



# The Institute of Chartered Shipbrokers Singapore Branch Q1 2017

EVENTS

IN THIS ISSUE

## ICS Annual General Meeting Dec 2016

by Punit Oza, FICS, Chairman, Singapore Branch



The Annual general meeting of the Singapore Branch was conducted on the 27<sup>th</sup> of Dec 2016, the meeting was chaired by Vice-Chairman Capt.

Subhangshu Dutt, in the absence of the Chairman, and was well attended by the committee members and well as the active members of the Singapore branch.

The meeting was started with a brief review of previous meeting minutes and outstanding items, but quickly moved gear into a very lively discussion that reviewed the membership statistics of the Singapore branch, with numerous attendees pitching in on how the ICS community in Singapore can grow faster.

The impressive work carried out by the branch in growing further in the education front and the growth in Student numbers was noted and also the recognition within Singapore from MPA was highlighted in the meeting.

The attendees unanimously agreed on furthering the cause of the institute by being more involved as well as serving the maritime community better, thus enriching Singapore Maritime community overall.

The Institute in 2017 aims to ensure that the Institute continues not only to serve as a key provider of education & training in the maritime sector in Singapore through our partnership and collaboration with local institutions and authorities, but also provide a platform for the members to keep themselves updated through regular expert lectures (our Bi-Monthly talks!) and networking opportunities for the members to interact with each other. We also clearly wish to constantly find new ways to provide more value to the members of the ICS community in Singapore.

We have also embarked on a conscious journey to create a more visible presence in the online world through actively embracing social media platform, which will enable us to reach further and also grow the community faster.

Look out for details on the next networking evening in the latter pages of this newsletter.  
- Our annual prize giving ceremony on the 27<sup>th</sup> of Feb 2017, to recognize and reward the most outstanding students in Singapore!

### Bi Monthly talks

Recent very popular Bi-Monthly talks in 2016, as well as upcoming events. Read more... Page 2



### Skills Future Road show

ICS Singapore branch participated in the skills future roadshow promoted by WDA Singapore, Read more... Page 2

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# Bi Monthly Talks

by Varun Mani, MICS

The Singapore Branch has been conducting a series of informative, education and interactive lectures, for members and the community in general over the last couple of years.

In that series, the latest one was held on 12th January 2017 at Singapore Shipping Association premises. **Capt. Mike Meade**, CEO and founder of M3 Marine Group discussed on **how to build a ship 'properly' in China**. The event was well attended and the talk was followed by a networking opportunity among members, students and guests.



"I have always looked forward to the Bi-Monthly talks, and despite my busy schedule have always made it a point to attend them, Not only are they informative, but also give me a good opportunity to meet other industry members"

- CAPT. RAJEEV KUMAR, FICS

This follows the trend of recent, very popular and over-subscribed talks such as the one on

17<sup>th</sup> Oct 2016, By Mr. **Gavin Ritchie**, on **Charterer's liability & Risk transfer**, which delved into the underlying risk for both time charter operators as well as voyage charterers, and what would be the blue print for effective risk management.

On 23<sup>rd</sup> June, the ever popular Mr. **Muthu Jagannath** gave a sold out talk on – "**Bill of Lading for Dummies**" This talk was attended and appreciated by companies in Singapore who also encouraged their staff to attend, since the talk covered, the functions, role in

the trade, Common clauses in contemporary Bills of lading.

## UPCOMING TALKS

To Learn about Upcoming Bi-Monthly talks & events, Check out the branch website [www.ics.org.sg](http://www.ics.org.sg) or Visit the branch's LinkedIn or facebook pages.

- You can also find presentations from past talks here !

