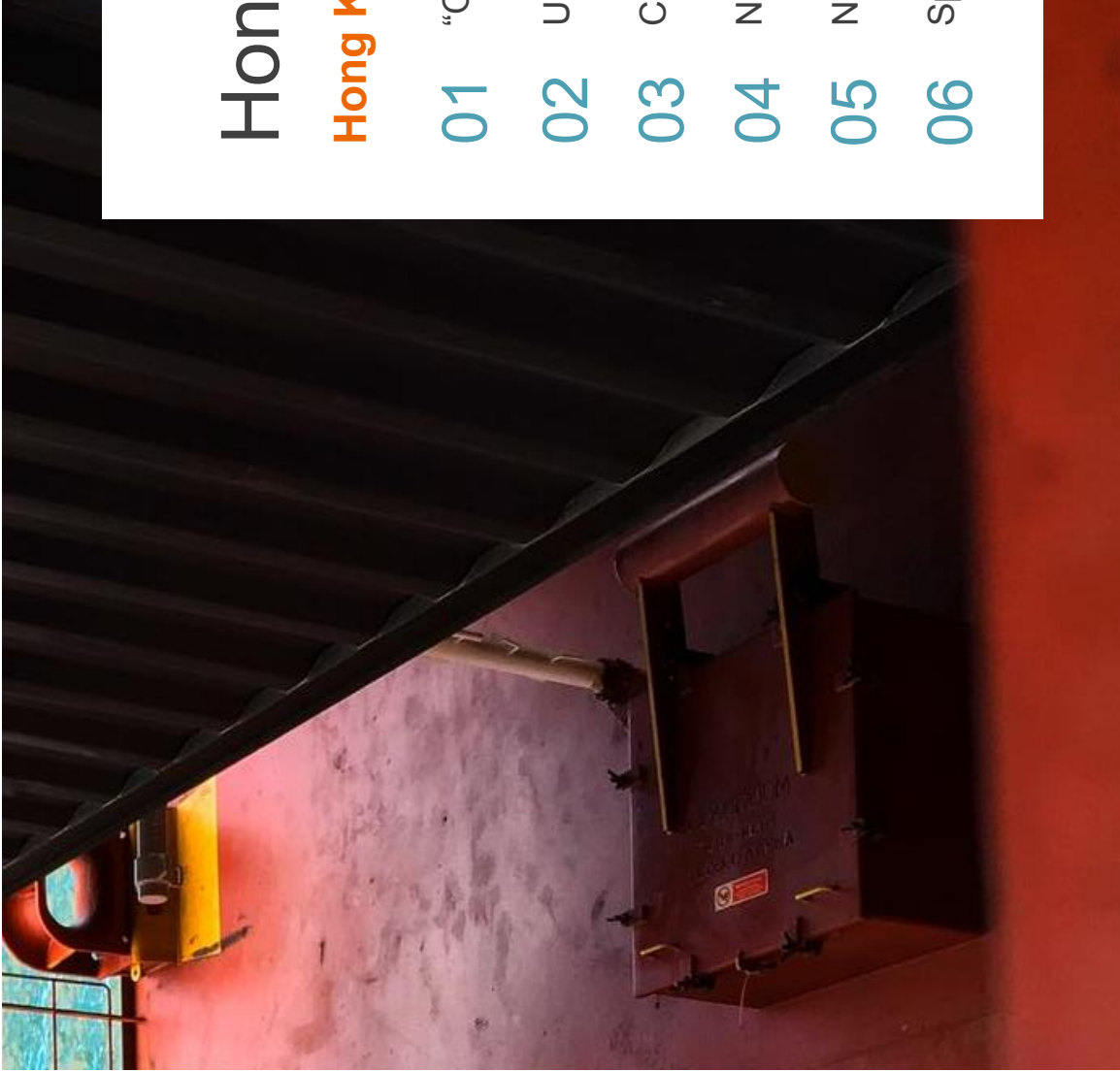


Arrest and injunctions in Hong Kong

Shiparrested Conference, Cairo
23 April 2025

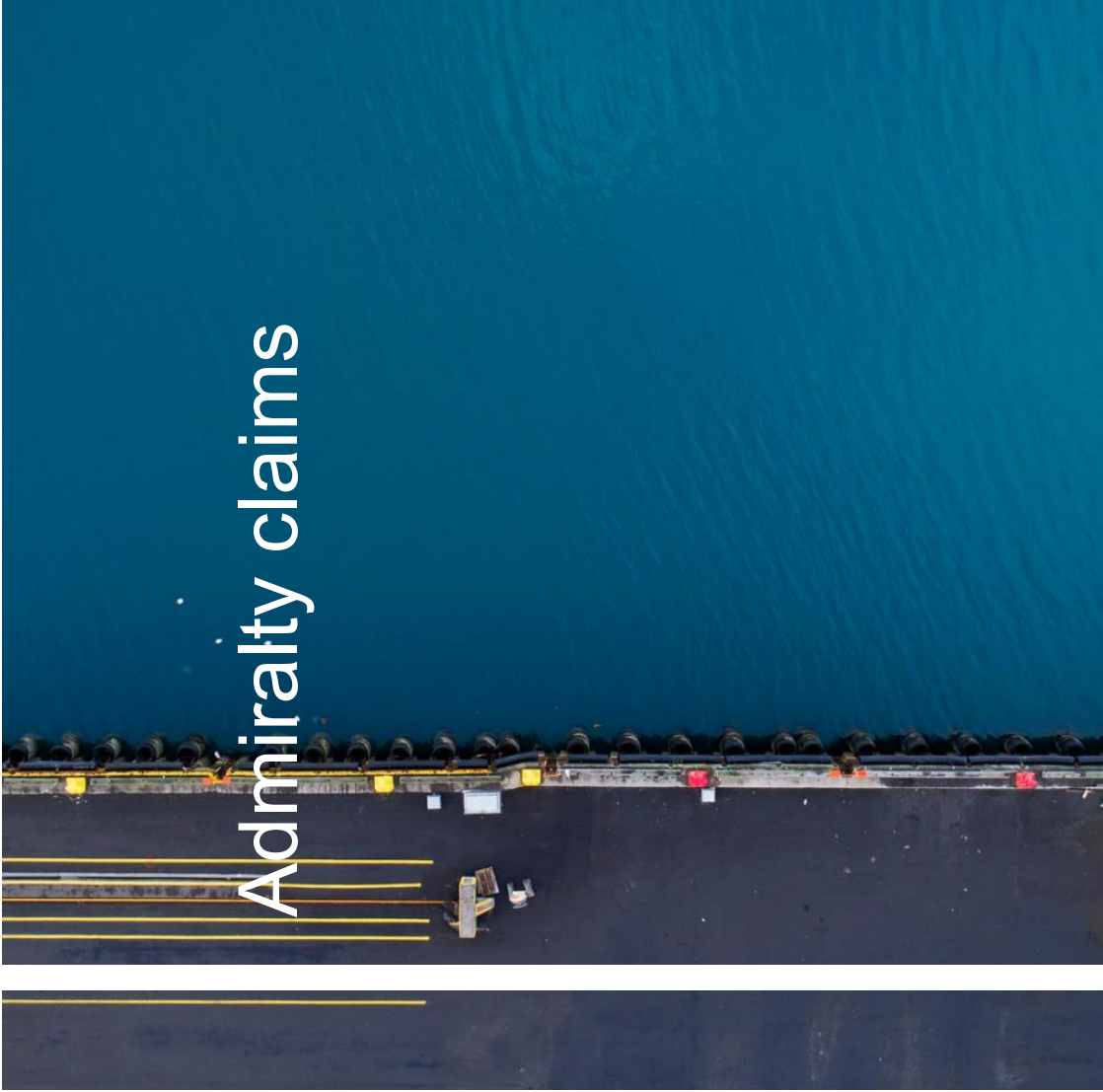
Steven Wise | Andrew Horton
CMS Hong Kong LLP



Hong Kong legal system

Hong Kong is part of China, but

- 01 “One country, two systems” – common law, not civil law
- 02 Use of English language, as well as Chinese
- 03 Copy documents, not originals / notarised copies
- 04 No POA / COI required
- 05 No exchange controls
- 06 Specialist Admiralty Court



Admiralty claims

- Claims to possession / ownership
- Mortgage
- Damage done to or by a ship
- Loss of life or personal injury
- Cargo claims
- Charterparty disputes
- Crew wages
- Claims regarding repair and construction
- General average
- Towage
- Salvage
- Goods or materials supplied to a ship
- Enforcement of “maritime” arbitration awards

NOT: MOA, general disputes, insurance premiums

Advantages of arresting in Hong Kong



Quick

Duty Judge
available 24/7

Simple

Limited disclosure



Economical

Court fees under
USD300
Lawyers' fees
usually USD6,000
to USD7,500
No counter-security



"Dip in dip out"

Obtain security for
arbitration or
foreign Court
proceedings
No requirement to
pursue substantive
claim



