




# The Changing Face of Passage Planning and the Legal Implications & Ince

Richard Oakley / Partner, Ince & Co (HK)

DD-MM-2021

# Contents

- 01 / Seaworthiness – legal position
- 02 / Seaworthiness - what's at stake
- 03 / Passage planning – practical realities
- 04 / Passage planning – what's changed

An aerial photograph of a city street scene, showing tall buildings, roads with cars, and a yellow diagonal line running across the image from the bottom left towards the top right.

“The firm’s vast and intellectual team is highly regarded for its experience in real estate and insurance.”

— Lorem ipsum

# The Deal – Hague Rules of 1924

The obligation at Art III (1): a carrier must exercise **due diligence before and at the beginning of the voyage** to make the **ship seaworthy**, to properly man and supply the ship, and to ensure the holds are fit to receive the goods.

The exemption at Art IV (2): for **act, neglect, or default of the master, mariner, pilot, or the servants of the carrier** in the navigation or in the management of the ship

1924



# 2011, CMA CGM Libra



# *CMA CGM Libra* judgement

The finding: The cause of the grounding was determined to be 'the defective passage plan and the master's resulting negligence in deciding to navigate outside the buoyed fairway'

The test: 'prudent owner test', namely 'would a prudent owner have sent the ship to sea with the relevant defect without requiring it to be remedied, had he known of it?'

# What is at stake:

Sound property values	\$ 24 M (ship \$ 12 M / cargo \$12 M)
Total <u>salved</u> values	\$16 M (ship \$ 8 M /cargo \$ 8 M)
Salvors' OOPs	\$ 6 M
Resultant Art 13 award	\$ 10 M (H&M and cargo each \$ 5 M)
Total SCOPIC costs	\$ 12 M (\$ 2 M excess for P&I)
General Average expenditure	\$ 4 M
Cargo Interests' PA losses	\$ 4 M

# Cargo Interests' claim:

Indemnification from shipowners for all losses attributable to the grounding based on a claim of unseaworthiness:

Share of salvage claim:	\$ 4.5 M
No contribution towards GA expenditure:	\$ 2 M
Cargo loss and damage:	\$ 4 M
Total claim:	<u>\$10.5 M</u>



# Passage Planning – APEM

- Appraisal:** Collecting and assessing all relevant information required for the intended passage
- Planning:** Developing and approving a passage plan based on the outcome of the appraisal of all relevant information
- Execution:** Briefing the bridge team on the passage plan. Navigating the ship in accordance with the passage plan
- Monitoring:** Checking progress of the ship against the passage plan.

SMS should include guidance for passage planning – but how relevant?

# Commercial Pressure

Charterers' want to cut corners to save a few hours, often expressed through their voyage routing company:

*“Reason: If safe navigation permits, we would like to suggest via W of [location] to minimize sailing distance / duration and FOC.”*

Master's perception to save time and cost – a fair perception?

NYPE clause 9:

*“That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and if necessary. Make a change in the appointments.”*

# Passage planning and ECDIS

A transitional phase from paper charts and publications to all electronic

Does the Master still understand the passage plan?

Do the OOWs understand the passage plan or are they just following the 'red line'?

# Priorities when passage planning, are they the same?

Shortest route

Proximity to navigational aids

Proximity to land

Staying on the “well trodden path”

Just how important is it to plan for GPS blackout or bridge black out?

Are AIS vectors better than ARPA vectors?

# CATZOG v. Paper chart

SCALE: 1:500,000

*[UK Hydrographic Office: suitable for general navigation but not for coastal]*

## SOURCE

The hydrography is derived from Indonesian Government charts of 1989 to 2008, based mainly on surveys of 1893 to 2008, and miscellaneous lines of passage soundings (see DEPTHS note). Satellite imagery of 1992 to 2001 has been used for coastline and the delineation of shoal areas (see SHOAL AREAS note). Later information has also been included.

## DEPTHS

Many of the areas on this chart have not been systematically surveyed. Depths in these areas are from miscellaneous lines of passage soundings or old leadline surveys. Uncharted dangers may exist.

## SHOAL AREAS

Many of the areas depicted within the area of this chart without contours have been derived from incomplete satellite imagery. Uncharted dangers may exist.