# WDA Skills Future road show

by Varun Mani, MICS



SkillsFuture is a national movement created by WDA, Singapore to provide Singaporeans with the opportunities to develop their fullest potential throughout life, regardless of their starting points. In this regard, the WDA conducted a road show which allowed key industry training and skills providers both local and overseas based, such as the Institute of Chartered Shipbrokers, Newcastle University etc. that are providing services in furthering Maritime education in the Singapore to participate. Of Course, ICS is the only internationally recognized professional body representing shipbrokers, ship managers, and agents throughout the world! The event was held at Bishan Junction 8, on 28<sup>th</sup> & 29<sup>th</sup> May 2016. ICS Singapore had a dedicated booth at the event and manned with material to provide information on the various courses and educational programs

being conducted, grants available, through the ICS, Singapore to all the locals who attended the event. The focus of the information was areas Such as the MCF Subsidy or the Skillsfuture rewards available to Singaporeans for taking the ICS PQE exams and enrolling for the Tutorship program.

The Booth was manned by Committee member Mr. **Varun Mani**, MICS, on 28<sup>th</sup> May, and by Chairman Mr. **Punit Oza**, FICS, on the 29<sup>th</sup>, together with Admin Executive Ms. **Jessica Camba**.

## FOR MORE INFORMATION

To know more about these subsidies & grants, please contact the branch - [info@ics.org.sg](mailto:info@ics.org.sg) or visit the website [www.ics.org.sg](http://www.ics.org.sg)



# Training & Education update

by Varun Mani, MICS

## IMPORTANT UPCOMING DATES

Announcement of November exam results

16 February 2017

May exam registration deadline

3 April 2017

May exam session

8 - 18 May 2017

Announcement of May exam results

10 August 2017



## Classes for Upcoming Exams

Please contact the institute to register for classes for the upcoming exams! The classes will run through March '17

### TO GET A SNEAK PEAK

Check Out previous years papers on the ICS website to get a better idea of the quality of questions



## FAST FACTS

122

Number of Registered Students in Singapore for April 2016 exams

25%

Students participated in the Class room training for April 2016

33%

Students participated in the Prep Class for April 2016

22%

Students registered for the Tutorship program prior to April 2016

95

Number of Registered Students in Singapore for Nov 2016 exams

34%

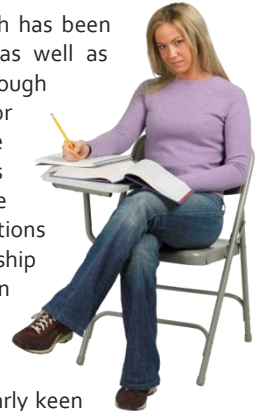
Students participated in the Class room training for Nov 2016

30%

Students registered for the Tutorship program prior to Nov 2016

ICS is one of the few international professional bodies in the Maritime industry that offers well recognized and respected Qualifications. The training provided by the ICS bridges the academic and the practical knowledge required in the business through the practical experience of the tutors, since they are all practicing members of the industry. The ICS education caters to the increasing demands in today's professional development whilst also letting the students create professional networks.

The Singapore branch has been offering Entry level as well as advanced training through flexible as well as tailor made programs. The Number of Students registering for the Professional qualifications as well as the tutorship support has been steadily rising through the years.



The students are clearly keen to benefit from being a part of a global industry as well as professional recognition and support that one gains from becoming an MICS.

The Singapore Branch has been holding exams twice each academic year, in November & April of each year, and has been providing, Tutorship via correspondence as well as Class room training for the Students in Singapore.

## Tutorship & Class room training

Once a student enrolls for the tutorship, he gets the latest course book, and accredited tutors guide the students through the course book, answer queries, as well as provide feedback and marking on the assignments. This lets the students, study according to their own schedules, maintain the flexibility between their work, study and personal lives, and yet provide a structured support to their education.

On the other hand Classroom training provides an intense 6 week course that runs through the whole syllabus that prepares the students specifically for the exams, as well as provides the students with a face to face opportunity to interact with the accredited tutors as well as other students. The class room training also lets the students discuss mock papers and review model answers.

# Local News & Events

by Varun Mani, MICS

## Rickmers Trust scraps another...

Jan 2017 - Rickmers Maritime Trust continues to slim down its fleet in order to keep creditors at bay. The 2004 built 5100teu Kathe C Rickmers is the latest vessel to be headed to the scrapheap. Net proceeds will go to pay back loans owed to HSH Nordbank and DBS Bank. The sale will result in a \$31.6m loss for the struggling Singapore Box operator. Earlier Rickmers had raised eye brows when it sent the 7 year old India Rickmers, for scrap



creating a new record for the youngest boxship to be sent for recycling.

