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CONTENTS

1 Cash for Scrapping	1
2 Pollution Regulation Update	1
3 Transportation Law Update	1
4 Supreme Court's Black List	2
5 China's Judicial Reform	3
6 About us	4

China rolled out subsidy plan for scrapping old vessels

In August 2013, the State Council issued the "Implementation Plans on Accelerating Structural Adjustment and Promoting Transformation and Upgrading of the Shipbuilding Industry (2013-2015)." According to the State Council's implementation plans, the country will encourage ship owners to replace their old tonnage with the greener and more efficient designs.

However, until four months later, the government has rolled out the long-awaited scrapping subsidy plan. On 9 December 2013, four Chinese ministerial government departments jointly issued detailed "implementation measures" and unveiled the subsidy plan to encourage ship owners to scrap ahead of schedule their old cargo vessels and single hull tankers, part of measures to support the country's suffering ocean shipping industry as well as the ship recycling and building industry.

According to the implementation measures, the new subsidy plan applies to China-flagged old tonnage which must be scrapped one to ten years before their mandatory retirement age. To illustrate, 33 is the mandatory retirement age of bulk carriers. Thus, owners will be reimbursed by the plan for scrapping his vessels that was built between 1981 and 1991 in the year of 2014.

The owner would receive in total 1,500 CNY (\$247) per gross tonnage. For a Panamax vessel with gross tonnage of 35,000, owner would receive about 8.65 million USD in subsidies. The whole amount subsidies will be paid in two

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installments. The first half, i.e. about 4.3 million USD, will be paid after the completion of scrapping work, and the remainder will be reimbursed when the owner placed new building order.

Regarding the plan, GMS, the world's largest cash buyer of ships for recycling, commented that the plan will mostly benefit large state owned shipping companies. According to Mr. Wang Kangtian, the CFO of China Shipping group, he welcomed the new subsidy plan. In a media interview, Mr. Wang expressed that the plan would apply to more than 30 vessels of the company's fleet. He furthered that the company currently had laid up 6-7 small vessels which would be covered by the plan, and they were scheduled to scrap these vessels first. It can be predicted that other shipping companies may have the same idea and in the long term the plan would bring positive effects to the shipbuilding industry.

Li Yu & Lucas Feng

Ministry of Transport amended Pollution Regulations

From 2013, the P&I clubs will not be required to submit documents each year to the maritime safety administration (MSA). On 31 August 2013, the Ministry of Transport (MOT) issued "Decision of the Ministry of Transport on Amending the Measures of the People's Republic of China for the Implementation of Civil Liability Insurance for Vessel-induced Oil Pollution Damages" (the new decision).

The new decision significantly amended the old pollution regulation, i.e. "Measures of the People's Republic of China for the Implementation of Civil Liability Insurance for Vessel-induced Oil Pollution Damage" (the old measures). The decision deleted Chapter 3 of the old measures which contained five articles providing detailed procedural regulations for the insurers. In order to insure Chinese flagged vessels, marine pollution liability insurers, including major Protection and Indemnity Clubs, must comply with these regulations and have to submit to the MSA dozens of forms and documents each year before 15 October.

As a replacement to Chapter 3, the new decision added an article as Article 8 providing as follows:

"The owners of vessels of Chinese registry shall buy civil liability insurance for vessel-induced oil pollution damages from the commercial insurance institutions legally established within the territory of China, or mutual-aid insurance institutions legally established within the territory of China or having a representative office or agency within the territory of China, or shall obtain letters of guarantee, letters of credit or other financial guarantee issued by the aforesaid insurance institutions and domestic banks.

The owners of vessels of Chinese registry shall buy civil liability insurance for vessel-induced oil pollution damages or obtain financial guarantee from insurance institutions with compensation capabilities, and the insurance institutions shall produce the relevant documents proving their compensation capabilities to the owners of vessels of Chinese registry."

From the above, it can be noticed that the insurers now are only required to produce documents to convince the Chinese insured regarding their credibility, and they are no longer required to submit any document to the MSA. It is believed that the new decision is a response to the new administration's reforming plan, which is aimed to build market-oriented economy and reduce the direct influence of government over economy.

John Wang & Lucas Feng

Ministry of Transport updated Regulations on Maritime Transportation

On 29 Aug 2013, the Ministry of Transport (MOT) issued MOT order [2013] No. 9 "Detailed Rules for the Implementation of the PRC Regulation on International Maritime Transportation" (following referred as the Detailed Rules) which canceled two administrative approval items and reformed regulations regarding international shipping agency business.