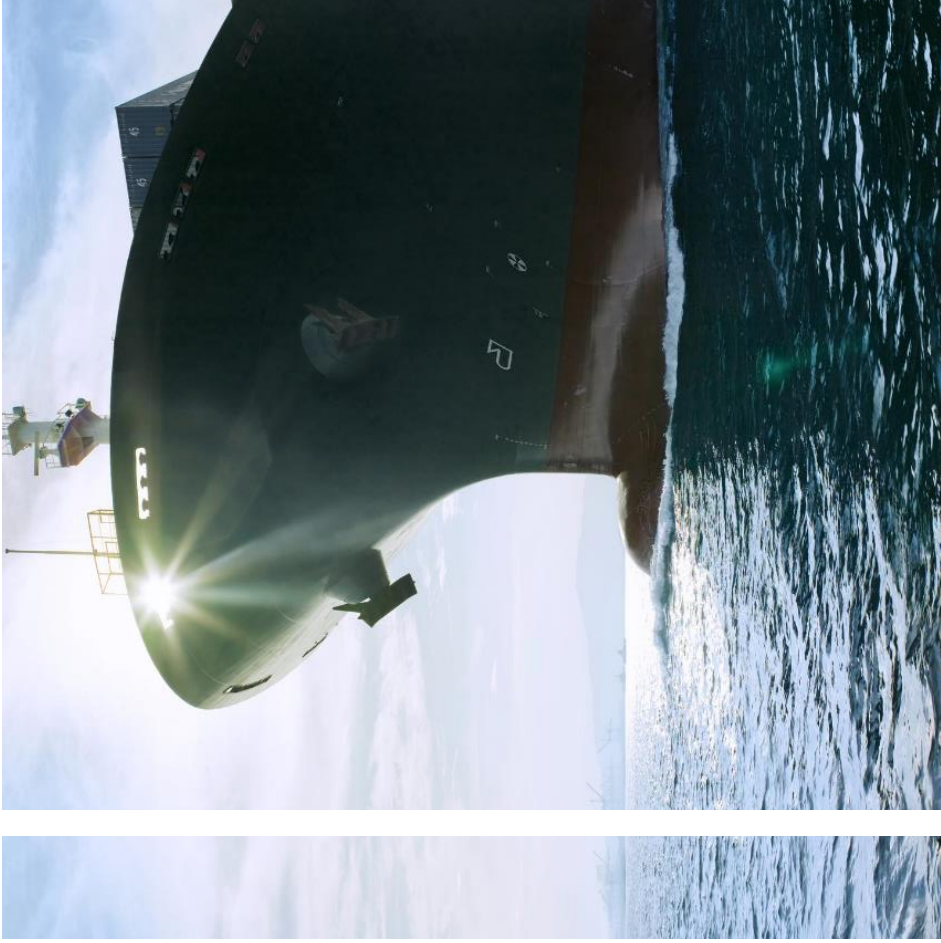
Security

Entitled to security
for best arguable
case plus interest
and costs
Highest limits under
Limitation
Conventions



Wrongful arrest

High test
Damages rarely
awarded



What if I can't arrest?

- Wrong type of claim, e.g. under MOA
- Vessel not calling in a favourable jurisdiction:
 - Requires counter-security
 - Requires original / notarised / translated documents
 - Expensive
 - Slow
- If it is a **Hong Kong flag ship**, consider applying for an **injunction**