## E-Press feeders drops TransAtlantic Brandname

Jan 2017 – E-Press Feeders will drop the TransAtlantic brand name from the start of next month, X-Press feeders bought three Baltic shortsea services from Sweden’s TransAtlantic in Dec 2015. Effective Feb 1st the TransAtlantic brand will only be retained for the freight forwarding division that the Singapore based feeder operator took over.

X-Press feeders also reportedly has concluded a slot exchange agreement with Unifeeder on services covering Russia, Finland, Estonia & Latvia

## MPA Licenses 51 Companies with Bunker Survey License

Jan 2017 - The Maritime and Port Authority of Singapore (MPA) has issued 51 companies with bunker survey license to operate in the Port of Singapore. The license is valid from 1 January 2017 to 31 December 2017.

Since the licensing scheme was first announced in October 2014, MPA has been engaging the bunker surveying industry on the details of the scheme.

The licensing scheme will raise the standards of bunker surveying companies and allow MPA to have greater regulatory oversight of bunker surveying companies and bunker surveyors

## MPA releases 2016 Singapore Maritime Performance report

Jan 2017 - According to the recently released MPA report, The Port of Singapore sustained its performance in 2016, amidst weaker-than-expected global economic conditions and significant structural changes in the maritime industry.



UNCTAD has also ranked Singapore as the second most connected country in the world for two years in a row, based on port connectivity, offering shipping companies seamless global trade connectivity. The World Economic Forum (WEF) Port Infrastructure Rankings put Singapore as having the second best port infrastructure.

## CMA CGM Sets Up Singapore Navigation and Port Operations Center

Jan 2017 – French container shipping specialist CMA CGM opened a Navigation and Port Operations Center in APL’s corporate headquarters in Singapore on January 11.

Designed to be CMA CGM’s third navigation command center to its combined fleet of more than 500 container vessels, the new Singapore outpost is dedicated to serving the Asian time zone.

The two other centers – located in CMA CGM’s corporate headquarters in Marseille, France, and its regional office in Miami in the United States –

take charge of the European and Americas time zones respectively.

Based on live analytics of the vessels’ operating speeds, ocean currents, weather forecasts and high traffic areas, each centers’ team is able to assess, anticipate and mitigate any navigation-related risks to CMA CGM’s vessel operations.



Guidance and alerts are provided to deck officers on how vessel routes, speeds and fuel consumption can be optimized across the company’s fleet, while ensuring the safety of its crews and vessels globally, CMA CGM said

## Singapore Strengthens Maritime Collaboration with Norway

Oct 2016 The Maritime and Port Authority of Singapore (MPA), represented by Chief Executive, Mr Andrew Tan, signed a Joint Statement with the



Norwegian Ministry of Trade, Industry and Fisheries on 10th October during the State Visit by President Tony Tan Keng Yam to Norway, Besides substantial commercial and industrial cooperation between the highly competent maritime clusters of Singapore and Norway, both countries also have extensive co-operation in research and development in maritime environment, sustainable energy technology, offshore and marine engineering.

# Pay to be paid rule - An Anachronism?

by M.Jagannath, FICS



This article will consider the effect of the "Pay to be Paid" rule found in the Rules of the P&I Clubs and whether the protection granted to the Clubs in case of insolvency of the Member survives after the implementation of the Insurance Act 2015.

