受某一船舶的申请时应遵循的做法。

5. 还注意到海上安全委员会文件 MSC 102/7/5，由中国和国际船级社协会提交给海上安全委员会第 102 届会议， 该文件记载，关于新冠肺炎的大流行后果，船厂及其相关的供应链受到严重的影响，导致恢复正常生产的困难以及不同程度的交船延迟；并且对于原本计划将于 2020 年 7 月 1 日之前交付船舶造成严重影响，这些船舶没有按照《海上人命安全公约》规则 II-1/3-10 的要求设计和建造。该份文件的附件中包含了一份就《海上人命安全公约》规则 II-1/3-10 关于“不可预见的交船延迟”的统一解释，反映了通函 MSC.1/Circ.1247 的做法，该份文件见本通函附件 3。由于海上安全委员会第 102 届会议推迟，海上安全委员会在 2020 年 7 月 1 日之前不能就提议的统一解释做出决定。

6. 秘书长感谢采取措施将本通函的内容提请给有关机构注意。要求成员国考虑将本通函两份附件中的统一解释适用于那些延迟到 2020 年 7 月 1 日以后交付的船舶。

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附件 **1**

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2013 年 7 月 1 日

按照造船合同日期、铺龙骨日期、交船日期适用《海上人命安全公约》和《防污公约》的相关要求，对有关规则的统一解释

1. 海上环境保护委员会在其第 65 次会议（2013 年 5 月 13 日至 17 日），海上安全委员会在其 92 届会议（2013 年 6 月 12 日至 21 日），批准了关于按照造船合同日期、铺龙骨日期、交船日期适用《海上人命安全公约》和《防污公约》的相关要求，对有关规则的统一解释，该统一解释由船旗国实施分会起草准备，见附件。该统一解释的目的是对适用《海上人命安全公约》和《防污公约》的相关要求提供具体的指引。

2. 要求成员国政府在适用《海上人命安全公约》和《防污公约》的相关规定时，适用所附统一解释，并引起相关各方的注意。

3. 本通函优先于通函 MSC-MEPC.5/Circ.4 适用。

附件

按照造船合同日期、铺龙骨日期、交船日期适用《海上人命安全公约》和《防污公约》的相关要求，对有关规则的统一解释

1. 根据《海上人命安全公约》和《防污公约》的相关规定，规则对于船舶的适用应按照以下日期处理：

.1 造船合同于 xxx 或其之后签订
.2 在没有造船合同的情况下，铺龙骨或类似建造阶段于 xxx 或其之后
.3 交船日在 xxx 或其之后

2. 关于这些规定的适用，备选船的造船合同的签订之日应解释为建造系列船的最初造船合同的签署日，如果：

.1 在最初系列船建造合同签署之日起一年内选择行使建造备选船；且
.2 备选船的设计方案与系列船的相同，并且由同一个建造方建造。

3. 上述第一段描述的规则应按照如下规定适用：

.1 如果造船合同签订日期是在某一套规则修正案特别指定的合同之日或之后，则该套规则适用；
.2 只有当没有造船合同之日的情况下，铺龙骨日期的标准适用，如果铺龙骨发生在某一套规则修正案指定的铺龙骨之日或之后，则该套规则适用；
.3 如果交船发生在某一套规则修正案特别指定的交付之日或之后，不论造船合同签订日或铺龙骨日，则该套规则适用，除非，管理机构同意并接受，船舶交付因建造方和船东不能控制的不可预见的情况而发生延迟。*船舶交付日期指船舶证书所依据的完成检验的日期（即船舶投入使用之前初次检验且首次发证），并且是在相关法定证书上登记的日期。

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* 是指关于“船舶交付不可预见的延迟"的统一解释（通函 MSC.1/Circ.1247 和《防污公约附件 1，统一解释 4》).

