THE MARITIME LAW ASSOCIATION OF SINGAPORE

MLAS
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ARTICLES

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About MLAS

The Maritime Law Association of Singapore (MLAS) aims to promote the study and advancement of maritime law and its administration in Singapore, and to promote and consider with other associations proposals for the unification of maritime law and practice of different nations.

The MLAS is a member organization of the **Comite Maritime International (CMI)** a non-governmental international organization devoted to the same object of the unification of maritime law and is the only organization in Singapore entitled to attend the International Conferences of the CMI.

MLAS President's Message

Dear Members,

I am pleased to say a few words in the introduction of this latest edition of our newsletter.

Our objectives are to ensure that our members have a resource to keep abreast of the latest and significant developments in our maritime legal space. It also offers an invaluable opportunity for contributors to unselfishly share their experience and knowledge. Having reviewed the latest edition, I am proud to say that these objectives are duly fulfilled and I hope you will likewise find it to be of interest and relevance to you.

I am grateful to all our contributors for taking time and spending their efforts in contributing to this latest edition. I also wish to thank our Publications Committee headed by our Vice President, Bazul Ashhab. Thank you.

I also wish to take this opportunity to inform you of the upcoming 11th Asian Maritime Law Conference, organised by our MLAS organising committee headed by Kenny Yap. It will be held on 14th October 2026 at the Fullerton hotel. It provides a platform for us to gather and share our knowledge and experience. Please support us and register for the conference when it opens. Hope to see all of you at the conference in mid-October.

Leong Kah Wah
MLAS President
2026/2027

Chairperson of Publication Subcommittee's Message

Dear Members,

It is my pleasure, once again, as Chairperson of the MLAS Publication Subcommittee, to introduce the latest edition of the MLAS e-publication.

The maritime industry continues to evolve against a backdrop of geopolitical uncertainty, changing commercial practices, technological innovation and an increasingly dynamic legal and regulatory landscape. In keeping with this year's theme, "Current Developments in Maritime Law and Practice," this edition brings together a collection of articles examining current legal and commercial developments affecting the maritime industry. We trust that these contributions will provide readers with valuable insights and encourage continued discussion within our maritime community.

This edition features contributions from experienced and well-regarded professionals of the maritime community who have generously shared their expertise. I am grateful to each of our contributors for helping to make this publication a valuable resource for practitioners and all those with an interest in maritime law.

I would also like to express my sincere appreciation to the members of the MLAS Publication Subcommittee for their commitment and hard work in bringing this edition to fruition.

I look forward to your continued support and contributions to future editions of the MLAS Newsletter.

Warm regards,

Bazul Ashhab Bin Abdul Kader
Chairperson of MLAS Publication Subcommittee
2026/2027

General Average – Security

M. Jagannath

1. We had earlier written on the provision of security[i] by the various interested parties (which would include the cargo interests) following the declaration of a General Average ("GA") and will not repeat what has been published earlier. This article will focus on the law and jurisdiction clause provided in the security wordings sought by the Average Adjusters on behalf of Owners.

2. With respect to the GA declared for The Ever Lenient, the Average Adjusters sought security by way of way of an Average Bond from cargo interests and an Average Guarantee from the cargo insurers which provided for English Law and Jurisdiction.

3. Law of the Contract:

a. English Law is commonly preferred in shipping contracts, including Bills of Lading ("BL"), owing to its well developed body of precedent. This is understandable and in fact, the majority of shipping contracts provide for English Law as the Law of the contract.

b. With respect to GA, contracts of carriage would invariably provide for the incorporation of York Antwerp Rules 1994 of 2016 ("YAR 94" or "YAR" 2016"). The YAR 94 or YAR 2016 do not have any specific provisions on the law or place of adjustment. This being the case, some contracts of carriage do provide for the place of adjustment or allow this to be accomplished at the Carrier's option[ii]. However, none of these clauses provide for the law and/or jurisdiction and therefore the provisions of the contract of carriage should apply to govern the GA.

4. Jurisdiction:

a. The selection of English Jurisdiction may however disadvantage cargo interests, particularly due to the costs and practical difficulties associated with pursuing or defending claims at a distance. This can include the expense of addressing issues such as denial of GA[iii], as well as the generally higher costs associated with proceedings in certain jurisdictions.

b. The Ever Lenient was trading in F E/SE Asia & Indian Sub-Continent and therefore the use of English Courts, arguably, would not have been with in the contemplation the cargo interests, particularly, if the Bills of Lading issued provided for another jurisdiction to deal with disputes.

c. Courts in other jurisdictions are also able to deal with issues related to GA (Singapore, Malaysia and Hong Kong to name a few) including dealing with foreign law (which in this case would be English Law). This will obviously bring diversity in the development of law and which should be welcomed! Accordingly, we believe that the time has come to consider other competing jurisdictions or processes and which may be more efficient not only in time but also in costs.

5. Incorporation of York Antwerp Rules in Contract of Carriage:

a. With respect to shipments under charterparties (C/P's), the charter would contain provisions for GA and which would include the relevant edition of the York Antwerp Rulesiv to be used for the adjustment together with the l ocation/jurisdiction where the adjustment would be accomplished. We do not have any issues on the adjustments being accomplished on the basis of the C/P's given that

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this was contractually agreed between parties.

b. Liner shipments will invariably have concurrent contracts of carriage (underlying and overlying contracts) and which may provide for different terms i.e. the Owners C/P terms on GA may not match the terms of the BL issued to the cargo interests or by the underlying carriers/NVOCC's. We had earlier touched on issues which may arise in shipping contracts having different codes[v] and similar issues would also arise for the provision of different jurisdictions to deal with disputes.

i. The BL to the cargo interests may provide for another law and jurisdiction. An argument can certainly be made that the law related to the adventure including GA should be based on what is provided in the contract closest to the Owners or the BL issued to the cargo interests. We submit that given that security is sought from cargo interests, the provisions of their contract (cargo interests) should be the one which should be relevant to the security being provided by them.

ii. Parties can vary the terms of their contract by agreeing to law and jurisdiction sought by Average Adjusters. The question then is whether cargo interests freely agreed to the varied wordings or were coerced? If coerced, cargo interests could later try and deny the application of the jurisdiction provided in the security wordings.

iii. Some jurisdictions expressly provide for the compulsory application of their law[vi] and jurisdiction for shipments from or to their jurisdiction. This being the case, irrespective of the wordings of the security, should a party initiate action in their jurisdiction, they would be entitled to deny the application of foreign law or j urisdiction as may be provided in the Average Bonds/Guarantees.

