

Shipping & International Trade

## English Court of Appeal Determines Who is an 'Operator' of a Vessel under the Convention on Limitation of Liability for Maritime Claims 1976

### Introduction

In December 2021, the English Court of Appeal in *Splitt Chartering APS & Ors v Saga Shipholding Norway AS & Ors* [2021] EWCA Civ 1880 handed down a judgment which provides clarification on the threshold which a claimant is required to meet to be considered an 'operator' of a vessel in the context of the Convention on Limitation of Liability for Maritime Claims 1976 ("**LLMC 76**") as applicable under English law. The findings of the English Court of Appeal will be persuasive in the Singaporean context, where the LLMC 76 (with the 1996 Protocol) is likewise in force.

Additionally, the English judgment highlights the importance of ensuring appropriate contractual arrangements between various business units in a group of companies ("**Group**") that collectively manage or operate a vessel. While the purpose of the LLMC 76 is to encourage international trade by sea carriage, what this judgment indicates is also that the courts will be slow to apply an overly broad reading to the categories of parties entitled to limit their liabilities under the LLMC 76. In the context of a Group, the burden is clearly on the Group to take steps to bring all its business units and associates within the umbrella of the protection.

The underlying facts are straightforward – in November 2016, the unmanned barge "STEMA BARGE II" ("**Barge**") drifted whilst at anchor ("**Incident**"). This resulted in damage to an underwater cable owned by a French telecommunications company, RTE. RTE sought to claim substantial damages for losses arising from damage to their underwater cable. This prompted the claimants in the English action to commence a limitation action in the English courts to limit their liability arising from the Incident. As a result of insufficient contractual arrangements in place, one of the claimants was not permitted to limit its liability arising from the Incident.

**Contribution Note:** This Client Update was written with contributions from Daphne Chua, Senior Associate, from Shipping & International Trade.



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## The 'Operator' of the Vessel

Shipowners and salvors are permitted to limit their liability under the LLMC 76. Art 1(2) defines 'shipowner' as 'the owner, charterer, manager, or operator of a seagoing ship'. In this regard, the English Court of Appeal agreed with the Judge at first instance that to be an 'operator' of a vessel requires an element of management and control of the vessel. This position is the same for an unmanned vessel, and a conventional merchant ship.

In coming to this finding, the English Court of Appeal rejected the argument that the words 'manager' and 'operator' should be given their ordinary meanings to encompass the commercial and physical operation or management of a vessel. In the English Court's view, the 'operator' must be considered at a higher level of abstraction than mere physical operation, and ought to involve an element of management or control. Management and control will almost certainly be found in those who direct the on-board personnel, and such legal persons will highly unlikely be on board the vessel.

The claimants in this case comprised (amongst others) the following companies from the same Group: (1) the registered owner of the Barge, Splitt ; (2) the charterer of the vessel pursuant to a document 'akin to a voyage charterparty', Stema A/S ; and (3) Stema UK. In the proceedings, it was accepted that Splitt and Stema A/S fell within the definition of 'shipowner'.

Upon considering the evidence, the English Court found that Stema UK did not fall within the meaning of an 'operator' of the Vessel. Therefore, Stema UK was not entitled to limit its liability for the Incident.

For context, Stema UK was the receiver of the cargo onboard the Barge, and did not have any formal role in respect of the Barge's management or operation. However, Stema UK's personnel did operate the machinery of the Barge and were involved in monitoring the weather, and in the decision to leave the Barge at anchor in bad weather.

The Court's conclusion was premised on the following which, in its view, suggested that Stema UK was acting for and on behalf of Stema A/S:

- (a) The registered owner of the Barge did not have a contractual relationship with Stema UK for work which Stema UK did on board the Barge. It appeared from the evidence that work was done by Stema UK because that was the way the Group organised its affairs.
- (b) The crew which Stema UK supplied to the Barge followed checklists prepared and supplied by Stema A/S. Likewise, the superintendent engaged by Stema UK gave evidence that he took instructions from Stema A/S.

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- (c) Post-casualty, Stema UK was not involved in any of the inspections or surveys. Only Stema A/S was involved.
- (d) Upon considering the circumstances leading up to the decision to leave the Barge at anchor despite the bad weather (which ultimately led to the Incident), the Court found that Stema UK was not the decision-maker.
- (e) None of Stema UK's witnesses suggested that Stema UK had any responsibility for the Barge.

## The 'Manager' of the Vessel

On appeal, the interpretation of the word 'manager' in the context of the LLMC 76 hardly featured in the arguments. However, Stema UK sought to rely on the first instance Judge's interpretation of 'manager' to contend that if it was not the operator of the Barge, it would be the manager of the Barge and therefore entitled to limit its liability under the LLMC 76.

