

## **Shipping Consultative Committee**

### **Minutes of the 35<sup>th</sup> Meeting held at 2:30 p.m. on 20 January 2010 in the Marine Department Conference Room A**

Present:	Mr. P.F. Chun	Marine Department (Chairman)
	Capt. Pradeep Chawla	Anglo-Eastern Ship Management Ltd.
	Mr. Vikas Grewal	Fleet Management Ltd.
	Mr. Y.H. Shum	Goldbeam International Ltd.
	Mr. Arthur Bowring	The Hong Kong Shipowners Association Ltd.
	Capt. C.W. Li	Hong Kong Seamen's Union
	Mr. Harry L.H. Chan	JSM
	Capt. C.M. Yu	The Merchant Navy Officers' Guild – Hong Kong
	Capt. L.C. Chan	Orient Overseas Container Line Ltd.
	Capt. Jay K. Pillai	Pacific Basin Shipping (HK) Ltd.
	Mr. Renato Miu	SINOTRANS Shipping Ltd.
	Dr. Ranjan Varghese	UNIVAN Ship Management Ltd.
	Capt. Ronald H.H. Wong	Parakou Shipping Ltd.
	Capt. T.T. Chang	Wah Kwong Shipping Agency Co. Ltd.
	Mr. S.T. Li	Marine Department (Secretary)

In attendance:	Mr. H.M. Tung	Marine Department
	Mr. Y.M. Cheng	Marine Department
	Mr. K.F. Chick	Marine Department
	Mr. C.H. Tso	Marine Department
	Mr. Jimmy W.H. Leung	Marine Department
	Mr. M.Y. Chan	Marine Department
	Mr. S.W. Cheung	Marine Department

#### Absent with apology :

Capt. David Leonard Watkins  
Capt. Deepak S. Honawar  
Capt. Gautam Kashyap  
Capt. Ning Pao Kun  
Mr. Tian Zhong Shan  
Mr. C. Kocherla

1. The Chairman welcomed all present and two newly appointed members i.e. Capt. C.W. Li of Hong Kong Seamen's Union and Capt. Ronald H.H. Wong of Parakou Shipping Ltd. He requested the Secretary to introduce those participants who stood in for SCC members:

Mr. Renato Miu (for Mr. Z.S. Tian), Mr. Vikas Grewal (for Capt. Gautam Kashyap) and Capt. Jay K Pillai (for Mr. C. Kocherla).

### **Agenda Item 1 – Declaration of Interest**

2. The Chairman reminded members that they were required to draw the attention of the Committee if their personal interest might substantially affect their views in the course of discussion of any topics at this meeting.

### **Agenda Item 2 – Confirmation of the Minutes of the 34th Meeting held at 2:30 p.m. on 11 June 2009**

3. The minutes of the 34th meeting held on 11 June 2009 were confirmed with no amendment.

### **Agenda Item 3 – Maritime Security – Long Range Identification and Tracking Systems (LRIT)**

#### **Progress of LRIT Conformance test onboard Hong Kong registered ships**

4. Mr. C.H. Tso reported on the latest development on the implementation of LRIT system as at 31 December 2009, 1225 Hong Kong registered ships had satisfactorily completed the LRIT Conformance Test, representing 95% of the total number of ships over 300 ton in Hong Kong Shipping Registry. Hong Kong Marine Department (MD) did not anticipate any problem for Hong Kong registered ships to meet the LRIT requirements when the system was put into full operation later in the year. 1 July 2009 was supposed to be the date the LRIT system should be in operation but obviously that was not the case as there were still a number of issues and problems concerning the system needed to be resolved.

## **Progress of the Data Centre for Hong Kong registered ships**

5. Hong Kong Marine Department (MD) signed a co-operative agreement with China MSA in late December 2009 for Hong Kong registered ships to use the China National Data Centre, which would be operated by the China Transportation and Telecommunication Centre (CTTC). The CTTC provided a training workshop for Marine Department staff in August 2009 on using the HKSAR terminals to communicate with the data centre in Beijing.

6. With respect to the implementation of the LRIT system, there was no indication during the last IMO Assembly in December 2009 on when the LRIT system would be put into full operation internationally. A limited number of data centers had been established and more were expected in the forthcoming months. MD would closely monitor the situation and advised the industry accordingly. MD would see if the situation might become a little clearer after the upcoming *ad-hoc* LRIT meeting in March and MSC 87 in May 2010.