6. The way forward:

a. It remains our view that these issues could all be dealt by choosing arbitration as the default dispute resolution process with a revolving seat[vii] (to ensure that the courts of the location where the cargo interests are based have supervisory control of the arbitration) and Law (if absolutely necessary). While an argument can certainly be made that a revolving Seat and Law would create an issue with certainty, the fact is that where domestic law provides for supremacy of their local laws and jurisdiction, they would apply irrespective of the choice provided in the contract.

b. Some of the Arbitration Rules do allow for joinder[viii] (see R 29 of SCMA Rules) subject to the agreement of all parties. The advantage of joinder are efficiency, consistency and cost savings given that it allows related parties or claims to be dealt with in one proceeding, reducing the risk of conflicting outcomes and avoiding duplication of time and expense.

c. Given that Arbitration is a contractual choice made by parties, rules of other associations/institutions can be amended to provide for such a provision.

7. The York Antwerp Rules are regularly revised considering changes in law and technology. We had earlier suggested that the time has come to have separate YAR Rules[ix] for Container Shipping. Accordingly, as and when the YAR come up next for revision, the issue of having separate rules for Container Shipping can be considered and

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discussed. Additionally, the YAR for Container shipping, if accomplished, can incorporate provisions such as class arbitration and which is now developing in consumer contracts.

8. In conclusion

a. It is time to also look at other jurisdictions to deal with GA's based on costs and geographical proximity to the voyage/incident in question.

b. Given the changes in law, arbitration should be considered as the default dispute resolution process for GA's given that the arbitral rules can provide for multiple seats and pathways to consider the potential differences in the contracts involved in the voyage.

[i.] See our earlier articles, Salvage & General Average – Security Issues, General Average – CMA CGM Libra and Rule D Defence,General Average – Reasonableness, General Average – Freight Forwarders & Containers, General Average – Differing Codes and Salvage & General Average – Excessive Security.
[ii.]See Cl 22 of MSC, Cl 24 of the Maersk & Clause 15(1) of TT Series 100 Bills of Lading Terms and Conditions.
[iii.] See our earlier article, General Average – CMA CGM Libra and Rule D Defence.
[iv.] See Clause 29 of Gencon C/P 2022.
[v.] See our earlier article, General Average – Differing Codes.
[vi.] See our latest article, China's New Maritime Code.
[vii.] See our earlier article on The Revolving Seat.
[viii.] See SCMA IV edition Rule 29.1 which states "If the parties so agree, the Tribunal shall have the power to add other parties (with their consent) to the arbitration and make a single final Award determining all disputes between them".
[ix.] See our earlier article, General Average – Container Vessels.

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Bills of Lading – Electronic & Switch

M. Jagannath

During the recently concluded ICMA XXIII, many papers were presented by the participants including the two papers below (we thank both Ms. Kimarie Cheng of WFW & Mr. Charles Debattista of 36 Stone for giving permission to publish the same in our website):

a. From Paper to Platform: Attornment and Electronic Bills of Lading[i]:

1. While we are all for the increased use of EBL's, overwhelming majority of BL's issued are Paper BL's ("PBL") and with EBL's still in single digits. This being the case, there still appears to be resistance to the usage of EBL's and perhaps, this can be explained that most of the EBL's have not captured the essence of PBL's. A search on the types of EBL's reveal that they are either

i. Blockchain Based Platforms such as Cargo X, Wave BL, IQAX, Trade Go, DocuTrade.
ii. Centralized/Traditional Platforms such as Bolero, essDocs, edox Online and eTEU.

2. If you look at PBL's, the transfer is done by endorsement to another, and which is only known to the Carrier once a party comes forth for delivery. There is no platform / intermediate party who is aware of the transfer of the shipment. However, some of the eBL's require that this information be available with them and while the successive party is not liable till such time, he comes forth to take delivery, the issue is whether the successive party is comfortable in providing this information.

3. Accordingly, it appears to us that a Peer-to-Peer EBL's are more closely aligned to PBL's such that they appear, at least in our opinion, to have the best chance of acceptance by trade.

4. Only time will tell how the trade progresses given that there appears to be resistance to change. In any event, the progression from PBL to EBL will allow for the easy visibility across the chain for all participants and also bringing costs.

b. To switch and how to switch – Switch Bills of Lading, carriers, traders and banks[ii]:

1. Switch BL's are commonly issued when a cargo interest wishes to mask some of the information to their counterparties. There may be legitimate reasons for masking this information.

2. While, in the absence of contractual agreement, there is no duty on the Carrier to issue a Switch BL, we submit that, if the Carrier agrees to issue a Switch after receiving a duly endorsed Bill of Lading, they have a duty of confidentiality[iii] i.e. they must not provide information related to the earlier parties.

3. One of the questions asked during the presentation of the paper was whether an eBL could be switched? Given that eBL's are supposed to be functional equivalent to PBL, we believe that the eBL's could be easily switched with the Switching party approaching the Carrier by accomplishing the first set of BL's and seeking a Switch.

[i] See our earlier articles, Electronic Bills of Lading, Electronic Bills of Lading – Part 2, Electronic Bills of Lading – 3, Electronic Bills of Lading -4, Bills of Lading – Electronic/Blockchain or Traditional methods?, Bills of Lading – Title to Sue.
[ii] See our earlier articles, Switch Bills of Lading – Revisited, Of Switch Bills of Lading, Bills of Lading – Issues and the paper of Dr Miriam Goldby on Managing the risks of Switch Bills of Lading.
Iii See our earlier article, Should Customer's / Shipment Information be provided to 3rd parties?

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When Ships Sink, Who Floats First?

John Sze, Ace Yuan

Singapore High Court charts the boundaries between insolvency, admiralty priorities and equitable subrogation in Re Da Shun Shipping (Pte) Ltd [2026] SGHC 75. Managing Partner John Sze, together with Withers KhattarWong LLP, acted for the liquidators of Da Shun Shipping (Pte) Ltd in this matter.

1. The decision is likely to be of particular interest to banks, creditors, insolvency practitioners and shipping disputes lawyers.

2. In insolvency, hard cases often arise not because there are too few creditors, but because there are too many rights competing over something too little value.

3. But what happens when one creditor's money is used to discharge another debtor's liability? Can that creditor inherit the discharged lender's security and leapfrog others? And when statutory lienholders agree to stand down and facilitate a sale of a vessel, do they lose the very priority they were bargaining to preserve?

4. These questions were brought sharply into focus in Re Da Shun Shipping (Pte) Ltd [2026] SGHC 75, where the Singapore High Court confronted the intersection of insolvency restructuring, admiralty priorities, and equitable subrogation.

5. In a commercially significant judgment, Justice S Mohan clarified three important issues:

a. when equitable subrogation will and will not be available to a co-debtor;

b. when equitable subrogation will and will not be available to a co-debtor;

c. how section 100 of the Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") can preserve creditor priorities through substitute security; and

c. why even preserved priority rights remain subject to proof of substantive liability.