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通函 MSC.1/Circ.1247
2007 年 11 月 6 日

关于 “船舶交付不可预见延迟”的统一解释

1. 海上安全委员会于 83 届会议（2007 年 10 月 3 日至 12 日）批准了关于“船舶交付不可预见延迟”的统一解释，见附件。目的是协调统一适用《海上人命安全公约》规则 II-1/3-2（防止油船和散货船的海水压载水舱腐蚀）的解释规则，《海上人命安全公约》规则 II-1/3-2 已由 MSC.216(82)决议修订。统一解释成为《防污公约》附件 1 的规则 1.28.

2. 要求成员国在适用《海上人命安全公约》规则 II-1/3-2 时使用所附统一解释，并将其引起相关各方的注意。

附件

《海上人命安全公约》规则 II-1/3-2 关于“船舶交付不可预见延迟”的解释

1. 为定义《海上人命安全公约》规则 II-1/3-2 船舶种类之目的，当某一船舶的建造合同（或铺龙骨）日期以及计划交付之日发生在该规则特别指定日期之前，但由于建造方和船东不能控制的不可预见的原因，船舶交付发生延迟，管理机构可以同意并接受该船舶在规则特别指定的日期之前交付。管理机构应考虑个案的具体情况，按照个案原则处理。

2. 管理机构根据上述第 1 段的规定同意并接受的船舶也应被港口国接受，这一点非常重要。为了确保这一点，建议管理结构在考虑船舶申请时，考虑以下做法：

.1 管理机构应考虑个案具体情况，按照个案处理原则，全面考虑船舶的申请。当船舶在境外建造，管理机构可以要求船舶建造国的管理机构提供一份正式的报告，阐明延迟是因为建造方和船东不能控制的不可预见的原因造成。

.2 当管理机构根据上述第 1 段同意并接受船舶申请的，客船安全证书、货船安全建造证书，或货船安全证书上记载的交付日期应以脚注的方式注明管理机构根据本解释中关于不可预见延迟的规定接受船舶。

.3 管理机构应向国际海事组织报告船舶的身份以及根据本解释关于不可预见延迟的规定接受该船舶的理由。

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附件 3

《海上人命安全公约》规则 II-1/3-10 关于“不可预见交船延迟”的解释草稿
(文件 MSC 102/7/5 附件)

1. 为定义《海上人命安全公约》规则 II-1/3-10 船舶种类之目的，当某一船舶的建造合同（或铺龙骨）日期以及计划交付之日发生在该规则特别指定日期之前，但由于建造方和船东不能控制的不可预见的原因，船舶交付发生延迟，管理机构可以同意并接受该船舶在规则特别指定的日期之前交付。管理机构应考虑个案的具体情况，按照个案原则处理。

3. 管理机构根据上述第 1 段的规定同意并接受的船舶也应被港口国接受，这一点非常重要。为了确保这一点，建议管理结构在考虑船舶申请时，考虑以下做法：

.4 管理机构应考虑个案具体情况，按照个案处理原则，全面考虑船舶的申请。当船舶在境外建造，管理机构可以要求船舶建造国的管理机构提供一份正式的报告，阐明延迟是因为建造方和船东不能控制的不可预见的原因造成。

.5 当管理机构根据上述第 1 段同意并接受船舶申请的，客船安全证书、货船安全建造证书，或货船安全证书上记载的交付日期应以脚注的方式注明管理机构根据本解释中关于不可预见的延迟的规定接受船舶。

.6 管理机构应向国际海事组织报告船舶的身份以及根据本解释关于不可预见延迟的规定接受该船舶的理由。

魏小为 | 合伙人

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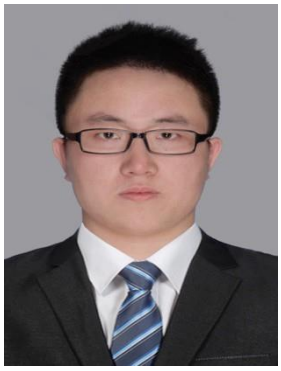

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