7. The Chairman supplemented that Hong Kong was ready to integrate into the LRIT system any time and had no problem to comply fully with LRIT requirements once the whole system was put into operation. At the moment, around 50 data centres had been linked to the system. However, problems in respect of financing of the system and the role of the co-ordinator had yet to be sorted out. At the moment, Hong Kong registered ships were not sending out LRIT data as it would be a waste of public money to send out data when the system was not in full operation.

8. In response to the question raised by Mr. Bowring as to when the LRIT system would be put into operation, the Chairman said that the final decision might be made by MSC 87 in May this year. Mr. Bowring made further query on whether MD would issue marine notice informing the shipowners of Hong Kong registered ships not to send out LRIT data. The Chairman replied that sending out of LRIT data could be controlled remotely from the data centre and there was no need to involve the vessels. MD however had already informed shipowners by Merchant Shipping Information Note that Hong Kong registered ships should get ready for integration into the system as required under the relevant amendments to SOLAS Convention. Mr. C.H. Tso further stressed that it was important to have a copy of the conformance test report on board the ship in order to meet the PSC requirement.

## **The issue of piracy attacks to merchant ships**

9. On the subject of piracy to Hong Kong registered ships, Mr. C.H. Tso reported that IMO had adopted two assembly resolutions last December, namely A.1025(26) on “Code of Practice for investigation of crimes of piracy and armed robbery against ships” and A.1026(26) on “Privacy and Armed Robbery against Ships in waters off the coast of Somalia”. These two resolutions could be downloaded from the IMO website. He also reported that since last SCC meeting, three attempted attacks were made to the following Hong Kong registered ships:

- (a) *BW Lion* – 9 Nov. 2009 – fired upon by two pirate skiffs off the east coast of Somalia, the vessel successfully evaded the attack, no crew was injured and the vessel only sustained slight damage;
- (b) *Full Strong* – 12 Nov. 2009 – was attacked by pirates on board a skiff at the eastern side of the Gulf of Aden. Spray bullets were fired at the ship and the pirates attempted to use hooks to board the vessel but were cut away by the ship’s crew. The ship made evasive manoeuvre and successfully evaded the attack, two crew members received minor injuries in the incident; and
- (c) *LR2 Poseidon* – 21 Nov. 2009 – one robber armed with a knife attempted to board the vessel which was at anchor in Baolongan in Indonesia. The vessel successfully stopped the attempt.

10. The Chairman supplemented that the two resolutions mentioned by Mr. C.H. Tso were adopted in line with the UN resolution which reiterated the need for the international community to try their best to stop the piracy attacks off the coast of Somalia. In the last IMO Assembly, the Secretariat was requested to set up a database regarding organizations that could provide medical or other humanitarian assistance to seafarers who were affected by piracy attacks. In case of need, shipowners might turn to these organizations for assistance e.g. when seafarers were held hostage.

11. Dr. Varghese enquired whether it was possible for the seafarers to have some sort of preliminary firearms training for self defense as every human being had the right to defend himself. The Chairman responded that if anybody wanted to acquire skills for use of firearms, it was entirely an individual’s decision and the policy of MD was to discourage the use of firearms by seafarers on board ships. MD did not think that was an effective measure to deal with the problem and actually this was also the position of most member states of IMO.

12. The causes of and possible measures to deal with the piracy were discussed at length among the members before the Chairman concluded that piracy was a very complicated issue and there was no easy solution. It was basically an issue that could not be resolved by the shipping community alone but unfortunately the shipping community had to pay the major part of the cost. Hopefully the international community could come up with enough political will to take decisive actions to deal with the root causes of piracy before international trade or shipping was unduly affected.

#### **Agenda Item 4 – New SOLAS Amendments**

13. Mr. Jimmy Leung reported that on 5 June 2009, the 86th session of Maritime Safety Committee of the International Maritime Organization adopted resolution MSC 282(86) on the following SOLAS amendments which shall enter into force on 1 January 2011:

- (a) SOLAS Reg. II-1/3-5 – New installation of materials containing asbestos – As of 1 January 2011, any new installation of materials containing asbestos is prohibited for all ships.
- (b) SOLAS Reg. V-19 – Carriage requirements for shipborne navigational system and equipment – To enhance the safety of navigation, MSC adopted regulations containing carriage requirements for a Bridge Navigational Watch Alarm System (BNWAS) and for an Electronic Chart Display and Information System (ECDIS). Both navigational systems are required to be fitted on new and existing ships.
- (c) SOLAS Reg. VI – 5.1 – Material safety data sheet – On 1 January 2011, Material Safety Data Sheet (MSDS) as recommended under MSC. 286(86) shall be provided prior to the loading of MARPOL Annex I cargoes or bunkering of fuel oil.