## ASL – ARCHIPELAGIC SEA LANES

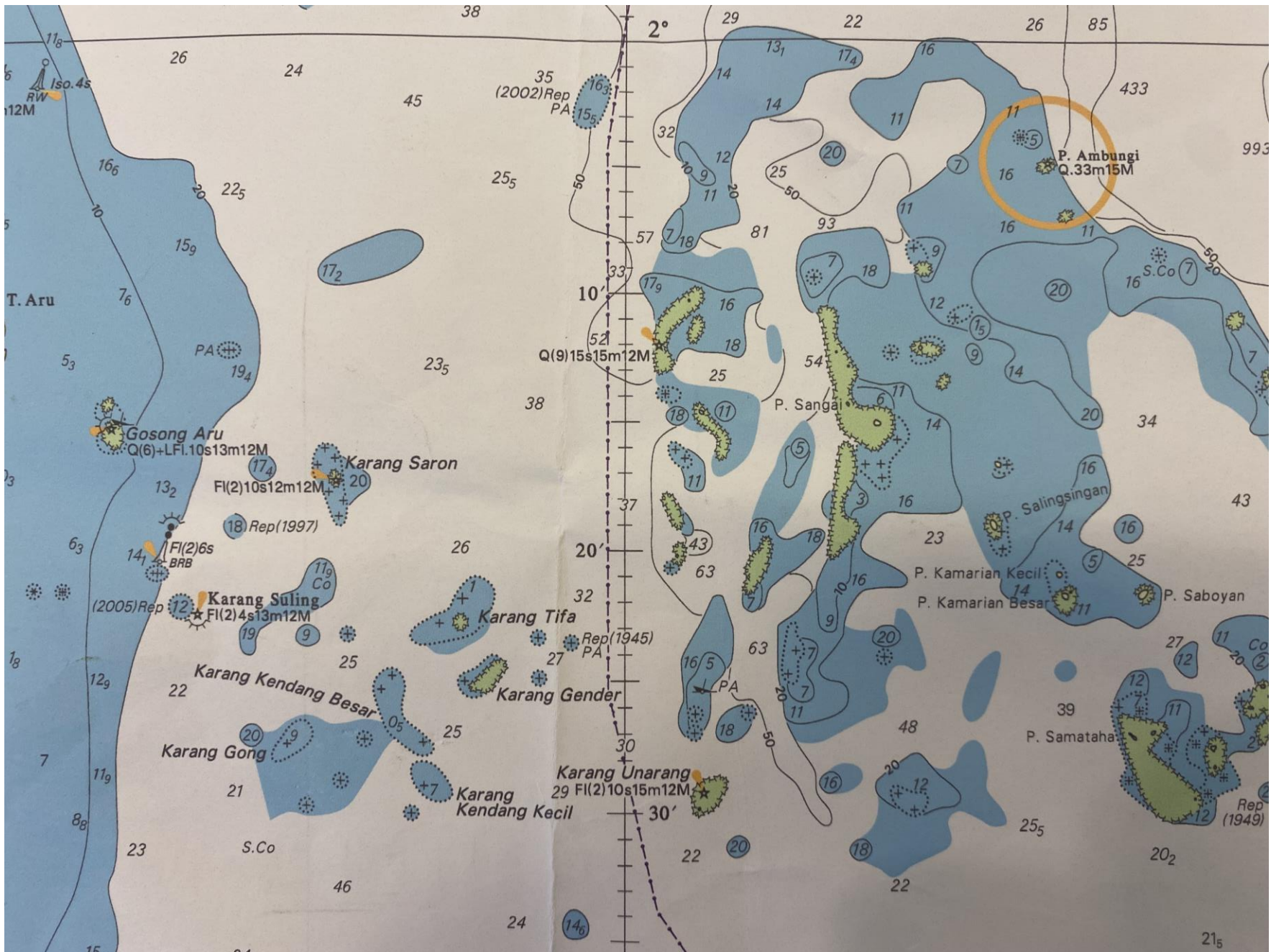
Archipelagic Sea Lanes, as defined in UNCLOS, have been designed in the area of this chart. Vessels exercising archipelagic sea lanes passage shall not navigate to shoreward of the limits indicated thus: [symbol] and shall not deviate more than 25 miles from the charted axis line.

The axis line of the ASL does not indicate the deepest water nor any recommended route or track.





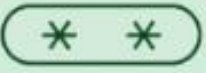
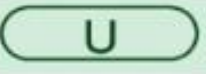
For further details, see the Mariner's Handbook and AMIRALTY Sailing Directions.