香港船舶註冊處 HONG KONG SHIPPING REGISTRY



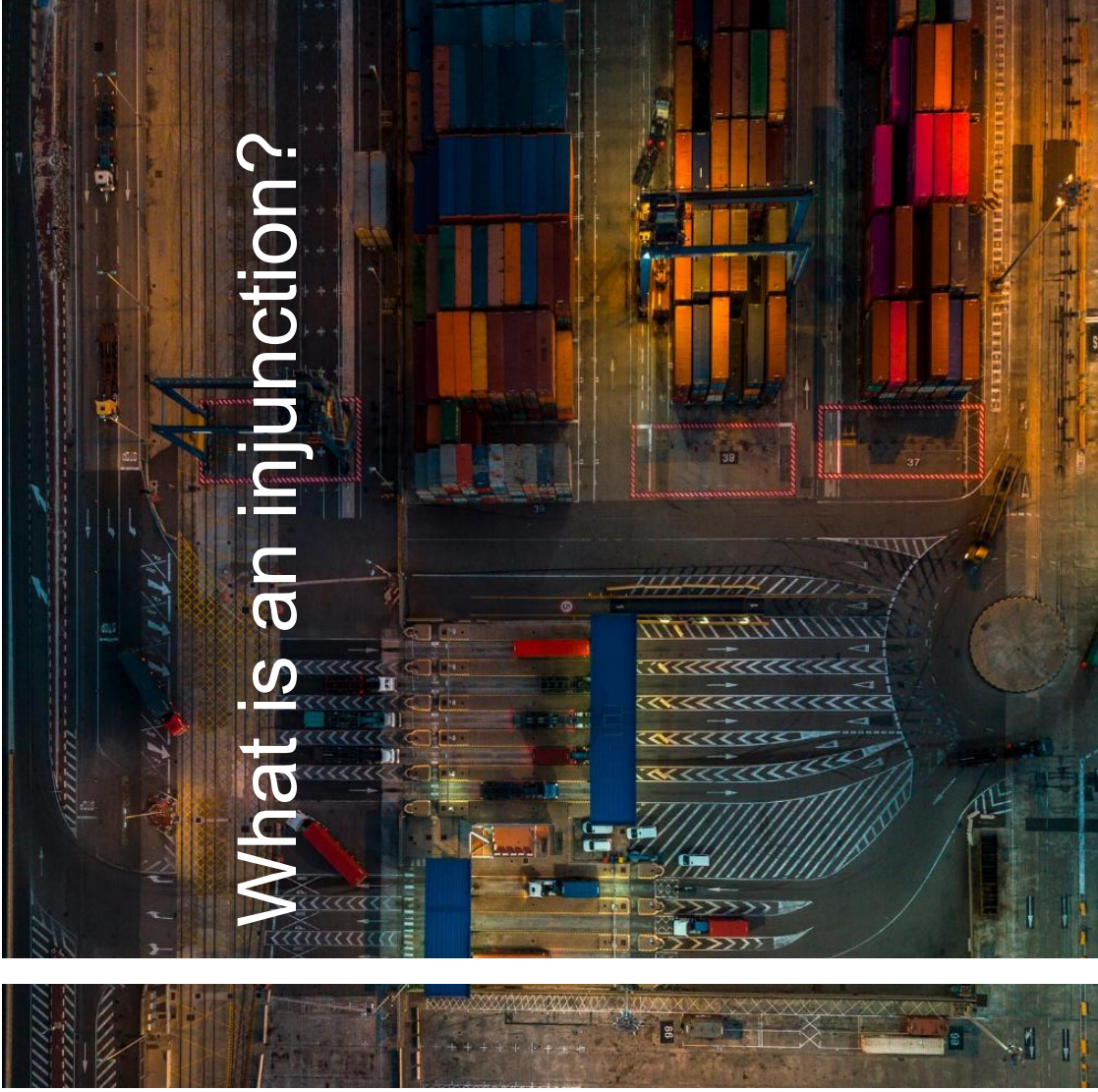
More than
2400 ships



128 million
gross
tonnage



4th largest
register (by
tonnage)



What is an injunction?