14. The Chairman reminded the members that shipowners had one year to comply with the new requirements. Capt. Wong enquired whether it was a mandatory requirement to train the officers to use electronic charts. The Chairman replied that although it was not a mandatory requirement, shipowners should provide training to their officers to ensure that they were competent enough in using the equipment. The Chairman informed the members that the Maritime Services Training Institute (MSTI) in Hong Kong was planning to set up such a training course for seafarers. Mr. Bowring supplemented that there were a lot of courses around as it was a money-making business.

**Agenda Item 5 - Implementation of (a) revised MARPOL Annex I (Regulations for the prevention of pollution by oil), (b) revised MARPOL Annex II (Regulations for the control of pollution by noxious liquid substances in bulk) and (c) revised MARPOL Annex VI (Regulations for the prevention of air pollution from ships)**

Mr. Y.M. Cheng reported on the following:

15. Revised MARPOL Annex I – Since last SCC meeting, Transport and Housing Bureau (THB) had put in effort to expedite the completion of the legislation. Currently, the DDI was being cleared by THB and the drafting of the legislation would commence very soon. MD aimed at having the legislation in place before the end of 2010. The Chairman supplemented that there was a slight delay but that was the current target date for completing the legislation to implement the revised MARPOL Annex I in Hong Kong.

16. Mr. Bowring enquired whether any problem would be expected from LegCo members in processing the legislation. The Chairman responded that as it was only an amendment to a piece of subsidiary legislation, only negative vetting process would be required. After the proposed amendment had been submitted to LegCo for a certain period of time, it would automatically become a part of the legislation if there was no objection from any LegCo members. He further mentioned that the problem on subsidiary legislation did not come from LegCo members but due to the fact that a long lead time was needed to draft the new legislation to give effect to amendments that came out rather frequently from IMO from time to time. The Direct Reference Approach (DRA) was indeed the only solution if Hong Kong maritime legislation wanted to keep in pace with the latest developments at IMO. The principal ordinances such as Cap. 413 which was related to MARPOL and Cap. 369 which was related to SOLAS all had provisions to use DRA. However, it would take time to convince Department of Justice (DoJ) colleagues to adopt DRA more extensively in drafting legislation as many of them were reluctant to use such approach. The revised MARPOL Annex I included the banning and phasing-out of single hull tankers. Hopefully MD would not be challenged in the interim period by shipowners on the policy to phase out single hull tankers at a rate that would be faster than that might be permitted by the Convention.

17. Revised MARPOL Annex II – There had been no progress in the clearance of the DDI for the amendments to the Merchant Shipping (Control of Pollution by Noxious Liquid Substance in Bulk) Regulation, Cap. 413B.

18. Regarding the collection of waste of Class 1, Category 5 with flash point below 23 degree C, Environmental Protection Department (EPD) informed that the provision of a barge to collect the waste had been scheduled to be made available by November 2010 under the new contractor Ecospace Ltd. which was awarded the tender on 1 December 2009.

19. The Chairman supplemented that it might take a few years for the legislation to be ready because there were other items of higher priority and one example was the Antifouling Convention. Normally MD would not accord amendments with priority because shipowners would have to comply with those amendments adopted under tacit acceptance procedures any way for vessels trading worldwide. For new convention like the Bunkers Convention, MD would have no legal basis to apply the new requirements to Hong Kong registered vessels without the relevant legislation in place.

20. Revised MARPOL Annex VI – The DDIs for the amendment to Merchant Shipping (Prevention of Air Pollution) Regulation Cap. 413M to give effect to the revised MARPOL Annex VI was submitted to THB in October 2009. Comments on the DDIs had yet to be received. With the worldwide economic downturn, China MSA advised that their research showed that the local engine manufacturers had difficulties in the production of Tier II engines. They would inform MD on their availability in due course. Response from Guangdong MSA and Shenzhen MSA indicated that they would closely monitor the situation of their local and river-trade vessels and advise MD on their compliance with the revised MARPOL Annex VI.

21. The Chairman supplemented that the revised MARPOL Annex VI would come into force on 1 July 2010 and ships trading internationally would have to comply with the new requirements. Since China indicated that they might have problem to impose this requirement on local vessels or vessels trading between mainland and Hong Kong. MD was still studying the issue and see what relaxation MD might allow for these vessels.