Background

6. Da Shun Shipping (Pte) Ltd ("**Da Shun**") and its sister company, An Wei Shipping Pte Ltd ("**An Wei**"), both part of the Hin Leong group, entered into a US$33.8 million joint and several loan facility with Bank of America, N.A. ("**BofA**"), secured by cross-collateralised mortgages over their respective vessels.

7. When An Wei's vessel (the "**Sea Horizon**") was sold amid the group's financial collapse, approximately US$5.8 million of the sale proceeds was used to discharge part of Da Shun's indebtedness under the same facility.

8. Da Shun's vessel (the "**Sea Latitude**") remained subject to

a. BofA's mortgage; and

b. competing admiralty claims by The Hongkong and Shanghai Banking Corporation Limited ("**HSBC**") and Societe Generale ("**SG**") for cargo misdelivery.

9. To facilitate the sale of Sea Latitude free of encumbrances, Da Shun's judicial managers obtained an order under section 100(2) IRDA permitting the vessel's sale. The vessel was sold for US$24.6 million. BofA was repaid in full. The balance of US$12.45 million was paid into court pending determination of competing claims.

10. The dispute that followed concerned who had the better claim to that fund.

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Issue 1: Contribution Does Not Equal Subrogation

11. An Wei argued that because its vessel sale proceeds were used to pay part of Da Shun's debt, equity should permit it to step into BofA's shoes and inherit BofA's mortgage priority over the sale proceeds.

12. The High Court rejected this argument. Justice Mohan held that equitable subrogation is not a free-standing fairness remedy. It is rooted in unjust enrichment, and a claimant must establish a recognised unjust factor.

13. The Court found that An Wei had voluntarily agreed to:

a. joint and several liability; and
b. cross-collateralised security.

14. The risk that one vessel might discharge another borrower's debt was part of the contractual bargain. There was no mistake, no failure of basis and no defective transaction. Accordingly, there was no unjust enrichment capable of grounding subrogation. The Court drew a sharp distinction between personal rights of contribution and proprietary rights of subrogation. An Wei may have had the former, but not the latter.

Practical lesson for lenders and co-borrowers

15. Parties entering cross-collateralised financing structures should appreciate that commercial exposure under joint and several liability may not later be recharacterised into proprietary rights simply because one co-borrower ends up bearing more of the repayment burden.

16. Bad commercial outcomes do not necessarily amount to legal injustice.

Issue 2: Section 100 IRDA and Substitute Security

17. The more novel issue concerned HSBC's and SG's statutory lien claims.

18. To facilitate the private sale of the vessel, HSBC and SG agreed to discontinue their admiralty in rem writs. An Wei argued that by doing so, they lost their lien rights and therefore any priority over the fund.

19. The High Court disagreed. Section 100 consent order expressly provided that the balance sale proceeds would be paid into court "as security" for HSBC's and SG's claims pending adjudication.

20. Justice Mohan held that the sale proceeds became the substitute res. In effect, the security interest moved from the vessel to the fund, and most importantly, the Court treated the section 100 order as a consent order and interpreted it using contractual interpretation principles. The Court held that where parties negotiate and agree terms embodied in a court order, the order is not merely procedural, it is also a binding commercial arrangement. The Court therefore gave effect to the parties' commercial bargain.

Practical lesson for competing banks and creditors

21. If rights are being preserved through restructuring mechanics, those rights must be expressly and carefully documented.

22. This decision demonstrates that properly drafted sale orders can preserve priority architecture despite the disposal of the underlying asset.

23. In distressed shipping contexts, sale proceeds can become a powerful substitute security mechanism.

Issue 3: Priority Does Not Dispense with Proof

24. The final issue was whether HSBC and SG had sufficiently proved their underlying mis delivery claims.

When Ships Sink, Who Floats First?

25. The Court made clear that the preserved priority does not mean proven liability. Although HSBC and SG retained their position against the fund, they still had to establish:

a. title to sue under the bills of lading;
b. actual misdelivery; and
c. quantum of loss.

26. The Court found these issues were heavily fact-sensitive and unsuitable for final determination on affidavit evidence. Proper adjudication, likely by trial was required.

27. This is an important reminder that insolvency distribution principles and substantive liability remain distinct inquiries.

<u>Practical lesson for disputes practitioners</u>

28. Priority disputes and merits disputes should be analytically separated. Winning the priority argument does not mean winning the substantive claim. Practitioners should resist the temptation to conflate security preservation with liability determination.

Conclusion

29. Re Da Shun Shipping (Pte) Ltd is an important development in Singapore insolvency and admiralty jurisprudence.

30. It demonstrates the Singapore court's willingness to uphold commercial bargains, preserve creditor expectations, and maintain the integrity of insolvency distributions, while resisting attempts to retrospectively reorder priorities through equitable arguments.

31. For banks, creditors and disputes practitioners alike, the decision is a timely reminder, in distressed restructurings, rights are not merely about who paid, but why, how, and on what legal basis priority is claimed.

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Scuttled Evidence, Sunk Claims: Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd [2026] SGCA 14

John Sze, Dong Jia Xi

The Singapore Court of Appeal's decision in *Argoglobal Underwriting* v OCBC [2026] SGCA 14 provides critical guidance on the limits of marine insurance claims, specifically addressing the interaction between the burden of proof, the definition of "perils of the seas," and the strict evidentiary requirements needed to sustain a claim for a Constructive Total Loss (CTL).

The case arose from the capsize of the jackup rig "TERAS LYZA" (the "**Vessel**") during its maiden tow voyage from Vietnam to Taiwan. Oversea-Chinese Banking Corporation ("**OCBC**"), as the mortgagee and sole loss payee under a hull and machinery marine insurance policy, brought a claim against five appellant insurance companies (the "**Insurers**"). Although the High Court originally found in favour of OCBC, the Court of Appeal reversed the decision, delivering a judgment that strictly reinforces fundamental tenets of marine insurance law.

Proving that the loss of the Vessel was caused by a peril of the seas

The Court of Appeal disagreed with the High Court's finding that OCBC had discharged its burden to prove that the loss of the Vessel was caused by a peril of the seas, as defined under standard Institute Time Clauses (Hulls). The Court of Appeal highlighted that the High Court judge had conflated the rejection of the Insurers' alternative defence theories (e.g., that the vessel was inherently unstable or a "decrepitude") with a positive affirmation of OCBC's primary case.

