



17 May 2019

Ref : Chans advice/219

To: Transport Industry Operators

Sanchi c/w CF Crystal (III)

The Hong Kong High Court issued a Decision on 25 February 2019 dealing with Changhong Group's delayed application for leave to appeal in relation to the collision case reported in our Chans advice/218 and Chans advice/215. [HCA]3/2018, 2019HKCFI542]

This case concerned a collision at sea between Changhong Group's cargo vessel, the CF Crystal, and a tanker owned by Bright Shipping, the Sanchi. The collision took place on 6 January 2018 at a location about 125 nautical miles from Changjiang Kou Light Ship in the East China Sea.

The Hong Kong legal action in question was an *in personam* collision action brought by Bright Shipping against Changhong Group. However, Changhong Group made an application for stay of the Hong Kong legal proceedings on the ground of *forum non conveniens*. On 15 November 2018, the High Court dismissed Changhong Group's application seeking a stay of the proceedings. On 12 December 2018, Changhong Group served a notice of appeal in respect of that decision of the High Court without first seeking leave to appeal under Section 14AA of the High Court Ordinance. On 18 December 2018, Bright Shipping issued a summons to strike out the appeal on the ground that Changhong Group had not obtained leave to appeal. The Court of Appeal held that the High Court decision of 15 November 2018 was an interlocutory one. It followed that Changhong Group needed to obtain leave under Section 14AA before an appeal could be brought. The Court of Appeal issued a Judgment on 20 February 2019 dismissing Changhong Group's appeal against the High Court's Decision of 15 November 2018.

Changhong Group filed a belated application to the High Court seeking leave to appeal. The High Court believed that the short delay by Changhong Group in making this leave application was largely attributable to its erroneous belief that the Order to be appealed was a final order. The High Court held that the short delay was excusable. The High Court believed that the intended appeal had reasonable prospects of success, which was not a particularly high threshold. The existence of parallel proceedings in different jurisdictions could be an important consideration in an application for stay of proceedings on the ground of *forum non conveniens*, and there was some substance in the contention that the correct approach by the court in the application of the principles deserved another visit by the Court of Appeal.

The High Court therefore granted leave to appeal notwithstanding the delay in the application.

Please feel free to contact us if you have any questions or you would like to have a copy of the Decision.

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