### **Agenda Item 6 - Maritime Labour Convention 2006 (MLC 2006)**

22. Mr. Y.M. Cheng mentioned that since last SCC meeting, MD had commenced the drafting of the legislation to give effect to the MLC 2006. There were a total number of 1 ordinance (Cap 478) and 11 pieces of subsidiary legislation to be amended and 1 new piece of subsidiary legislation to be drafted. MD aimed at having all the amended and new regulations in place by mid-2011. The amended regulations were relating to the following areas:

- Health and Safety
- Hours of Work
- Provisions and Water
- Ships' Doctors
- Crew Accommodation
- Crew Agreements
- Medical Examination Repatriation
- Reporting of Accidents and Dangerous Occurrences
- Wages and Accounts
- Medical Stores

23. The Chairman supplemented that hopefully the DDIs could be sent to THB upon completion within 1 or 2-week's time for discussion among THB, DoJ and MD. Finally the drafting instructions would be passed to DoJ for law drafting, a process that might take a year or so. It was expected that the relevant legislation could be in place by mid-2011 ready for the international convention to come into effect internationally in 2012.

24. Mr. Bowring informed the members that he had received an e-mail from ILO that the subject convention would probably come into force internationally by the end of 2011. He also drew the attention of the members that some advice given by some classification societies was wrong. For example ABS suggested that specific survey inspection of accommodation under MLC 2006 was required. Actually the above inspection requirement was not necessary as it was already provided under the existing ILO conventions and shipowners should not pay for the additional surveying certificate. Therefore ABS had misinterpreted the convention. Funding for a tri-partite meeting at ILO this year had been authorized by the governing body at the end of 2009. Governments, shipowners and seafarers would form a special tri-partite committee for implementing the convention. The function of the committee was to look at implementation and interpretation of the convention for the port States and flag States. Mr. Bowring advised that the convention contained great flexibility and the final form on how the convention would be applied to ships was the responsibility of the administrations not the classification societies. Shipowners had to be very careful what classification societies were doing at the moment as some of their interpretation was totally incorrect.

25. Capt. Chan asked Mr. Bowring what was wrong with ABS interpretation of MLC. Mr. Bowring replied that an additional certificate for MLC accommodation was not needed under the convention if the accommodation was built to meet the requirements of ILO 92 or 133. The Chairman concluded that MD should expedite the drafting process and come up with some specific guidance on how the Hong Kong administration would like to interpret the different provisions in the convention.

Post meeting notes:

The DDIs for the amendment to the local legislation to give effect to MLC 2006 were submitted to THB on 12.2.2010.

### **Agenda item 7 – Voluntary IMO Member State Audit Scheme**

26. Mr. Jimmy Leung reported on the Voluntary IMO Member State Audit Scheme. MD had formally accepted the arrangement of scheduling the audit for HKSAR from 8 to 15 March this year by signing the Memorandum of Co-operation between Hong Kong (China) and IMO in December 2009. The audit for HKSAR would be carried out by 3 IMO appointed external auditors from Australia, India and Republic of Korea. MD was now liaising with the auditors to finalise the audit plan as well as the logistic arrangements.

27. The Chairman supplemented that MD was doing all the preparation for the IMO audit. A member asked whether the IMO audit scheme was mandatory. Chairman responded that it was not but there were suggestions at IMO that the scheme should eventually become mandatory. One of the major obstacles to make the scheme mandatory was the cost.

### **Agenda Item 8 – Implementation of the International Convention on Liability and Compensation for Bunker Oil Pollution Damage in the HKSAR**

28. Mr. Jimmy Leung reported that local legislation for the Bunkers Convention was completed on 31 December 2009. The Ordinance and Fees Regulation would come into operation on 22 January 2010. A letter was sent to the OCMFA (Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China) on 27 November 2009 requesting Central People Government (CPG) to notify IMO accordingly. Every effort was now being taken to request CPG to notify IMO the extension of the Convention to HKSAR by 22 January 2010.

29. The Chairman supplemented that hopefully IMO would be notified of the extension in time. Even if this could not be done, a delay of a few days should not cause too much problem. MD was doing everything possible through its contacts in Beijing to expedite the process. Capt. Chan said that the fee for the Insurance Certificate was HK\$ 535, which was higher than that in the UK. The Chairman responded that the fee in fact was cheaper than many other administrations. He also stated that after 22 January 2010, if any shipowners faced any problem asking their P & I Club to issue a blue card for the purpose of issuing insurance certificate under the Bunkers Convention, they should ask MD for assistance. Capt. Chan requested details of the MD contact point for application for the Insurance Certificate. Mr. M.Y. Chan replied that the Cargo Ship Safety Section should be contacted for any problem concerning the insurance certificate under the Bunkers Convention.