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In order to restructure the economy and build a more sustainable development model, the Administration of President Xi and Premier Li promised to relinquish the government's control over micro economy matters. As a result, on 15 May 2013 the State Council issued "Decision of the State Council on Matters Concerning Administrative Approval Items to Be Cancelled and Delegated to Lower Levels" which canceled the administrative approval regarding Merger and Acquisitions between International Shipping Operators. Two months later, State Council Order No. 638 was issued revising "PRC Regulation on International Maritime Transportation" (following referred as the Regulation). And the legislation update had been accomplished when the MOT issued the detailed Rules by the end of August.

Amendments

- 1.The Detailed Rules has canceled administrative approval Item regarding Merger and Acquisitions between International Shipping Operators.
- 2.The Detailed Rules has canceled administrative approval regarding establishing representative organization in PRC by foreign international shipping operator or foreign international shipping auxiliary enterprise.
- 3.Regarding Chinese funded companies engaged in international shipping agency business, the Detailed Rules has replaced administrative approval and now required the companies to file documents to MOT in order to operate. The China Shipping Agency and NVOCC Association was authorized to receive on behalf of MOT the documents filed by the companies. According to the Detailed Rules, the Association must confirm within 10 working days whether the documents filing was successful or they must explain the reason for rejection.
- 4.Administrative approval is still required for the foreign-funded companies engaged in international shipping agency business.

In summary, it can be seen from the above that the government was making significant effort to relax control over micro economy matters, but foreign-funded companies were still tightly supervised. It is interesting to see how the new filing procedure will influence the international shipping agency business. In the past, some government departments are unwilling to give up their power of control, and some of the filing procedures are no easier than the administrative approval procedures replaced.

The Supreme Court's Campaign against judgment enforcement difficulties

At the end of 2013, the Supreme People's Court introduced combined measures to tackle the long criticized judgment enforcement difficulties. These measures include establishing a black list of persons who refuse to enforcement, information sharing network and enforcement execution command centers. It was reported that the campaign had achieved great accomplishment. According to the statistics of the Supreme Court, 14,465 long-term cases involving government has been solved and closed in the year of 2013. At the same time, 1,045 persons who initially refused to enforcement had contacted with the court for cooperation, and the number of new registered enforcement cases and closed enforcement cases had gone up by 10.56% and 9.32% respectively.

The Black List

On 16 July 2013, the Supreme Court issued "Several Provisions of

the Supreme People's Court on Announcement of the List of Dishonest Persons Subject to Enforcement" which constitutes the legal basis for the Black List. In a visit to the Supreme Court in August, a high rank party official responsible for propaganda praised the black list as "a hard measure" to build the social credit system.

The Supreme Court published the black list at its official website through <http://zhixing.court.gov.cn/search/>. Through the web page, the public can find the individual's record either by searching his/her name or id number. With respect to searching the record of organizations, user can input either the registration number or key words of the name of such organization at the same web page. As reported by the Supreme Court, the individuals and organizations on the black list will encounter restrictions or be banned from participate in government procurement programs, infrastructure construction bidding, entering into market and getting credit etc.

Web-based Information Sharing Platform

The Supreme Court confirmed that it had signed cooperation agreement with National Citizen Identity Card Number Information Center administered by Ministry of Public Security, and National Administration for Code Allocation to Organizations. Furthermore, the Supreme Court had also signed memorandum of cooperation with all the major commercial banks in China including Industrial and Commercial Bank of China, Agricultural Bank, Bank of China, Construction Bank and Bank of Communications. Other information such as real estate registration, car ownership, social security and tax payment record was also included in the database .

On 29 August 2013, the Supreme Court issued "Provisions of the Supreme People's Court on the Network Inquiry and Freeze of the Deposits of the Persons Subject to Enforcement". To promote efficiency, the provisions provide that the Court can use electronic seals for stamping legal documents and those documents can also be transmitted electronically. And if the condition permits, the court may establish the system which enables itself to freeze the fund, property and stock owned by the persons subject to enforcement through the internet.

Enforcement Execution Command Center

The Supreme Court announced that it would actively promote the provincial courts to establish Enforcement Execution Command Center (EECC). The trial of establishing EECC has been started in Guangdong and Guangxi since early 2012. According to the Higher People's Court of Guangdong, the EECC was equipped with five major working systems, which can perform enforcement execution coordination, information gathering and management, execution supervision and emergency response, etc. The court said that the EECC had significantly reduced the work load of property searching jobs as well as the cost of execution.

