NUS National University of Singapore | Centre for Maritime Law Faculty of Law

7th SINGAPORE SHIPPING LAW FORUM 2024

Sanctions: Between a Rock and a Hard Place

17 October 2024, 6.15pm to 7.30pm | The Westin Singapore

Justice Steven Chong at Singapore Shipping Law Forum 2024

On the evening of 17 October 2024, the Centre for Maritime Law (CML) at the National University of Singapore held its 7th Singapore Shipping Law Forum. The Honourable Justice Steven Chong, Justice of Appeal, was the keynote speaker. Over 130 participants from Singapore's maritime and legal community attended the event. Professor Stephen Girvin, MPA Professor of Maritime Law and Director of CML, gave the opening address and traced Chong JA's career path from law student to Justice of the Court of Appeal.

The lecture consisted of two sections. Part I dealt with the basic understanding of the sanctions. Chong JA emphasised that sanctions have been known for international trade and shipping since ancient times. The speaker addressed the issue of what sanctions are and which parties impose them. Particular focus was paid to the UN, the EU, the UK, and the US. One of the peculiarities of the modern sanctions regime is that they are not comprehensive but are targeted. However, the understanding of this institution has remained generally the same. One of the reasons why sanctions are the subject of ongoing disputes is the possible ambiguity of their interpretation.

Part II covered how the industry responds to sanctions risks. Two main contractual tools help with it: the force majeure clause and the sanctions clause. Several relevant cases were discussed. The first was *Litasco SA v Der Mond Oil and Gas Africa SA* [2023] EWHC 2866 (Comm), [2024] 1 All ER (Comm) 1044. In this case, it was held that the parties accepted the risk of sanctions that existed at the date of the conclusion of the disputed agreement. The importance of the wording of the clause was emphasised. The second case was *RTI Ltd v MUR Shipping BV* [2024] UKSC 18, [2024] 2 WLR 1350. The UK Supreme

Court held that the force majeure clause does not require the party to the contract to accept the non-contractual performance. Chong JA emphasised that the approach in Singapore is different. This was confirmed in *Holcim (Singapore) Pte Ltd v Precise Development Pte Ltd* [2011] SGCA 1, [2011] 2 SLR 106. Primary attention was paid to analysing the clause's wording. The last case was *Kuvera Resources Pte Ltd v JPMorgan Chase Bank, NA* [2023] SGCA 28, [2023] 2 SLR 389. This concerned the difference between internal commercial risk management and the party's legal obligations. The Bank was placed 'between a rock and a hard place' and must have chosen whether to breach the contract or risk possible violation of the restrictive measures. In the end, Chong JA opined that there could be some benefits to a subjective sanctions clause. However, this involves a degree of risk of abuse. Chong JA closed his lecture with the suggestion that these risks may be mitigated by precise drafting and good lawyering.

Darryl Ng, Managing Partner of Virtus Law LLP, gave the concluding remarks.

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