Post meeting notes:

The Embassy of the People's Republic of China in the United Kingdom of Great Britain and Northern Ireland sent a Note Verbale to the Secretary-General of IMO on 9 February 2010 informing him that in accordance with the Basic Law of the HKSAR of the PRC, the Government of PRC decided to extend the Bunkers Convention 2001 to the HKSAR from the date of 22 January 2010. On 11 February 2010, IMO issued a circular (BUNKERS.1/Circ.38) informing IMO members that the Bunkers Convention was extended to the HKSAR with effect from 22 January 2010.

### **Agenda item 9 - Implementation of the International Convention on the Control of Harmful Anti-fouling Systems on Ships in the HKSAR**

30. Mr. Y.M. Cheng reported that in August last year, the mainland authority informed HKSAR that they would ratify the AFS Convention soon and asked whether HKSAR was ready for the Convention. Since then THB had put in effort to expedite the preparation of the required legislation to extend the Convention to HKSAR.

31. The Chairman supplemented that at present the DDI was being studied by THB and DoJ. Hopefully, the detailed instructions could be passed to the DoJ for drafting of new legislation by the end of this year.

32. Dr. Varghese pointed out that the Convention had been adopted for some time and his main concern now was that many new antifouling systems were available in the market. All the shipowners now were using typical tin-free antifouling paints but many of these products were copper based. He proposed that the use of copper base paint should also be restricted and care should be taken in the legislation to avoid people from requesting the removal of copper base paint later. The Chairman responded that the Antifouling Convention allowed the use of copper base and it was not the policy of MD to impose additional requirements on top of the international requirements. If the industry or the environmentalist thought that copper should also be eliminated in the antifouling paint, then they should make a proposal to IMO to amend the convention.

33. Dr. Varghese enquired whether a proactive approach to the problem could be considered by MD. The Chairman replied that for the benefit of the environment MD might consider only to encourage the shipowners to voluntarily use copper-free antifouling paint. If Dr. Varghese could provide MD with sufficient evidence or information that something got to be done, MD as an administration might consider taking the initiative to make a proposal to IMO to amend the convention. Mr. Bowring suggested that taking proactive action was a good thing but ship managers would find it very difficult to persuade shipowners to take up a more expensive alternative that would make them uncompetitive.

### **Agenda Item 10(a) – Matters relating to the Hong Kong Shipping Register (HKSR) \_ HKSR statistics**

34. Mr. K.F. Chick reported on the Hong Kong Shipping Register. The statistics as shown in Table 2 revealed that the main composition of the Hong Kong registered ships were mainly bulk carriers, containers and tankers totally comprising about 88% of the tonnage. Comparing with last year, there was a slight decrease in bulk carriers in percentage with a slight increase in tankers. As of the date, the 46 million GT mark had been passed. The statistics as shown in Table 5 revealed that PRC seafarers still was the main source of crew for Hong Kong registered ships. 60% of the officers came from PRC, 18% from India and 12% from Philippines totally accounted for 90% of all the officers working on Hong Kong vessels.

35. Mr. Chick confirmed to Mr. Bowring that according to the statistics on Hong Kong crew, the 94 officers and 12 ratings were seagoing staff. Mr. Bowring further enquired whether most of the Hong Kong officers were previously Hong Kong cadets and whether in the statistics Korea referred to North Korea or South Korea. Mr. K.F. Chick replied that some of the Hong Kong officers were previously Hong Kong cadets and in the statistics Korea referred to South Korea.

### **Agenda Item 10(b) – Flag State Quality Control (FSQC) and Pre-Registry Quality Control (PRQC) Statistics, Agenda Item 10(c) – Detention of HK Ships and Related Statistics, and Agenda Item 10(d) – Detention of HK Ships on Security Ground**

36. Mr. M.Y. Chan reported that Annex 1a showed the statistics of Hong Kong fleet in port state control under various MOUs and USCG and the overall performance could refer to Annex 1b. HKSAR continued to maintain a good performance in the register. In terms of the three bench markings i.e. the detention rate, number of deficiency per inspection and number of inspection without deficiency, Hong Kong registered ships were better than the world average. Annex 2 presented the figures in Australia for Hong Kong registered ships and vessels of five other major registries. The figures had indicated that Australia was not targeting Hong Kong registered ships. Mr. Tung advised that shipowners had to be very careful when their ships were trading to Australia as Australia had a very strict PSC inspection regime and every administration got about 6% detention there.

