

## **Shipping Consultative Committee**

### **Minutes of the 36<sup>th</sup> Meeting held at 6:30 p.m. on 5 October 2010 on board MD's launch "Tin Hau"**

Present:

Mr. P.C. So	Marine Department (Chairman)
Capt. Vikrant Malhotra	Anglo-Eastern Ship Management Ltd.
Capt. 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	Mayer Brown JSM
Capt. C.M. Yu	The Merchant Navy Officers' Guild – Hong Kong
Capt. Wei Zhou	Orient Overseas Container Line Ltd.
Capt. Jay K. Pillai	Pacific Basin Shipping (HK) Ltd.
Mr. Renato Miu	SINOTRANS Shipping Ltd.
Mr. C.J. Murari	UNIVAN Ship Management Ltd.
Capt. Ronald H.H. Wong	Parakou Shipping Ltd.
Capt. J.J. Lu	Ocean Longevity Shipping & Mgt. Co. Ltd.
Mr. S.T. Li	Marine Department (Secretary)

In attendance:

Mr. H.M. Tung	Marine Department
Mr. Y.M. Cheng	Marine Department
Mr. C.H. Tso	Marine Department
Mr. W.H. Leung	Marine Department
Mr. M.Y. Chan	Marine Department
Mr. S.W. Cheung	Marine Department
Mr. S.F. Wong	Marine Department

Absent with apology:

- Capt. David Leonard Watkins
- Capt. L.C. Chan
- Capt. Gautam Kashyap
- Capt. Pradeep Chawla
- Mr. Tian Zhong Shan
- Dr. Ranjan Varghese

1. The Chairman welcomed all present and two newly appointed members i.e. Capt. Jay K. Pillai of Pacific Basin Shipping (HK) Ltd. and Capt. J.J. Lu of Ocean Longevity Shipping & Mgt. Co. Ltd. He explained to the members that the reasons of having only three agenda items for this meeting were to allow more time for informal exchange of views on various aspects during the dinner for the members to get to know one another better personally and for fostering a closer working relationship between MD colleagues and SCC members.

### **Agenda Item 1 – Confirmation of the Minutes of the 35th Meeting held at 2:30 p.m. on 20 January 2010**

2. The minutes of the 35th meeting held on 20 January 2010 were confirmed with no amendment.

### **Agenda Item 2 – Follow-up actions on the Minutes of the 35<sup>th</sup> SCC Meeting**

3. The Chairman informed the members that most of the follow-up actions had been taken up by MD staff concerned and recorded as post-meeting notes in the minutes. The only outstanding item was the builder's certificate and he invited Mr. S.W. Cheung of MD to brief the members on the issue.

4. Mr. Cheung reported that since the last meeting, DoJ was consulted on the status of the builder's certificate and according to the views of DoJ (Department of Justice), the builder's certificate was not a title document under the laws of Hong Kong but only a certificate to confirm that the construction of a vessel had been completed by the builder. During the consultation, DoJ also advised that the law did not provide MD with the authority to issue a post-dated or forward-dated certificate of registry (CoR). However, MD could still register a vessel before the ship was delivered if the shipowner had submitted all the documents as required under Cap. 415 and signed a declaration before the Registrar that he had majority interest of the ship upon registration. In response to the above DoJ comments, the practice of issuing a post-dated or forward-dated CoR was terminated by MD and issue the CoR on the date when the particulars of the ship were entered into the register which might be before the delivery of the vessel.

5. Mr. Harry Chan of Mayer Brown JSM interjected with his comments that the builder's certificate (though not treated as a document of title by DoJ) was evident of title required by section 21 of the Merchant Shipping (Registration) Ordinance (the "MSRO") when reading together with the declaration of entitlement to own a ship by owners. By

delivering the builder's certificate to the MD before the date of delivery of the ship, the owner might be caught in a situation that its authorized officer had made a false declaration because MD could have registered the ship but at the time of registration, the owner had no title to the ship. There were provisions under the MSRO permitting the Hong Kong Register of Ships to cancel the registration of a ship where a person had made a false declaration. Mr. Cheung responded that the legal liability rested upon the declarant and MD was not in position to verify the declaration. In such circumstances, MD would caution the declarant on the legal liability he would face when he made a false declaration for registration.

6. Mr. Cheung carried on to say that when the new practice was exercised, Hong Kong Shipowners Association (HKSOA) asked for a meeting to discuss the issue. A meeting was convened together with representatives of HKSOA, JSM and Richard Butler. In the meeting, HKSOA complained that the industry had not been consulted of the new practice and MD explained that the purpose of the new practice was to strengthen the law enforcement and it was not a change in policy or law amendment, therefore, consultation with the industry was deemed unnecessary. However, if HKSOA considered that the HKSR should provide information on the latest registration procedures, MD agreed to inform the industry of the new practice as soon as possible.