The cover provided by P&I Clubs (Mutual), although described, as liability insurance, is in fact indemnity insurance. This is because the Clubs have a "Pay to be Paid" Rule and which makes it incumbent on their members to first make payment to the claimants to discharge their liabilities and subsequently seek reimbursement subject to the terms of the entry (See Rule 5 A of the UK P&I 2016 Rules which provide "Unless the Directors in their discretion otherwise decide, it is a condition precedent of an Owner's right to recover from the funds of the Association in respect of any liabilities, costs or expenses that he shall first have discharged or paid the same out of funds belonging to him unconditionally and not by way of loan or otherwise"). While the wordings of this Rule may vary between the various P&I Clubs, the gist of this Rule is that the Member must have a liability to pay a claim and which they must first settle with their claimants so as to entitle them to seek a reimbursement under the cover provided by the Club. There are however exceptions to the general rule that the member's liability must have been first discharged, one of them being the Omnibus Rule (see Rule 38 of the UK P&I Rules 2016 which states "The Directors shall meet as often as they may consider necessary for the settlement of claims which shall be paid by the Association as the Directors may determine in accordance with these Rules and the Directors shall have power from time to time to authorize the Managers, without prior reference to the Directors, to effect payment of claims of such types and up to such sums as the Directors may determine. No Director shall act as such in the settlement of any claim in which he is interested").

The P&I Club's Rules invariably incorporate English Law and Practice (see Rule 42 of the UK P&I Rules 2016 which states "Law of Contract :Any contract of insurance howsoever made between the Association and an Owner and these Rules shall be governed by and construed in accordance with

English law"). Accordingly, the English Marine Insurance Act 1906, The UK Third Parties (Right against Insurers) Act 2010 (which repealed the 1930 Act) and the Insurance Act 2015 (which amended certain provisions of the Marine Insurance Act 1906) apply to the contract.

We consider the relevant sections of each of these acts below:

S 85 of the English Marine Insurance Act 1906 deals with Mutual Insurance and states:

"Modification of Act in case of mutual insurance:

(1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association.

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance."

The UK Third Parties (Right against Insurers) Act 2010 came into force on 01st Aug 2016. This Act modernizes and simplifies the earlier Third Parties (Rights against Insurers) Act 1930 (which has been repealed). The 2010 act allows third parties to bring proceedings directly against insurers when the insured is liable to the third party but has become insolvent. The third party need no longer "establish" the insured's liability to it first (as was required under the 1930 act). The result is that the third party is able to litigate the substantive claim against the insured in tandem with an action against the insurers so that they (Insurers) pay any damages awarded.

S 9(5) of the 2010 act states "The transferred rights are not subject to a condition requiring the prior discharge by the insured of the insured's liability to the third party" i.e. it bars any condition precedent to liability such as the "pay to be paid" rule.

S 9(6) of the 2010 Act then goes on to state "In the case of a contract of marine insurance, subsection

(5) applies only to the extent that the liability of the insured is a liability in respect of death or personal injury" i.e. the preceding sub-section would only apply if there was a liability for death or personal injury (gives effect to the dicta of The Fanti and The Padre Island and which is discussed in 3a below).

The Insurance act 2015: The UK Insurance Act 2015 came into force on 12th August 2016 to reform the prevailing UK legislation on Marine Insurance. It applies by default to all commercial insurance policies. The Act amends key sections of the Marine Insurance Act 1906. In particular, S 11 of the Insurance Act 2015 deals with the effect of warranties and condition precedent to liability. The wordings of S 11 are given below:

Terms not relevant to the actual loss:

(1) This section applies to a term (express or implied) of a contract of insurance, other than a term defining the risk as a whole, if compliance with it would tend to reduce the risk of one or more of the following—

- (a) loss of a particular kind,
- (b) loss at a particular location,
- (c) loss at a particular time.

(2) If a loss occurs, and the term has not been complied with, the insurer may not rely on the non-compliance to exclude, limit or discharge its liability under the contract for the loss if the insured satisfies subsection (3).

(3) The insured satisfies this subsection if it shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred.

(4) This section may apply in addition to section 10.

The effect of the S 11(3) of Insurance Act 2015 is that if the Condition Precedent to Liability clause has no bearing to the actual risks, then the Insurer would be unable to rely on them say to exclude liability.