37. Mr. M.Y. Chan further reported that according to Annex 4a – List of detained vessels in 2009, Australia was the port state in which Hong Kong ships had frequently been detained. In Tokyo MOU, HK had 25 detentions in 2009, where 15 of them were detained by Australia. In 2009 New Zealand was another administration that frequently detained Hong Kong registered ships. A total of 18 Hong Kong ships were detained by the above two administrations. Mr. M.Y. Chan urged that Hong Kong registered ships should pay particular attention to those detainable items before entering their ports. Overall, the number of detentions and detention rate of Hong Kong ships were decreasing comparing with the past few years. However, Mr. Tung expressed his disappointment that despite the issue of three circulars advising shipowners to be well prepared for the CIC on lifeboat, two Hong Kong registered ships were still detained in Australia due to lifeboat defects during the CIC period. Regarding the detention by USCG, MD was still awaiting the final calculation by USCG. Mr. Tung added that similar to the last year Hong Kong registered vessels were on the borderline again. A Hong Kong registered ship was detained due to failure to produce the LRIT conformance test report to the USCG during PSC inspection. MD was discussing with the USCG to see if it could be classified as a detention item under security ground.

38. Capt. Chawla proposed that as Marshall Islands was getting bigger and bigger like Liberia and MD should include Marshall Islands on the table in Annex 2 which would provide a good benchmark to the performance of Hong Kong registered ships. Mr. M.Y. Chan agreed with his proposal. Further discussion on the issue of PSC inspections and detentions by Australia were conducted among the members. The Chairman concluded that should there be any problem found in PSC inspections in Australia, it should be best raised at a venue like the PSC Tokyo MOU meeting and MD would endeavour to have closer contact and more exchange of information with Australia so that the PSC inspections could be smoother there.

39. Capt. Chawla noticed from Annex 3 that for some cases there was a time gap of 6-7 months between detention and FSQC inspection. Although FSQC inspection was an excellent tool to prevent ships from further detention, it would not be effective with a long time gap. Mr. M.Y. Chan responded that MD would analyse the reasons for each detention and would request a FSQC inspection if found necessary. As ships were trading worldwide, MD had to match the inspection with the sailing schedule. Under some circumstances, a final notice would be served to warn the ship manager that MD might instruct the classification society to withdraw the DoC or take similar measures if a FSQC inspection by MD was not arranged within two months' time.

### **Agenda Item 10 (e) – HK Ship Accidents and Casualty Statistics**

40. Mr. C.H. Tso presented a table of casualty statistics from January to December 2009 to the members. He drew the attention of the members that the sudden surge of collision cases might have been caused by the huge increase in collision accidents involving high-speed craft plying between Hong Kong, Macau and China. In view of the high accident rate of the high-speed craft, Marine Accident Investigation Section was working closely with relevant sections in the Shipping Division to see if anything could be done to rectify the situation.

### **Agenda item 11 – How to standardize builder's certificates**

41. This agenda item was proposed by Mr. Harry Chan and he gave an introduction on the topic. According to Mr. Chan, it had been a common knowledge to MD and also to the shipping community including all the people who were involved in new building registration that there was some sort of uncertainty on the issue of builder's certificate. This uncertainty was created because, no MD officer was actually attending delivery of a new building. As such, no MD officer had received the evidence of title which was the builder's

certificate and watched the people signing a Protocol of Delivery in the delivery of a ship before MD issued and handed out a certificate of registry. At the request of and in order to help the shipowners, MD invented the idea of giving a shipowner a post-dated certificate of registry. The above arrangement gave rise to some problems because when the law was written, it was written in the sense that when somebody came to register a ship, firstly he had to satisfy Section 21 and Section 20 of the Merchant Shipping Registration Ordinance i.e. he had to make a declaration of entitlement to say that at the time of registration of the ship, he was the shipowner. At the same time, he had to produce in the case of a new building evidence of ownership which was the builder's certificate. Upon registration, a certificate of registry would then be issued. No problem would arise if no post-dated certificate of registry was issued because nobody would need to obtain a builder's certificate before the ship was actually handed over and delivered. However, in order to help the shipowners to sail the ship out from the shipyard immediately, MD issued a post-dated certificate of registry to the shipowner. Under the present system, a post-dated certificate of registry could not be issued until one had delivered a builder's certificate i.e. the shipowner had to go to the builder and asked the builder to release the original builder's certificate or a copy of the builder's certificate from 7 to 10 days before delivery. The shipyard would normally be willing to provide the shipowner with an original builder's certificate if the shipowner still got other ships being built by the shipyard. In this connection, there was a practice in the market where a builder issued a document called a builder's certificate merely for the purpose of enabling the shipowner to register a ship and this was not meant to be the document to convey title. Under the circumstances, the mortgagee was very concerned because mortgagee would lose control over delivery of the ship. According to normal closing procedures, until the delivery instalment has been released to the builder by the shipowner with the approval/consent of the mortgagee, the builder would not release the builder's certificate to the shipowner. Under the current arrangement, without the knowledge of mortgagee, the shipowner could get the builder's certificate before delivery. Therefore, quite often two builder's certificates in fact were issued by the builder. One was actually a document of title issued by the builder on delivery according to the ship building contract while the other one which was issued earlier just for the purpose of enabling the shipowner to register the ship. Mr. Chan reminded shipowners that only one builder's certificate and no more should be issued by the builder. If there was more than one builder's certificate, the mortgagee would become very nervous.