<u>The Dual Element Definition</u>

The Court reaffirmed that under standard English marine insurance law and practice (applicable via the policy), "peril of the seas" comprises two distinct elements:

The first element is the **maritime element** – the loss or damage must be "of the seas" (*Versloot Dredging BV v HDI Gerling Industrie Versicherung AG* [2013] 2 All ER (Comm) 465 ("*The DC Merwestone*") at [31] and [34]). This element is most commonly satisfied by proving seawater ingress (Howard Bennett, *Law of Marine Insurance* (Oxford University Press, 2nd Ed, 2006) ("*Bennett*") at para 10.26)

The second element is the **fortuity element** – the loss must be an accident. The loss cannot encompass the ordinary action of winds and waves, nor can it be an inevitable consequence of the vessel's inherent condition (*Arnould*: *Law of Marine Insurance and Average* (Sweet & Maxwell, 21st Ed, 2024) ("*Arnould*") at para 23-11).

<u>Direct Proof vs. Circumstantial Proof</u>

The Court articulated two conventional methods by which an insured can establish a claim on a balance of probabilities:

The insurer can so establish a claim with **direct proof**. The insured can establish the precise, physical cause of the seawater ingress and demonstrate its fortuitous nature. If the exact cause cannot be pinpointed, the insured may alternatively prove that the ingress resulted from one of several identified possibilities, *provided all such possibilities are fortuitous and maritime in nature.*

Alternatively, the insurer can rely on circumstantial proof. Historically designed to aid shipowners when a vessel vanishes without a trace, the law allows for a rebuttable presumption of loss by perils of the seas.

Scuttled Evidence, Sunk Claims: Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd [2026] SGCA 14

However, the Court of Appeal explicitly restricted the boundaries of this presumption, ruling that it can **only** be invoked if two cumulative conditions are met:

1. The vessel must be proven to be **seaworthy** upon sailing.

2. The vessel must have been lost in **wholly unexplained circumstances**.

Where there is evidence of an incursion of seawater in a particular part of the vessel, the cause of which is uncertain, this presumption is not applicable (*Arnould* at para 20-35).

<u>OCBC's direct proof did not address the fortuity element</u>
OCBC had pleaded that the capsize of the Vessel was caused by a combination of (i) the flooding of the Vessel's port aft thruster room and adjacent machinery space, and (ii) the effect of wind and waves. OCBC's own expert witness had testified that prevailing wind and waves did not cause the capsize, and OCBC did not plead any cause of the flooding. The Court of Appeal noted that the OCBC had made out only the maritime element, but not the fortuity element. Because OCBC's expert could only theorise potential routes of water ingress but could not propound a specific, fortuitous cause, direct proof failed.

<u>OCBC's circumstantial proof did not show loss in "wholly unexplained" circumstances</u>
OCBC had framed the rebuttable presumption of loss by perils of the seas as:

Where the insured vessel is seaworthy and has been lost by the entry of seawater in circumstances where seawater is not expected to enter in the ordinary course of things, there is a presumption of fact that the vessel has been fortuitously lost by perils of the seas.

This formulation ostensibly fuses circumstantial proof with the maritime element of direct proof.

Where OCBC appeared to accept the rebuttable presumption as requiring an "unexplained loss" of a seaworthy vessel, OCBC scoped "unexplained loss" as including circumstances where the insured simply did not proffer a plausible explanation. This goes beyond the conventional understanding that "unexplained loss" is where the insured is realistically incapable of providing an explanation.

Tracing the lineage of the term, the Court of Appeal reaffirmed the conventional understanding of "unexplained loss", such that a claimant can only rely on the rebuttable presumption where it could not determine the cause of the loss. Because the Vessel did not sink immediately but remained afloat for several weeks, the Owners had ample opportunity to conduct detailed inspections to discover the cause of the ingress but failed to do so – the circumstances were not "wholly unexplained." The Court ruled that the presumption cannot be used as an "evidential tool of convenience" to rescue an insured from shortcomings in its own evidentiary collection.

A crucial guide for claiming constructive total loss

The judgment also serves as an essential manual for both insurers and insureds regarding the rigorous thresholds required to successfully establish a Constructive Total Loss ("**CTL**").

Scuttled Evidence, Sunk Claims: Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd [2026] SGCA 14

Under marine insurance law, a vessel is a CTL if it is reasonably abandoned because its actual total loss appears unavoidable, or because the cost of recovering and repairing the vessel would exceed its insured value. In this case, the rig's insured value was US$56 million.

<u>The Hearsay Obstacle and Business Records Exception</u>

To prove that the costs of recovery and repair exceeded US$56 million, OCBC relied on a suite of "CTL Documents," including initial cost estimates and correspondence from third-party shipyards (Triyards, Offshore Heavy Transport, and Marco Polo). However, OCBC did not call on any representatives from these third-party shipyards – the makers of these quotations – to testify at trial.

The Insurers objected to these documents as inadmissible hearsay. While the High Court had admitted them under the "business records exception" of the Evidence Act, the Court of Appeal forcefully disagreed. The Court clarified that third-party quotations compiled retrospectively for the purpose of assessing an insurance claim are **not** made in the ordinary course of routine daily business trade. Consequently, they remained inadmissible hearsay and carried no weight in proving the actual figures of estimated repair costs.

<u>Total Loss of Evidentiary Value via Scuttling</u>

The case delivers a stark warning to insured parties against the premature destruction of evidence. After serving a Notice of Abandonment, which the Insurers rejected, the Owners scuttled the rig in deep waters off the Philippines after no scrap buyers emerged.

By scuttling the vessel before a consensus was reached or a definitive, independent joint survey could confirm that repair costs exceeded the insured value, the insured effectively destroyed the primary subject matter of the dispute. Without live witness testimonies from the shipyards or a verifiable physical wreck to assess, the Court held that OCBC failed to make out even a *prima facie* case that the rig was a CTL.

Key Takeaways for Insureds and Insurers

The Court of Appeal's ruling establishes clear behavioural and legal benchmarks for parties navigating maritime casualties:

<u>For the Insured</u>

- **Investigate Dynamically**: If a vessel experiences a casualty but remains accessible (e.g., capsized but afloat), the insured cannot simply declare the cause "unknown" and rely on legal presumptions. A rigorous, proactive investigation into the exact mechanism of water ingress is required.

- **Secure Substantive Evidence for CTL**: To prove a CTL based on commercial unfeasibility, an insured must present legally bulletproof evidence of repair costs. Relying on written yard quotations without securing the live or deposition testimony of the entities responsible for the estimates risks having the entire financial framework of the claim thrown out as inadmissible hearsay.

- **Preserve the Subject Matter**: Scuttling or disposing of a vessel before a claim is legally settled or before an exhaustive, undisputed condition report is completed severely impairs the insured's ability to discharge its burden of proof.