## Validity of "Pay to be Paid" Rule:

The validity of this clause was tested in the English Courts (The Fanti and The Padre Island) when the 1930 Act was in place. The HOL ruled that the words "Pay to be Paid" meant what they said and a member ship-owner had no right to be indemnified unless and until it had made payment to the third party. This outcome resulted in the third party unable to pursue directly against the P&I Clubs (which we submit was the intent of the 1930 Act) when the member was insolvent. In effect, insolvency of a member protected the P&I Clubs from any claims from third parties. It



however appears that in this case, a concession appears to have been made that the P&I Clubs would not enforce the "Pay to be Paid" provision in claims for personal injury or death. The 2010 Act has, by s 9(5) and 9(6), legislated that the bite of the "Pay to be Paid" rules remain except for personal injury and death claims.

With respect to the Hull and Machinery Policies, the most common wordings used are the Institute Time Clauses 1/10/83. Clause 8.1 of the Running Down Clause (Collision Liabilities) states as below:

8.1 The Underwriters agree to Indemnify the Assured for three -fourths of any sum or sums paid by the Assured to any other person or persons by reason of the Assured becoming legally liable by way of damages for ... (words underlined by us for emphasis)

Invariably, Owners cover 3/4 of the RDC with the Hull Insurers and the balance 1/4 with their P&I Insurers. It is also not uncommon for Owners to seek 4/4 cover either with their Hull Insurers or their P&I Insurers. Most of the Hull Insurers are commercial Insurers – however, some of the cover is provided on a mutual basis (e.g. Norwegian Hull Club). Given the wordings of the RDC Clause, it is submitted should a third party pursue for recovery directly against the Insurers, say due to the Insolvency of the Owners, they would be caught with the requirement "paid by the Assured" (see the Canadian Federal Court of Appeal Judgement in *Conohan v. The Co-Operators*, 2002 F.C.A. which considered the wordings similar to a "Pay to be Paid" Rule).

The English Courts however have not allowed development of this argument for Commercial Insurers. The English Commercial Court in *Ventouris v Mountain (The Italia Express)* (No 2) [1992] 2 Lloyd's Rep 281 (this was a case on War Risks Insurance) stated that "the purpose of the "Pay to be Paid" rule was to meet the special needs of a mutual insurance scheme in a member's association or club; such a rule was in appropriate in the non-club environment of a commercial insurance contract.

The "Pay as may be Paid" Rule in Reinsurance Contract: Both the 1930 and the 2010 Third Parties (Rights against Insurers) Act do not apply for Reinsurance contracts. This being the case, there is no statutory "protection" for insolvency available to a party pursuing the reinsurers under these Acts. The English Courts have considered the meaning of "Pay as may be Paid" and maintained "it would be both unjust and discordant with commercial good sense, if by reason of the accident of a reassured becoming insolvent, the reinsurers (who had accepted premiums) should go free from liability under the reinsurance policies in respect of claim for which they would unquestionably have been liable had the reassured remained solvent."

In *Charter Reinsurance Company Ltd v Patrick Feltrim Fagan* (1996), the English House of Lords held that the (reinsurance) contract had to be construed as a whole. Under the contract, the sum became payable when the insurance claim itself became payable and not only when it was actually paid out. It therefore appears that the English Courts have been generous in giving a wide interpretation of the wordings to facilitate recovery against a reinsurer when the reassured was insolvent.

### Further comments:

One of the arguments for the "Pay to be Paid" Rule is that this rule is used by P&I Associations and which are strictly not Insurance Companies but are run by the pooling of risks by the Owners. While protection may have been relevant in the last century, P&I Clubs now have sizeable reserves and provide cover, some of which are compulsory in nature. Additionally, some P&I Insurers provide Fixed Premium Entry (similar to Commercial Insurers). If protection is deemed necessary, then it is submitted, that it should be given to both P&I and Commercial Insurers (who may also provide similar P&I cover).

Some jurisdictions have dealt with the application of "Pay to be Paid" by denying its application and thereby allowing third-parties to directly pursue the P&I Insurers for recovery. Should the English Courts continue to maintain the same position of the "Pay to be Paid" rule, third parties would prefer to initiate actions in jurisdictions which do not give effect to this rule.