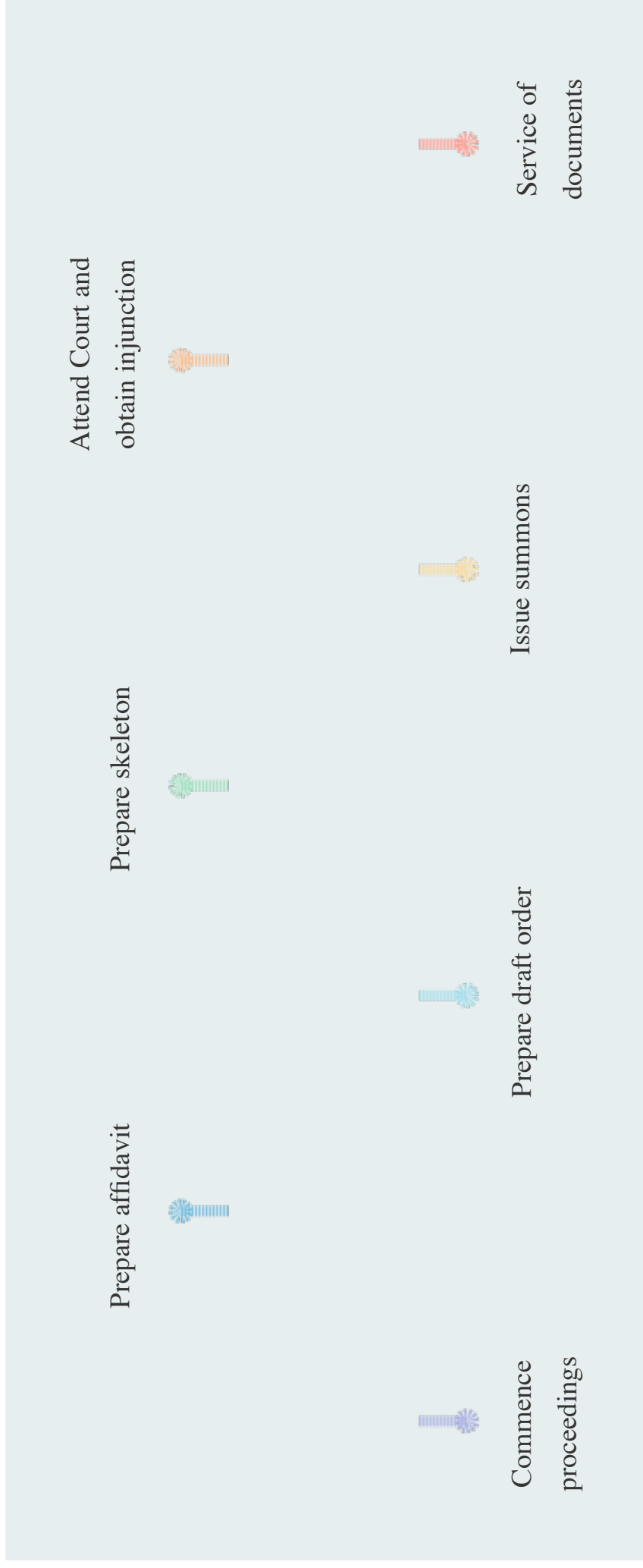
Effect of an injunction

- Prevents dissipation of assets
- Usually used to freeze bank accounts
- Applies to all types of assets, including ships
- Hong Kong flag ship – serve on Registry

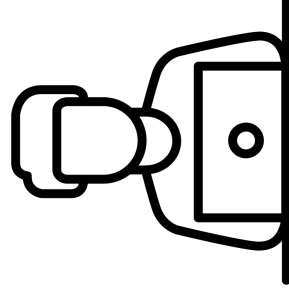
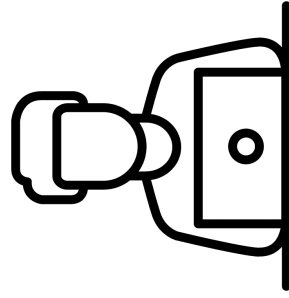
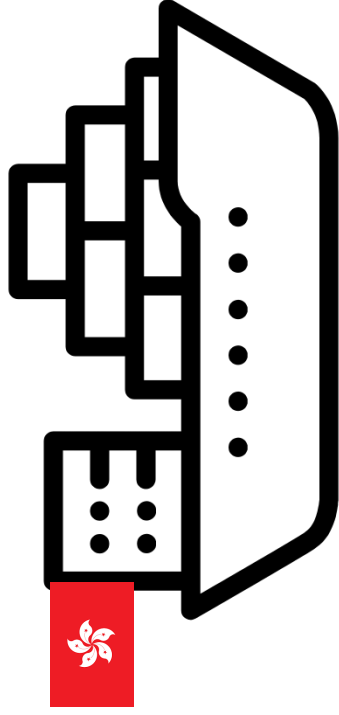
Legal test

- A serious question to be tried
- Are damages an adequate remedy?
- Is there a real risk of dissipation of assets?
- Balance of convenience

Injunctions – application procedure



Case study - background



Parties concluded Memorandum of Agreement for sale of HK flagged vessel

Seller (HK company) walked away from the deal before completion, saying they had decided not to sell