Scuttled Evidence, Sunk Claims: Argoglobal Underwriting Asia Pacific Pte Ltd v Oversea-Chinese Banking Corp Ltd [2026] SGCA 14

For the Insurer

- **The Power of Inaction on Alternative Theories**: The judgment reaffirms that insurers do not bear the burden of proving an alternative theory of loss (such as wear and tear or unseaworthiness). An insurer can succeed simply by showing that the insured's evidence is insufficient to prove a fortuitous peril on a balance of probabilities.

- **Strict Adherence to Policy Conditions**: Insurers are fully entitled to hold insured parties to strict compliance regarding the presentation of original, non-hearsay evidence when validating multi-million-dollar cost estimates.

Conclusion

Argoglobal v OCBC reinforces the conservative, predictable nature of marine insurance law in Singapore. It strictly confines the legal presumption of "perils of the seas" to true maritime mysteries where a vessel is lost without a trace. Where a casualty leaves behind physical evidence and surviving data, the burden remains squarely on the insured to systematically investigate and prove fortuity, while ensuring that any subsequent claim for a Constructive Total Loss is anchored in rigorous, legally admissible financial evidence.

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ICC Arbitration Rules 2026 – The Next Evolution

Yeo Boon Tat, Yi Lin Teoh

The International Chamber of Commerce (ICC) has published its 2026 ICC Arbitration Rules which came into force on 1 June 2026. These updates aim to improve procedural efficiency and clarity in the arbitral process while preserving the flexibility, neutrality and procedural integrity that underpin ICC arbitrations.

This article will focus on the key changes and their significance on the ICC arbitration landscape.

Terms of Reference

One of the most notable changes under the 2026 ICC Arbitration Rules is the removal of the mandatory Terms of Reference (TOR).

The mandatory TOR had long been a defining feature of previous editions of the ICC Rules. It played a central role in delineating the scope of the dispute and identifying the issues to be determined. However, the ICC recognised that its practical utility has diminished over time. The process of preparing the mandatory TOR has increasingly been viewed as time-consuming and potentially detrimental to procedural efficiency of the arbitral proceedings. Its removal therefore reflects a shift toward a more streamlined and flexible case management approach.

In place of the mandatory TOR, the initial case management conference (CMC) assumes greater importance as the primary forum for defining the scope of the dispute[1] . Notably, parties are not permitted to introduce new claims after the initial CMC without the authorisation of the arbitral tribunal[2] . In determining whether to grant such authorisation and allow new claims after the initial CMC, the arbitral tribunal must consider the following:

(i) the nature of the new claims;
(ii) the stage of the arbitral proceedings;
(iii) cost implications; and
(iv) any other relevant circumstances.

Expedited Procedure

The 2026 ICC Arbitration Rules have introduced two key enhancements to the provisions on Expedited Procedures.

First, the monetary threshold for the Expedited Procedure has been increased from USD 3 million to USD 4 million if the arbitration agreement is concluded on or after 1 June 2026[3] . This adjustment expands the range of disputes eligible for expedited proceedings and reflects the ICC's recognition of the growing effectiveness of expedited arbitration in higher value disputes.

Second, the 2026 ICC Arbitration Rules have introduced a new "Highly Expedited Arbitration Provisions" (HEAP) framework[4] . This is strictly an opt-in procedure and features an even shorter timetable with the arbitral tribunal expected to render a final award within three months from the date of the initial CMC. The ICC notes that it is likely most suitable for lower-complexity commercial disputes, claims with a simple factual matrix, or a distinct aspect of a dispute that requires swift resolution. The HEAP framework is also not intended for procedurally complex disputes.

ICC Arbitration Rules 2026 – The Next Evolution

Emergency Arbitrator

The 2026 ICC Arbitration Rules have introduced new provisions to the Emergency Arbitrator procedure.

While the previous 2021 ICC Arbitration Rules provided that the Emergency Arbitrator procedure applied only to "*parties that are either signatories of the arbitration agreement… or successors to such signatories*", the scope has now been extended to *"any party for which the President is satisfied, based on information in the Application, that an arbitration agreement binding such party may exist*[5]*"* .

A new mechanism has been also introduced where a party may request for preliminary orders within the Emergency Arbitrator proceedings to direct the other party not to frustrate the purpose of the Emergency Arbitrator application[6] . This request can be taken on an *ex parte basis as the ICC* recognises that there may be circumstances where prior notification may undermine the effectiveness of the relief sought (for example in cases involving potential asset dissipation or destruction of evidence).

Early Determination

The 2026 ICC Arbitration Rules have introduced a provision to allow a party to apply to the arbitral tribunal for an early determination that one or more claims or defences are manifestly outside the arbitral tribunal's jurisdiction[7]. This formalizes the guidance in ICC's Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration already existing prior to the 2026 updates to the ICC arbitration rules.

Enhancing Arbitrator Disclosure

The independence and impartiality of arbitrators are core tenets of international arbitration.

Prior to the 2026 updates to the ICC arbitration rules, the ICC's Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration contained two principles regarding the disclosure framework – (i) any doubt as to whether a disclosure should be made must be resolved in favour of disclosure and (ii) a disclosure does not imply a lack of independence or impartiality. The 2026 ICC Arbitration Rules have now incorporated these two principles to encourage prompt and full disclosure of the facts and circumstances in relation to concerns over the arbitrator's independence or impartiality[8] .

The elevation of these principles to the level of arbitration rules aims to reinforce the integrity and transparency of the arbitration process. The ICC believes the revisions in the 2026 ICC Arbitration Rules would clarify expectations around disclosures and, at the same time, also provide reassurance to arbitrators that disclosure alone should not be understood as an admission of conflict.

Confidentiality

The 2026 ICC Arbitration Rules have introduced a provision to impose confidentiality obligation on the arbitrators[9] . Interestingly, there is no equivalent obligation on the parties as the ICC has decided to leave the parties to tailor appropriate confidentiality provisions and safeguards that meet the needs of their contract or dispute.

Conclusion

The 2026 ICC Arbitration Rules represent a significant advancement toward more efficient, flexible, and transparent arbitration procedures. By carefully calibrating and refining the framework, ICC demonstrates its responsiveness to the evolving needs of the international arbitration community. Stakeholders are encouraged to familiarise themselves with these changes to effectively navigate the updated arbitration landscape.

ICC Arbitration Rules 2026 – The Next Evolution

1. Article 24, 2026 ICC Rules of Arbitration.
2. Article 25, 2026 ICC Rules of Arbitration.
3. Article 1(3) of Appendix V, 2026 ICC Rules of Arbitration.
4. Appendix VI, 2026 ICC Rules of Arbitration.
5. Article 1(2)(c) of Appendix IV, 2026 ICC Rules of Arbitration.
6. Article 7 of Appendix IV, 2026 ICC Rules of Arbitration.
7. Article 30, 2026 ICC Rules of Arbitration.
8. Articles 12(2) and 12(4), 2026 ICC Rules of Arbitration.
9. Article 12(8), 2026 ICC Rules of Arbitration.