The Court of Appeal did not comment on the first instance Judge's interpretation of the word 'manager', which was as follows:

- (a) "the person entrusted by the owner with sufficient of the tasks involved in ensuring that a vessel is safely operated, properly manned, properly maintained and profitably employed to justify describing that person as the manager of the ship... A person who is entrusted with one limited task of management may be described as assisting in the management of the ship, rather than being the manager of the ship"; and
- (b) That the ordinary meaning of 'the operator of a ship' includes 'the manager of the ship'.

However, Stema UK's argument was rejected because of the Court of Appeal's finding that Stema UK's role was limited to providing assistance to the operator and manager of the Barge (Stema A/S) in the limited respect of operating the Barge's machinery and monitoring the weather. Therefore, there was no basis on which Stema UK could be described as manager of the Barge.

## Concluding Words

This judgment provides practical insight on the concept of a 'manager' or 'operator' under the LLMC 76, and thus when the provisions of the LLMC 76 may be relied on. As Singapore is also a party to the LLMC 76, the decision may be relevant to the treatment of the issue under Singapore law as well.

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Practically speaking, stakeholders such as ship managers and technical managers, who handle a wide array of tasks on behalf of shipowners such as vessel technical management, crew management and crew insurances, would likely fall within the meaning of "manager" and potentially qua "operator" as well.

That said, this decision highlights the importance of giving proper consideration to contracting arrangements between various business entities within a Group. The English Court of Appeal has suggested the possibility of bringing all associates within the umbrella of protection by ensuring that the crew are seconded to the owner or operator and/or ensuring that the owner or operator is responsible for the actions of the associate. Such arrangements can easily be put into place with properly drafted inter-company agreements.

Further, given the contextual interpretation of the terms 'operator' and 'manager', when planning the contractual arrangements, consideration should be given to ensure that the party designated as 'operator' or 'manager' can in fact fall within the ambit of these terms under English / Singapore law.

For further queries, please feel free to contact our team below.

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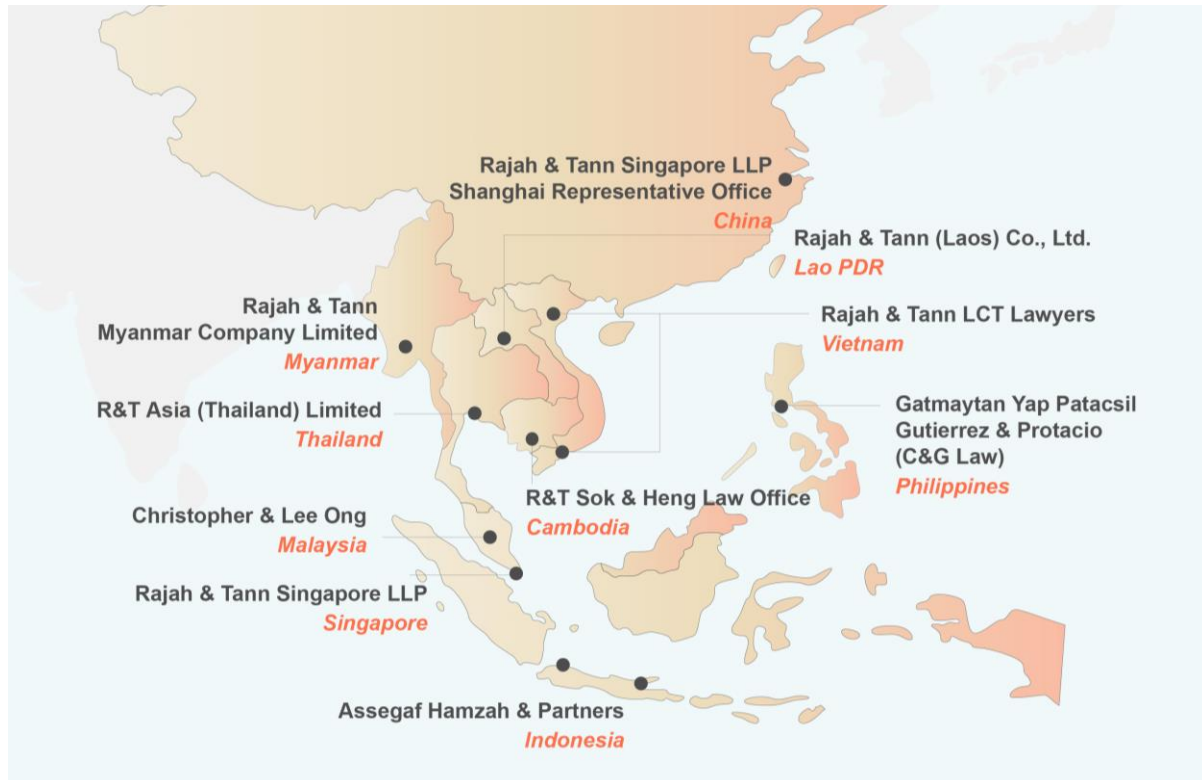
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