42. JSM had discussed the issue with MD and proposed for an escrow arrangement. MD should be concerned if the shipowner could not register the ship on the date as stipulated on the post-dated certificate of registry. MD had tried to improve the situation by informing the shipowners that the post-dated certificate of registry would automatically be cancelled if a closing did not happen on that day and they had to surrender the certificate of registry. Mr. Chan proposed that if MD could not send someone to the closing to obtain a copy of the

builder's certificate, an escrow agent could be employed to attend the closing. The escrow agent could be a representative of the shipowner, the ship's agent or the ship's manager who would bear criminal liability according to the law. When MD received a document by fax or by e-mail attached with copies of builder's certificate and the protocol of delivery from the escrow agent confirming that the builder had issued the builder's certificate and the parties had signed the protocol, MD then registered the ship and advised the escrow agent to release the certificate of registry. The above arrangement was a much better system.

43. Mr. Tung pointed out that the issue raised by Mr. Chan was basically a problem between mortgagee and shipowner, which could be resolved by incorporating appropriate provisions in the mortgage agreement between them. MD could not issue the certificate of registry to anybody who was not the applicant for ship registration (usually the applicant was the shipowner) or was not the one authorized by the applicant. Mr. Tung also added that MD had no problem to add the scheduled delivery date on the format of the builder's certificate to clearly indicate when the ship would be handed over. This might help to clarify the issue.

44. Mr. Shum disagreed with Mr. Chan that the builder's certificate was a title document. Mr. Chan rebutted that it was clearly stated in the shipbuilding contract that title would pass on delivery, at which time the builder's certificate would be released by the builder to the shipowner. Section 21 of the Merchant Shipping Registration Ordinance referred to evidence of ownership and builder's certificate was the document on which the registry should be based on when registering the ship.

45. Mr. MY Chan stated that although MD issued post-dated certificate of registry, the registration would not come into effect unless MD had received the Protocol of Delivery. He supplemented that the existing arrangement i.e. pre-dated Certificate of Registry had facilitated the shipowner to obtain the Certificate of Registry (CoR) before the issuance of Protocol of Delivery so the vessel might operate immediately after the handover. In accordance with Registration Ordinance (Cap 478), the Registrar might request any documents what he thought fit. As such, MD issued a pre-dated CoR based on the original Builder's Certificate. This CoR carried a predetermined condition that the Protocol of Delivery had to be available on the scheduled registration date, otherwise the CoR would become invalid. MD did always remind the shipowner about this condition.

46. Further discussion on the builder's certificate was held among the members. The Chairman concluded that the issue could not be solved in the meeting and MD would seek DoJ advice on whether MD had been acting appropriately according to the relevant law. Members were also requested to consult the relevant colleagues in their companies so that a

final decision would be made at the next SCC meeting. Mr. Chan made a final remark that the escrow agent proposal was actually a very good proposal because it could be applied to both second-hand as well as new ships and would cost little money.

47. Dr. Varghese proposed that in order to protect the interests of shipowner and make the builder legally liable to deliver a quality ship, a quality statement stating that the ship had complied fully with the requirements of classification society and flag state should be stipulated in the builder's certificate. The Chairman responded that the format of the builder's certificate was based on certain international convention and could not be amended unilaterally by MD.

## **Agenda item 12 – Any Other Business**

### **MARPOL Annex V**

48. Capt. Pillai recently came across a problem with MARPOL Annex V in China. According to the subject convention, food wastes could be thrown out 12 nautical miles from the nearest land. However, one of his chartered ships was fined US\$ 7,500 for discharging food waste 12 nautical miles from the nearest land in the Bohai Strait. However, According to Capt. Pillai, in MARPOL Annex V, the only special area mentioned was the northeast coast of Australia. The Chairman requested Capt. Pillai to provide MD with more information with a view to seeing if clarification from the relevant Chinese authorities would be necessary.