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Stability, Progress, and a Farsighted Vision in Arbitration Law (2025 Revision)[1]

He Jun Ming

1. After much anticipation within the legal community, the revised Arbitration Law of the People's Republic of China (Arbitration Law 2025) was finally promulgated and came into effect on March 1, 2026. This article will examine the highlights of the revisions and discuss potential issues under the Arbitration Law 2025.

I. Highlights of the Arbitration Law 2025

2. The highlights of updated Arbitration Law 2025 can be summed up in four areas.

A. Enhancing the Internationalization of Commercial Arbitration System in China

a) Adopting the Seat Standard to Resolve Nationality Debates

3. Article 81 marks a significant advancement by establishing, for the first time in statute, the concept of the 'seat of arbitration.' It stipulates that the seat governs the award's nationality, determines the jurisdiction for judicial review, and indicates the default applicable procedural law.

4. The previous Arbitration Law lacked the concept of a 'seat of arbitration'. This conceptual gap led to debates in cases such as *Anhui Long Li De Packaging and Printing Co., Ltd. v. BP Agnati S. R. L.*[2] and *Brentwood*[3]. Furthermore, this revision enables international parties to better understand and accept Chinese arbitration legal system, based on their existing familiarity in the New York Convention and the UNCITRAL Model Law.

b) Formal recognition of both institutional and ad hoc arbitration in China

5. The Arbitration Law 2025 explicitly replaces the term "Arbitration Commission" with "Arbitration Institution", while Article 82 under Chapter VII ("Special Provisions for Foreign-Related Arbitration") effectively establishes a framework for ad hoc arbitration.

6. Nevertheless, ad hoc arbitration is restricted to specific types of disputes. This helps domestic enterprises gradually adapt to the ad hoc mechanism while filling a long-standing gap in Chinese legislation. Concurrently, it addresses the prior hesitancy of Chinese courts to recognize and enforce foreign ad hoc awards, which stemmed from the lack of explicit domestic legal grounding.

c) Broadening the scope of arbitrable foreign-related matters

7. Article 78 represents a significant expansion of the scope of foreign-related arbitration. While retaining the traditional categories of foreign-related disputes in economic trade, transportation, and maritime affairs, it introduces a new provision for "other disputes involving foreign elements". This expansion is further reinforced by related provisions: Article 93 incorporates the new Sports Arbitration chapter from the China revised Sports Law[4], and Article 94 acknowledges the expanded jurisdiction of institutions like Shenzhen Court of International Arbitration (SCIA) to include investment arbitration.

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d) Promoting reciprocity and strengthening the capacity for countermeasures

8. Article 88 unifies the jurisdictional nexus for the recognition and enforcement of foreign awards. Simultaneously, the revision clarifies the order of application for the principle of reciprocity: treaty obligations take precedence, followed by reciprocity. It also marks the first introduction of a "reciprocal restrictions" clause at the legislative level in China. This provides a potential legal basis for judicial countermeasures against the backdrop of escalating trade wars. Consequently, Chinese courts are better equipped to operate effectively within an increasingly complex international environment, forming synergistic legal effects with domestic laws such as the Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures[5].

B. Enhancing the Standardization of the Commercial Arbitration Industry in China

a) Clarifying the Legal Nature of Arbitration Institutions in Accordance with the Civil Code

9. Article 13 of the Arbitration Law 2025 clarifies, for the first time in statutory form, the legal nature of arbitration institutions as "public-benefit non-profit legal persons", thereby putting an end to long-standing debates over their legal status. Consequently, the operation and other aspects of arbitration institutions will now be subject to supervision consistent with that applied to other public-benefit non-profit legal persons, and mechanisms for their exit. This position is further corroborated by Articles 16 and 17, which specify the requirements for the establishment and registration of arbitration institutions.

b) Strengthening Management for Arbitrators and Institutional Staffs

10. Article 21 introduces requirements for arbitrators' professional competence, diligence, integrity, and ethical conduct. Furthermore, Article 23 explicitly clarifies the circumstances under which arbitrators may be removed, and Article 18 specifically addresses the tenure of Staffs of arbitration institutions. It is reasonable to expect that arbitration institutions will increasingly develop tailored arbitrator management rules by drawing on advanced domestic practices (e.g., *CIETAC's Code of Conduct for Arbitrators and Rules on Arbitrator Conduct Review*[6]) and international standards (e.g., the IBA Guidelines on Conflicts of Interest in International Arbitration[7]).

c) Enhancing Arbitration Procedural Flexibility with Targeted Solutions to Key Practical Challenges

11. Article 27 codifies the doctrine of deemed acceptance of jurisdiction, effectively elevating existing institutional practices—such as Article 10 of the CIETAC Arbitration Rules—to a statutory level. It provides tribunals with granular guidance on both the substantive requirements and the practical implementation of this principle. Furthermore, Article 41 modernizes the service of documents by prioritizing party autonomy over service methods. This reform significantly alleviates the perennial challenge of 'service difficulties' that has long hampered arbitration proceedings.

12. Additionally, Article 45 introduces a 'proactive disclosure' system, providing a clearer legal basis for the independence and impartiality declarations already widely adopted by leading arbitration institutions.

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d. Mandatory information disclosure

13. Article 19 requires arbitration institutions to establish an information disclosure system, mandating the proactive publication of their articles of association, fee schedules, annual financial reports, and other operational details to accept public supervision. This transparency requirement aligns with global trends toward greater openness in arbitration practice.

C. Promoting Equal Status for Arbitration and Litigation in China

14. The Arbitration Law 2025 marks a pivotal shift in promoting the equal status of arbitration and litigation in China by bridging the gap in interim relief and investigative powers. Through the implementation of Articles 39, 58, 79, and 82, the law officially extends the three core types of preservation measures—property, evidence, and conduct preservation—to the arbitration process.

Furthermore, the revised law substantially empowers arbitral tribunals by granting them greater autonomy and authority in decision-making and evidence gathering. By explicitly adopting the "competence-competence" principle in Article 31, the law grants tribunals the inherent power to rule on their own jurisdiction and the validity of arbitration agreements. Coupled with Article 55, which authorizes tribunals to seek direct assistance from relevant entities in obtaining evidence, these reforms transform the tribunal into a more robust and independent judicial body.