The Social Credit System

It can be predicted that the establishment of information sharing platform and EECC will increase the efficiency of enforcement execution. And it can be also expected that the black list will be a deterrent, especially for those companies who were heavily involved in government procurement programs and those who are willing to take part in future government construction programs. However, it should be noticed that nearly all the major Chinese insurers and commercial banks are now on the Supreme Court's black list. One of the largest Chinese property insurers has been involved in more than 14,000 cases on the black list. It seems that the road to the social credit system will be long and the improvement will be slow.

China's New Administration announced remarkable Judicial Reform Plan

Third Plenary Session of the 18th CPC Central Committee

One year after being elected as the communist party chief, Mr. Xi Jinping announced to the world his administration's ambitious reform plan after the Closing of Third Plenary Session of the 18th CPC Central Committee. On 12 November when the Bulletin of the Session was published, it seems the judicial reform may be implemented very cautiously as people could only see the Bulletin repeating the political language "building Chinese legal system, deepening judicial system reform". Three days later Xinhua News published "the CPC Central Committee's Decisions on Comprehensive and Deepening Reform of Several Major Issues" and Mr. Xi's explanation regarding the Decisions which contends more detailed judicial reform policies.

Mr. Xi addressed the judicial reform in the sixth point of his Explanation regarding the Decisions that "Judicial system is an important part of the political system. These years, people's complaints significantly concentrated on judicial injustice. The insufficiency of judiciary credibility largely originated from inappropriate judicial system and its working mechanism.", He then further stressed that judicial reform is one of the essential elements of the current Comprehensive and Deep Reform Plan, and the Session advanced several related new measures, include:

To reform Judicial Management Mechanism To push forward unified management of finance, personnel and power of courts below provincial courts

To explore the separation of Administrative Divisions and Jurisdiction

To improve the mechanism of exercising judicial power

To improve the system so that the presiding judge and tribunal will be liable for the case and the judges should decide and then be liable for the case

The Supreme People's Court's Opinion

Nine days after the closing of the third Plenary Session, the Supreme People's Court responded the Party's call for judicial reform through putting forward measures to increase judicial transparency. The Supreme Court handed down the "Several Opinion on Establishment of three Platforms for Judicial Transparency." The three Platforms includes:

1. Trial Process Transparency Platform;
2. Judgments Transparency Platform;
3. Judicial Enforcement Transparency Platform.

Through the Trial Process Transparency Platform, courts must keep video and audio record for the trial of each case and the parties must be given access to those records. And the platform shall enable the parties to on-line track important information regarding their cases including contact details of the presiding judge, status for the execution of property preservation orders, jurisdiction matters, etc.

With respect to the Judgments Transparency Platform, the Supreme Court required all the lower courts, since 1 January 2014, to submit

the judgment to www.court.gov.cn/zgcpwsw/ within seven days after effectuation. The Supreme Court will be in charge of the running of www.court.gov.cn/zgcpwsw/ website and promised to provide an efficient retrieval system that enables the public to find the case through searching appropriate keywords.

With the assistance of the Judicial Enforcement Transparency Platform, the Supreme Court will establish a comprehensive black list of persons who are subject to enforcement and fail to satisfy the award given in the judgment. The black list and related information will be made available to the public including financial institutions. The Supreme Court also promised to facilitate the public to search and retrieve such information. At the same time, the Supreme Court required the lower courts to keep audio and video records of enforcing process of important cases and parties shall also be given access to these records.

The potential impact of the reform on commercial cases

It can be summarised from the above that the Current Administration are making great efforts to promote Judicial Independence in four ways. That is:

Firstly cutting the relationship of finance, personnel and power between lower court and the local government at the same level;

Secondly, separating jurisdiction and administrative divisions;

Thirdly, improving judicial decision making mechanism so that the judges rather than the court administrative leaders will decide cases and take the liability in the case of wrong decisions

Fourthly, increasing transparency.

Regarding commercial cases, it should not be over estimated about the positive impact that may be brought by the reforms. It is predictable that the reform would deter protectionism over local corporations in some degrees and the black list is a milestone toward the establishment of Chinese Credit System. However, social and cultural changes and public awareness are required to support the implementation of judicial reform. And the current reform unfortunately omitted some major issues such as improving trial procedures, defining more detailed evidence rules and increasing reasoning in the judgment.

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