Rumoured that Seller in fact intended to sell to someone else for a higher price

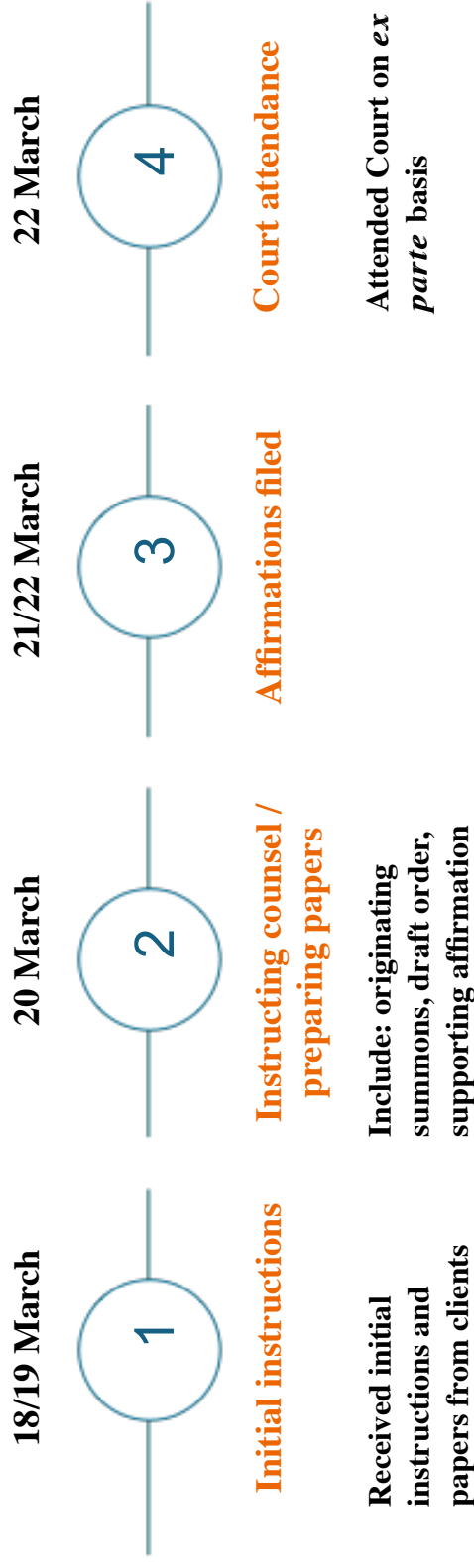
Not practical to arrest the vessel

Buyer asked us what could they do to prevent sale to a new buyer

Could we get an injunction?

Legal test	In our case
• A serious question to be tried • Are damages an adequate remedy? • Is there a real risk of dissipation of assets? • Balance of convenience	• Opinion from London Counsel on merits • No – sale proceeds would be quickly moved, so award of damages would be unenforceable • Yes – low commercial morality bordering on fraud in saying no longer wanted to sell but negotiating sale at higher price • In favour of injunction – would not prevent trading of vessel

Timeline – applying for the injunction



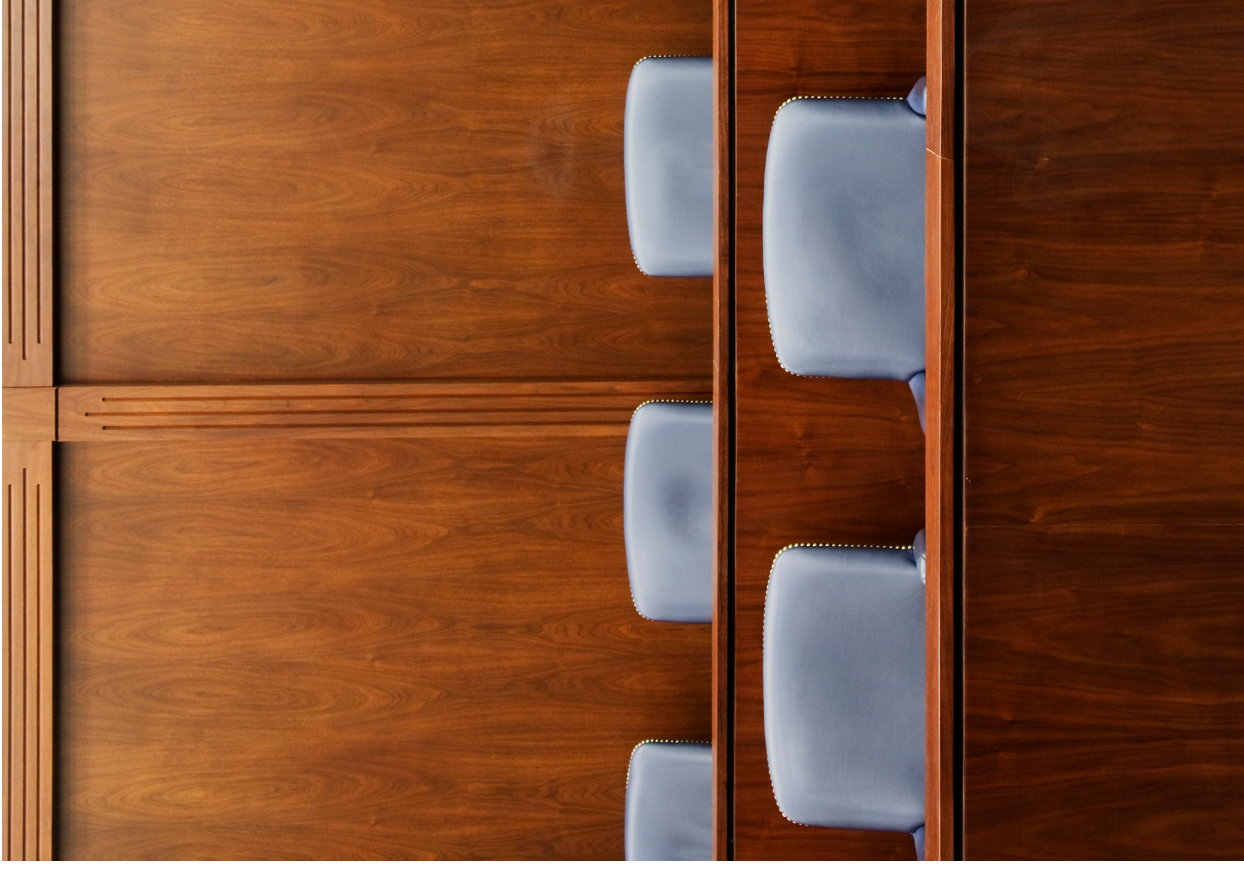
At the hearing...