7. Mr. Cheung further pointed out that ports clearance in Japan and Korea would accept faxed copy of CoR for new ships while ports in China normally required the ships to produce the original CoR. It was noted that at the present, majority of the ships registered in Hong Kong were built in Mainland and that was the reason for the shipowner wished to have the CoR before the ship delivery. In order to facilitate the port clearance of new Hong Kong registered vessels, MD would request Mainland to accept faxed copies of CoR transmitted from MD during the forthcoming regular meeting with China MSA (Maritime Safety Administration) at the end of this month. Members agreed that this request might help to solve the problem.

8. Mr. Harry Chan suggested that in order to prevent pre-mature registration, MD should remind the shipowners not to present the builder's certificate to MD until they actually got the title of the vessel, since MD was not a party to the contract and thus would not know when the passing of title would take place. Due to the usual habit of obtaining a builder's certificate in advance before the date of delivery of the vessel (which was necessary in the past in order to procure a post-dated or forward-dated CoR), many shipowners had stepped into a trap by registering a ship pre-maturely when they did not have the title of a vessel.

9. Mr. Shum of Goldbeam International Ltd. disagreed with Mr. Chan that the builder's certificate was a title document. Mr. Chan responded that he did not argue whether the builder's certificate was a title document and the DoJ had already given their view. However, it was stipulated in ship building contracts commonly used in Asia by Japan, Korea or China that title would only be transferred on delivery and a builder's certificate was included amongst the documents to be delivered by a builder to the owner on delivery closing. It was a wrong practice for MD to issue the predated CoR to the shipowner who had asked for a builder's certificate before the delivery of a vessel. Mr. Cheung disagree with the allegation that MD was wrong as MD and JSM treated the builder's certificate in different manner.

10. Mr. Bowring suggested that MD should sort out the issue with JSM and informed the members of the outcome accordingly.

11. Mr. Shum proposed that in order to solve the problem, MD could consider to change the name of the document builder's certificate on the form MO 42 to another name. Mr. Cheung replied that unfortunately MD could not change the name of builder's certificate as the name was stated clearly in the law. Nevertheless MD would try to solve the problem with JSM. Mr. H.M. Tung supplemented that the main issue laid upon the contract between the concerned shipowner, shipbuilder, the law firm and the bank. The problem could be solved if the relevant provisions in the contract could clearly be stated when the builder's certificate and/or the title could be given to the shipowner. Since MD was not involved in the content of the contract and as advised by DoJ, MD could register a vessel when the builder's certificate and the declaration were received. MD was not responsible for the investigation of how the above documents should be delivered to the shipowner and would follow the advice given by DoJ to register vessels in Hong Kong. A Merchant Shipping Information Note (MSIN) would be issued to our shipowners/operators for this issue.

### **Agenda Item 3 – The Way Forward of SCC**

12. The Chairman informed the members that he would like to propose the following changes to the current practice and these proposals were agreed by all the members:

- (a) the Chairman would not remind SCC members at the beginning of each meeting to make declaration of interest. It was the responsibility of individual member to make their own judgement whether their personal interest might substantially affect their views in the course of discussion of any topics at the meeting; and

- (b) the statistics of HKSR would be issued to members on a regular basis i.e. twice a year, instead of tabling for the information of members at each SCC meeting. This systematic approach should provide more convenience for MD to prepare the statistics and avoid delay of clearing the concerns of members on the statistics. Any comments from the members on the statistics could be either dealt with by MD immediately after the issue of the statistics or in the coming SCC meeting.

13. The Chairman advised the members that SCC was one of the communication channels through which the shipowners of Hong Kong registered vessels and the Government of the HKSAR could consult and exchange information with each other and to advise Director of Marine on matters relating to mainly technical requirements of ships imposed by the international conventions of the IMO and ILO, etc. Besides SCC, the members could also make use of other communication channels like the Customer Relations Group (CRG) for the HKSR. The CRG provided a high-level consultative forum to assist the HKSR to achieve its goals and it was chaired by the Deputy Director of MD. It was found that some SCC members were also members of CRG.

14. Finally, the Chairman requested the members to offer their comments on the IMO/ILO papers of various meetings and that their comments would be consolidated by the MPD (Multi-lateral Policy Division) of MD and reflected in the IMO/ILO meetings. Mr. Bowring concurred with the Chairman and gave a remark that Hong Kong used to make a lot of submissions to the IMO through the MSC, MEPC, etc. in the past and this request was supported by HKSOA.

### **Close of Meeting**

15. As there was no other business, the meeting closed at 7:10 p.m.