The wordings of "Pay to be Paid" and "Pay as may be Paid" rules are similar. However, English courts have given different interpretations. The "Pay as may be Paid" rules are mainly with respect with the reinsured pursuing the reinsurer (and not a third party as in the case of "Pay to be Paid" rule). Dicta in *Re Eddystone Insurance Co Ltd., ex parte Western Insurance Company Ltd* (1892) which was expressly approved by the Court of Appeal in *Re Law Guarantee Trust and Accident Society* (1914) and also came up in *Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd* (1988) tends to suggest that the effect of the clause would be similar even if the liquidators were to pursue the counterparty.

Section 11 of the Insurance Act 2015 provides that "condition precedent to liability" is of no effect if the breach did not result in an increase in the risk. The "Pay to be Paid" Rule only comes into effect once the liability of the member has been established. This being the case, the payment or non-payment of the Owners would generally have no bearing to the risk. It is therefore submitted that the wordings of the Insurance Act 2015 would

catch the "Pay to be Paid" Rule rendering it null and void.

### Conclusion:

It remains to be seen if the English Courts continue to provide protection to P&I Clubs from pursuit by third parties and thus giving effect to the "Pay to be Paid" rules, particularly with the provisions of the Insurance Act 2015 which tends to override "Conditions Precedent" having no bearing to the risks.

With respect to commercial insurance, the English Courts had earlier denied the application of similar "Pay to be Paid" rule wordings. Given the blurring of the differences between the P&I and Commercial Insurers, should the English Courts wish to continue with the protection afforded earlier, it would be appropriate for them to also consider their application with commercial insurers so as to ensure parity.

### FEEDBACK

The Author is a Claims correspondent / Consultant based in Singapore dealing with Transport Liability, P&I and H&M Claims.

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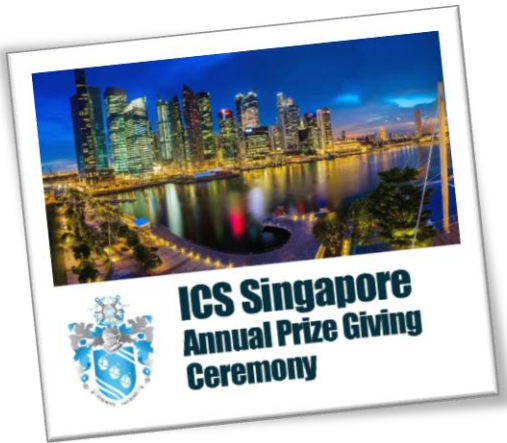
Email: [jagan@nau.com.sg](mailto:jagan@nau.com.sg)

# ICS Singapore Annual prize giving Ceremony 2017

The Institute of Chartered Shipbrokers Singapore Branch will hold its Annual Prize Giving Ceremony on the 27th February 2017. The ceremony is to recognize all the candidates who excelled in the Academic Year 2015-2016 examinations.

Networking over cocktails will follow at the end of the event.

Free Admission for ICS Existing Members, Registered Students and Invited guests. For Non-Invited guests, Admission Fee is \$30 per person.



PROGRAMME	
6.30 pm	Arrival of Guests
7.00 pm	Address by Chairman
7.10 pm	Address by Guest of Honor
7.20 pm	Prize Giving Ceremony Commences
8.00 pm	End of Ceremony Cocktails and Networking

**Monday**  
**27<sup>th</sup> February 2017**

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**7:00 PM – 9:30 PM**

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**Venue**  
**The Tanglin Club**  
*(The Raffles Room)*  
5 Stevens Road  
Singapore 257814

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**Dress Code**  
Office Attire

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**RSVP**  
by 20<sup>th</sup> February 2017  
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**NEWSLETTER CONTRIBUTIONS**

The ICS Singapore newsletter would be published once every quarter. Contributions from members with any articles on local industry events as well as their opinions are welcome. Please send in your Contributions to [info@ics.org.sg](mailto:info@ics.org.sg).

The Newsletter is edited by **Varun Mani**, MICS



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