Urgency?

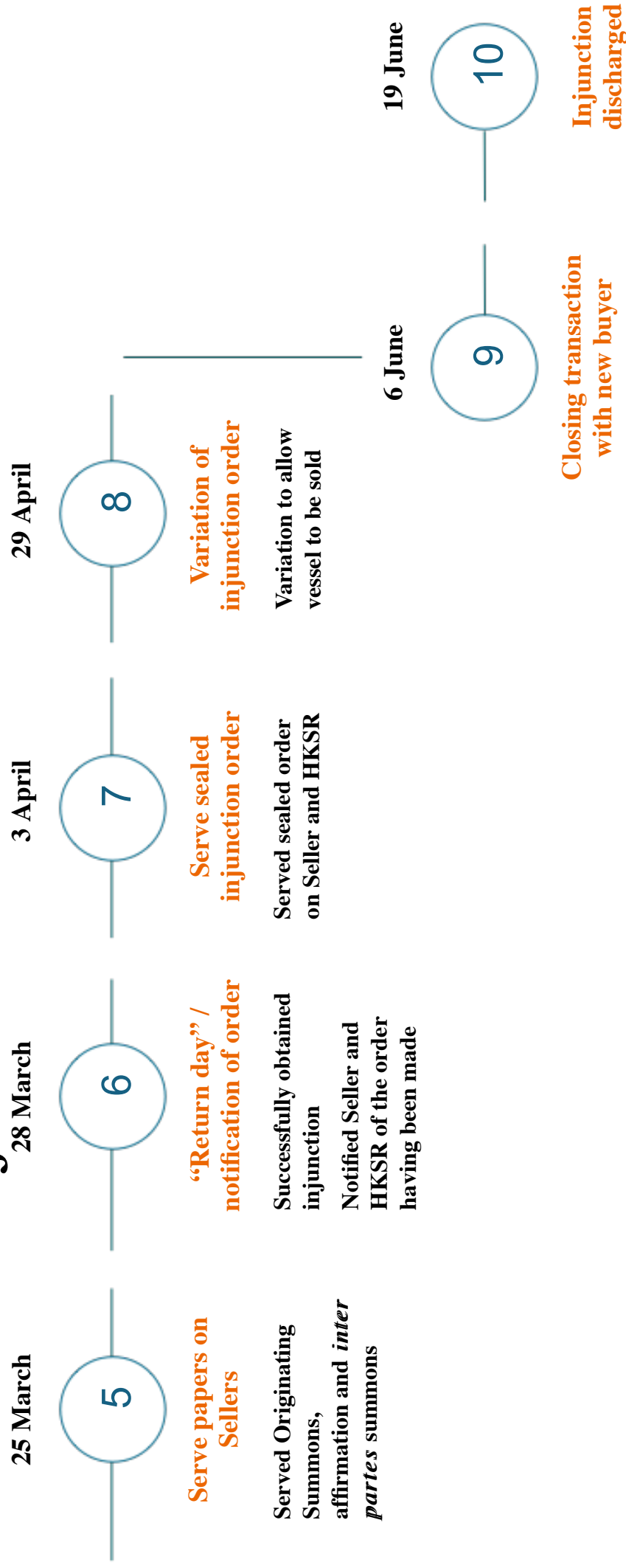
- Vessel was under charter
- 2 disports – AIS indicated vessel at the 1st port
- Would still have to travel to the redelivery port
- Original sale terms were that the vessel would be free of current employment, cargo, etc.
- Judge assumed another sale would be on similar terms, and there was no evidence to the contrary

Necessity for *ex parte* – not satisfied

- Judge kept the case with him
- We issued summons for an *inter partes* hearing on the next Thursday (the “return” day)