D. Proactively Enhancing the Technological Advancement of Commercial Arbitration in China

15. The **Arbitration Law 2025** actively drives the technological advancement of commercial arbitration in China by formalizing digital procedures and integrating technical expertise. **Article 11** provides a definitive legal foundation by granting online arbitration equal legal validity and cost parity with offline proceedings. Furthermore, **Articles 18 and 22** institutionalize the role of scientific and technical talent within the arbitration framework, encouraging the inclusion of technology experts in both institutional governance and arbitrator selection.

II. Potential Issues for Further Discussion

16. While the Arbitration Law 2025 introduces numerous highlights, it still leaves certain regulatory gaps or potential risks in the following four areas.

A. Potential Drawbacks of the "Opt-Out" Model for Online Hearings

17. Article 11 adopts an "opt-out" model for online hearings. This approach offers potential benefits such as reduced dispute resolution costs and improved efficiency. However, it also raises significant concerns regarding party autonomy since parties with limited technological access could face barriers in exercising procedural rights.

18. Furthermore, if online hearings are extensively promoted without regulation, the widespread adoption of "asynchronous proceedings" in arbitration may follow. If the parties choose "asynchronous proceedings", they may even conduct the hearing without being face-to-face or present at the same time. Should this occur, coupled with the increasing number of consumer arbitration cases in China, the solemnity and credibility of arbitration procedures could be significantly diminished.

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B. Vague "Unless Otherwise Provided by Law" Clauses May Increase Systemic Uncertainty

19. Articles 5 and 37 contain phrases such as "unless otherwise provided by law" without specifying relevant laws or provisions. Since the current PRC Securities Law, Foreign Investment Law, and Anti-Monopoly Law contain mandatory jurisdiction or exclusive procedural clauses, the absence of systematic integration is likely to lead to ambiguity over arbitrability.

20. Furthermore, as commercial arbitration is widely used in cross-border transactions and investments and requires parties' specific agreement, such vague wording could reduce contractual predictability for foreign parties designing dispute resolution clauses. This may discourage parties from choosing China as the seat of arbitration.

C. Supporting Measures for Multiple Initiatives Remain Unspecified

21. As previously discussed, the Arbitration Law 2025 introduces several changes, including granting investigative power to arbitral tribunals, improving the interim measures system, and further liberalizing ad hoc arbitration. However, the law itself does not specify detailed supporting measures for implementation.

22. Additionally, online arbitration also lacks specific standards. Although several reference documents have already published, mandatory national standards are still absent. There are also no specified consequences for violating related mandatory requirements.

III. Conclusion

23. The enactment of the Arbitration Law 2025 marks a watershed moment in the development of Chinese arbitration industry. To realize the full potential of Arbitration Law and strengthen the international competitiveness of Chinese arbitration, it is essential to deepen our understanding of legal principles and respect practical realities.

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2. SUPREME PEOPLE'S COURT, 'Reply of the Supreme People's Court to the Request for Instructions on Application for Confirming the Validity of an Arbitration Agreement in the Case of Anhui Long Li De Packaging and Printing Co., Ltd. v. BP Agnati S. R. L', ((2013) Min Si Ta Zi No. 13), in Guide to Foreign-Related Commercial and Maritime Trial vol. 26, 125–29 (25 Mar. 2013).
3. Brentwood Industries Inc v Guangdong Fa'anlong Mechanical Equipment Manufacture Co Ltd((2015) Sui Zhong Fa Min Si Chu Zi No. 62 ((2015)穗中法民四初字第62号), (2020) Guangzhou Intermediate People's Court, Aug 06, 2020.
4. Law of the People's Republic of China on Sports (promulgated on 24 June 2022, effective 1 Jan. 2023), Ch 9.
5. Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, PRC MOFCOM Order No 1 of 2021, promulgated on 9 Jan. 2021.
6. China International Economic and Trade Arbitration Commission (CIETAC), Arbitrator Management Regulations, https://www.cietac.org/categories/49 (accessed 13 Nov. 2025).
7. International Bar Association Publishes 'Guidelines on Conflicts of Interest in International Arbitration', IBA Press Release dated Monday, July 12, 2004.

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Indonesia's New Direction on Strategic Natural Resource Exports

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Background

Indonesia is moving toward a more centralized model for the export of certain strategic natural resource commodities. Following the issuance of Government Regulation No. 24 of 2026 concerning the Governance of Exports of Strategic Natural Resource Commodities ("**GR 24/2026**"), the Government intends to place selected natural resource exports under a designated state-owned enterprise ("**SOE**") mechanism.

GR 24/2026 came into force on 1 June 2026 and may represent a material shift in Indonesia's export governance, particularly for sectors that have historically relied on direct contractual relationships between Indonesian producers or exporters and offshore buyers.

General Overview of the Framework

Under GR 24/2026, the policy initially covers coal, palm oil, ferro alloy, and other strategic natural resource commodities that may be determined from time to time, with detailed Harmonized System ("**HS**") Codes [1] expected to be regulated further through a Minister of Trade regulation.

At a broader policy level, the framework forms part of the Government's effort to strengthen control over strategic exports, improve trade data integrity, and address risks such as trade under invoicing and export proceeds leakage, which also sits alongside the strengthened Foreign Exchange Export Proceeds (*Devisa Hasil Ekspor* – "**DHE**") framework under Government Regulation No. 2 of 2026 and Government Regulation No. 21 of 2026.

The policy also appears consistent with Indonesia's broader industrial policy direction under Government Regulation No. 28 of 2021 concerning the Industrial Sector Implementation as amended by Government Regulation No. 46 of 2023, where state control over strategic industries may be exercised through regulation of ownership, licensing, production, distribution, pricing, supervision, and export restrictions to support domestic availability and industrial deepening.

Scope of Strategic Natural Resource Commodities

GR 24/2026 defines "Strategic Natural Resource Commodities" as natural resource commodities determined by the Government by considering national interests, economic stability, domestic needs, and/or national strategic resource management. At the initial stage, GR 24/2026 identifies coal, palm oil, and ferro alloy as Strategic Natural Resource Commodities. It also allows the Government to designate additional commodities through a coordination meeting led by the Coordinating Minister for Economic Affairs or the Coordinating Minister for Food, as applicable, and formalized through a Minister of Trade regulation. Strategic minerals, plantation commodities, and other export-oriented products should therefore monitor potential future inclusion.

Role of DSI and the Transition Period

The central feature of GR 24/2026 is the restriction on who may export Strategic Natural Resource Commodities. Such commodities may only be exported by a designated SOE export entity, either as owner or as sole intermediary. Government statements identify PT Danantara Sumberdaya Indonesia ("**DSI**") as the SOE expected to carry out this role.