Post meeting notes:

MD had studied the issue raised by Capt. Pillai and concluded that the Chinese authorities had acted according to the relevant Chinese law and the MARPOL Annex V. Under MARPOL Annex V, the requirement of 12 nautical miles from land means 12 nautical miles seaward from a country's baseline and China had made an official declaration on the baseline of its territorial sea in 1996. The Gulf of Bohai lies within the baseline and was part of the internal waters of China. Masters of vessels visiting China could not use the excuse of not knowing how to measure the 12 nautical miles from the nearest land when an offence was committed under MARPOL Annex V. Such information should be made readily available to the masters from the local agents. However, Capt. Pillai clarified later that based on documentary evidence gained from the Owners after the SCC meeting, the cited violation had not occurred in Gulf of Bohai, as initially reported, but within 12 nautical miles off the coast of CJK, which was indeed a Marpol Annex V violation as per IMO regulations.

### **Electronic application for dispensation**

49. Mr. M.Y. Chan introduced a new development regarding the electronic dispensation application. Cargo Ships Safety (CSS) Section frequently received applications for dispensation and extension from shipowners and ship managers for manning, firefighting, lifesaving, radio equipment servicing, drydocking, etc. due to exceptional and urgent circumstances. In order to take advantage of e-business, CSS Section was setting up a system that would allow companies to apply for dispensations and extensions via the MD e-business platform. The system would be launched in the second quarter of this year. The electronic application on-line would be run in parallel with the existing arrangement but shipowners and managers would be encouraged to use this convenient method because the system could record all the dispensation and extension applications. This would allow MD to monitor the number of applications from each company.

50. Both Capt. Pillai and Capt. Wong shared the view that as a shipowner or manager, if there were times when dispensations from MD were necessary but that would not mean the company would not try to rectify the deficiencies as soon as possible. There were always some difficult circumstances to leave the company with no other alternatives but to apply for dispensation. The Chairman supplemented that when MD received applications for dispensation, MD would respond quickly and issued the required dispensation provided that the particular dispensation would not adversely affect the safety standard of the vessel.

### **Issue of certificate of registry to second-hand ship**

51. Mr. Harry Chan raised an issue that unlike the new-building, MD did not allow a certificate of registry to be issued to a second-hand ship before it was delivered and he enquired whether a copy of certificate of registry would be accepted for the purpose of port clearance. Capt. Pillai replied that some ports would accept faxed copy of certificate of registry for the said purpose. Mr. M.Y. Chan explained that for new-buildings the shipyard having already received say 80% or 90% of the money from the shipowner would be willing to issue a pre-date builder's certificate to the shipowner while in the case of second-hand ship, the whole sum of money would only have to be transferred to the seller at the last minute and the seller understandably would be very reluctant to issue a pre-date bill of sale. The Chairman supplemented that MD was always prepared to do any thing reasonable under the relevant legislation to facilitate ship-owners in operating their vessels.

## **Recognition of Certificates under STCW**

52. Mr. YM Cheng reported that on 17 June 2009, a bilateral undertaking was signed between HKSAR and the Republic of Serbia.

## **SCC/144 – IMSBC Code**

53. Mr. Y.M. Cheng advised the members that the consultation paper SCC/144 concerning the IMSBC Code and the relevant amendment to Merchant Shipping (Safety)(Dangerous Goods and Marine Pollutants) Regulation, Cap. 413H was issued on 14.1.2010. Members were invited to return their comment on or before 29.1.2010.

## **41<sup>st</sup> Session of the Sub-Committee on Standards of Training and Watchkeeping (STW 41)**

54. Mr. C.H. Tso informed the members that the 41st session of the Sub-Committee on Standards of Training and Watchkeeping (STW 41) had finalized the draft revised text of STCW Convention and the STCW Code. The Secretary-General of IMO was now circulating the final text to parties of the Convention, in preparation for the Diplomatic Conference scheduled to be held from 21 to 25 June 2010 in Manila, Philippines. Mr. Tso invited members, organizations or unions who were interested in attending the Conference to contact him, so that appropriate arrangements for the credentials could be made in advance.

## **Retirement of the Chairman**

55. The Chairman informed the members that this was the last meeting he chaired as he would retire in April and he thanked the members for their support over the years. On behalf of all the members, Capt. Chawla expressed a vote of thanks to the Chairman for his chairmanship of SCC for the past years.

## **Close of Meeting**

56. As there was no other business, the meeting closed at 5:10 p.m.