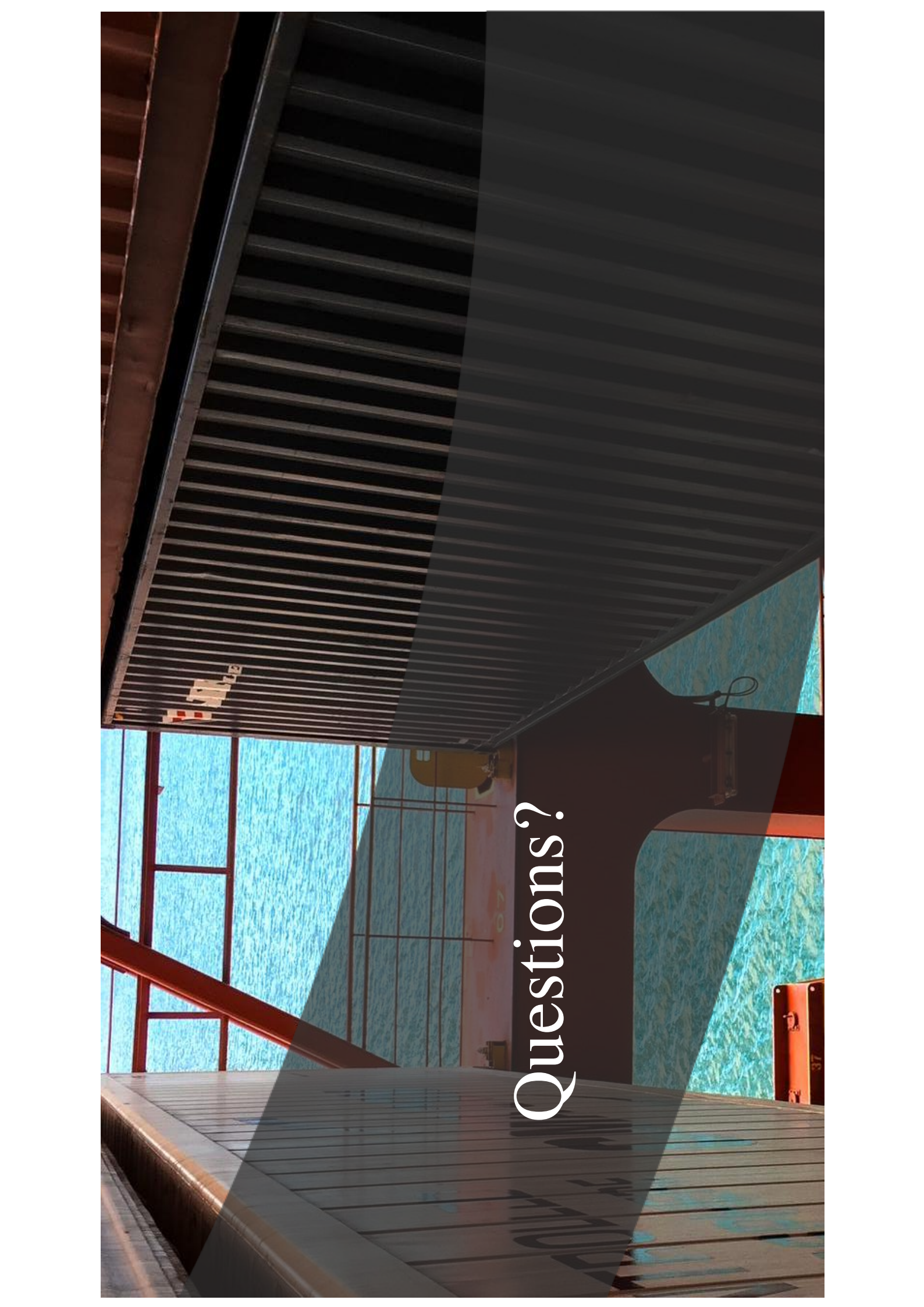


Timeline – obtaining / serving / discharging the injunction



Our monitoring

- Apparent change of ownership found in public searches
- Apparent change of the vessel's name
- Clarifying ownership with the Registry – including obtaining transcripts and reminding Registry of prohibition on transfer
- Notifying relevant stakeholders (including the Registry and the P&I Club which appeared to hold cover)

The background image shows a ship's deck with a dark, semi-transparent overlay. The overlay is a large, dark, irregular shape that covers most of the image. The text "Questions?" is written in a white, serif font, centered within the dark area. The ship's deck is visible in the background, with a railing and a view of the ocean. The text "Questions?" is the main focus of the image.

Questions?

Team

Andrew Horton and Steven Wise have very effectively galvanised CMS' maritime practice in the region, adding to the firm's existing financing and transactional offering.

Legal 500 Asia-Pacific

Disputes



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Although it does handle some traditional shipping finance work, the team's sweet-spot lies in relation to the financing of complicated energy and onshore-related vessels, including LNG carriers and floating production storage and offloading (FPSO) units.

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