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Under the current export framework, private business actors may generally export coal and palm oil, subject to licensing, customs, and sectoral requirements. The new regime may replace that model by requiring exports of covered commodities to be conducted through, and later by, DSI.

During the transition period, contemplated to run until **31 December 2026**, exports may only be conducted through DSI. This transition period also requires an evaluation within three months after the regulation comes into force. Based on that evaluation, the Government may set an earlier deadline. After the transition period, exports may only be conducted by the SOE export entity, entailing a fuller transfer of the export-facing function to DSI.

Potential Impact on Existing Commercial Arrangements

For businesses operating in affected commodity sectors, the key issue is the treatment of existing export arrangements. Many exporters currently operate through long-term sales contracts, offtake arrangements, shipping arrangements, and price adjustment mechanisms. These are typically built around direct privity between the Indonesian exporter and the offshore buyer.

Companies should assess whether existing contracts contain change in law clauses, force majeure clauses, assignment or novation provisions, payment redirection provisions, sanctions undertakings, and clauses governing title transfer, delivery terms, and risk allocation, especially for contracts extending beyond the transition period.

GR 24/2026 provides that sales contracts signed before 1 June 2026 and still in force will be evaluated by the SOE export entity. This may create immediate review requirements for existing long-term offtake and export sales arrangements.

During the transition period, the implications are likely to be procedural and documentary, as GR 24/2026 indicates that exports "through" the SOE export entity may involve submission of export documents, sales contracts, related documents, and additional data through integrated government systems. After the transition period, domestic producers may need to shift from direct international sales to a domestic sale or supply model with DSI. Based on GR 24/2026, the SOE export entity will also determine the selling price and may apply a reasonable margin, which may affect pricing control, buyer relationships, tax treatment, and liability allocation.

Shipping and Logistics Considerations

The framework may affect shipping and logistics arrangements, particularly where existing export contracts are structured around a private exporter's control over shipment scheduling, vessel nomination, loading arrangements, and delivery terms. Export transactions for commodities are often linked to charterparty arrangements, bills of lading, letters of credit, shipping instructions, laytime and demurrage, port readiness, and customs clearance. If DSI becomes the party through which, or by which, the export is legally conducted, businesses should review whether existing shipping documents and contracts remain aligned with the new structure.

Where the Indonesian producer is currently named as shipper, exporter of record, seller, or beneficiary under a letter of credit, the introduction of a DSI layer may require adjustments to shipping instructions, documentation flow, payment documents, and title transfer mechanics. Any mismatch between the commercial contract, customs declaration, bill of lading, and payment documentation could create issues in cargo release, insurance coverage, and dispute allocation.

Indonesia's New Direction on Strategic Natural Resource Exports

GR 24/2026 expressly provides that the governance of such exports may include export control, including verification or technical tracing, as well as regulation of export transportation and insurance. This gives a clearer regulatory basis for shipping, freight procurement, marine cargo insurance, and related documentation issues.

This DSI framework may also potentially affect the direct appointment of other Indonesian SOEs operating in the shipping sector, on the assumption of achieving cost efficiency among SOEs within the context of maritime transportation.

In addition, the DSI framework may also be afforded various regulatory and commercial facilitation measures within the context of transportation and logistics incentive schemes. For instance, if the framework is implemented alongside a requirement for exports to be conducted on a CIF basis, further considerations may arise regarding freight procurement, marine cargo insurance, vessel nomination, and shipment execution, which have been established for decades by the Government of Indonesia through the Minister of Trade and the Minister of Finance. As the export-facing entity under a CIF structure typically assumes responsibility for arranging carriage and insurance, DSI may exercise greater influence over the arrangements, potentially affecting existing chartering practices and commercial shipping relationships. Such arrangements may also give rise to questions concerning the allocation of responsibility for laytime, demurrage, detention, cargo claims, shipping instructions, and insurance recoveries, particularly where contractual, customs, banking, and shipping documentation are issued by different parties.

The DSI framework may also create new considerations relating to jurisdiction and dispute resolution mechanisms in international commercial arrangements and charter parties. With the potential shift toward a state-linked entity, counterparties may increasingly prefer foreign governing laws and neutral forums, including international arbitration.

Operational and Compliance Issues to Watch

Several issues will have to be anticipated, such as:

- The implementing regulations will need to clarify commodity coverage, including detailed HS Codes.
- Sectoral implementation also remains uncertain, e.g., public reporting indicates that the Ministry of Energy and Mineral Resources is still awaiting further technical regulations and implementation guidance.
- Businesses will need clarity on DSI's legal role, particularly whether it will act as owner, sole intermediary, seller, or exporter of record.
- Payment and DHE mechanics will need to be aligned. Companies should expect closer scrutiny of payment flows, export proceeds, foreign exchange retention, and reporting.
- The transitional period may require contract restructuring, including amendments to export contracts, letters of credit, shipping documentation, bank coordination, and customs procedures.
- Businesses with government contracts or agreements containing investment, divestment, and domestic processing and/or refining commitments should also assess whether they may fall within the exemption mechanism under GR 24/2026.

Indonesia's New Direction on Strategic Natural Resource Exports

What Businesses Should Do Now

- **Regulatory exposure mapping**: Identify affected products, relevant HS Codes, and export contracts that may remain active beyond the transition period.

- **Relevant contract review**: Assess whether existing contracts need to be amended if exports must be conducted through or by DSI, including sales contracts signed before 1 June 2026 that remain in force and are subject to evaluation. Key areas for review include the seller, exporter of record, payment recipient, delivery obligations, liability allocation, dispute resolution, and change in law provisions.

- **Buyer communication**: For companies with long-term buyers, early communication may be necessary. Offshore buyers will likely require certainty on contractual performance, delivery responsibility, and whether DSI will assume any direct contractual obligations.

- **Shipping and documentation audit**: Review charterparty arrangements, letter of credits beneficiary designation, and title transfer mechanics to assess the implication of the DSI structure.

Closing Remarks

The centralized export governance framework signals a clear shift in Indonesia's approach to strategic natural resource exports. While framed as a measure to improve trade governance and support the domestic economy, its implementation could materially affect existing business models in major export sectors.

The practical impact will depend on DSI's formal role, detailed HS Code coverage, and implementing regulations. Until then, businesses should avoid assuming that the policy will operate as a simple administrative routing mechanism, and should continue preparing contract, payment, and shipping documentation reviews in parallel.

1. HS Code a standardized numerical classification for goods used for customs tariff and trade statistics purposes. In Indonesia, HS classification is operationalized through the Indonesian Customs Tariff Book (Buku Tarif Kepabeanan Indonesia – BTKI), which adopts the international 6-digit HS structure and the ASEAN Harmonized Tariff Nomenclature (AHTN), and is implemented through the applicable customs tariff regulations.

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