## Mariner's Handbook

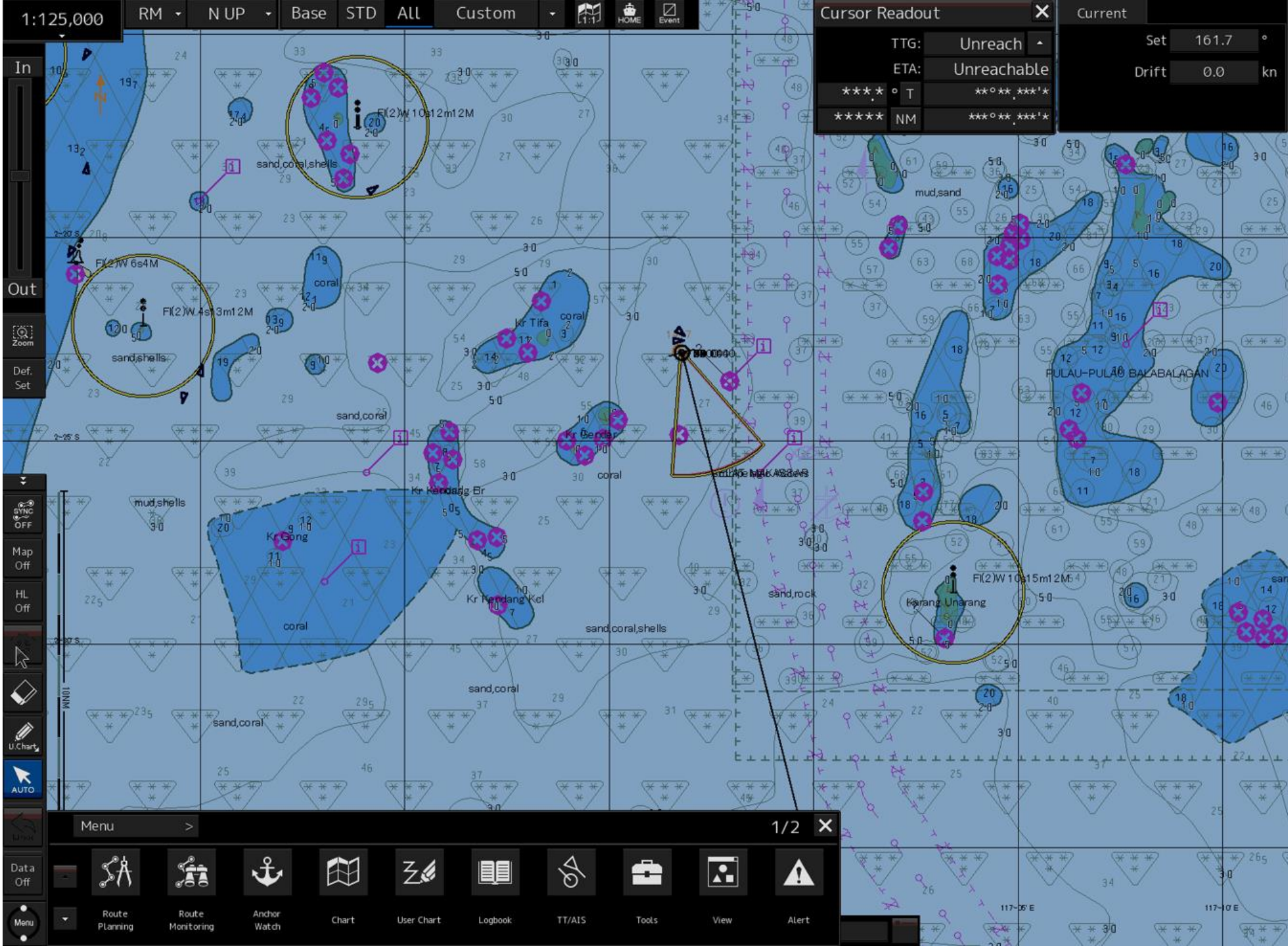
It should be noted that the axis of an Archipelagic Sea Lane does not indicate the deepest water, or any route or recommended track.



# CATZOG v. Paper chart

ZOC	Position Accuracy	Depth Accuracy		Seafloor Coverage	Typical Survey Characteristics	Symbol
A1	± 5m	=0.50 + 1%d		Full area search undertaken. Significant seafloor features detected and depths measured.	Controlled, systematic survey high position and depth accuracy achieved using DGPS or a minimum three high quality lines of position (LOP) and a multibeam, channel or mechanical sweep system.	
		Depth [m]	Accuracy [m]			
		10	± 0.6			
		30	± 0.8			
		100	± 1.5			
1000	±10.5					
A2	± 20m	=1.0 + 2%d		Full area search undertaken. Significant seafloor features detected and depths measured.	Controlled, systematic survey achieving position and depth accuracy less than ZOC A1 and using a modern survey Echosounder and a sonar or mechanical sweep system.	
		Depth [m]	Accuracy [m]			
		10	±1.2			
		30	± 1.6			
		100	± 3.0			
1000	± 21.0					
B	± 50m	=1.0 + 2%d		Full area search not achieved; uncharted features, hazardous to surface navigation are not expected but may exist.	Controlled, systematic survey achieving similar depth but lesser position accuracy less than ZOC A2 and using a modern survey echosounder, but no sonar or mechanical sweep system.	
		Depth [m]	Accuracy [m]			
		10	±1.2			
		30	± 1.6			
		100	± 3.0			
1000	± 21.0					
C	± 500m	=2.0 + 5%d		Full area search not achieved, depth anomalies may be expected.	Low accuracy survey or data collected on an opportunity basis such as soundings on passage.	
		Depth [m]	Accuracy [m]			
		10	±2.5			
		30	± 3.5			
		100	± 7.0			
1000	± 52.0					
D	Worse than ZOC 'C'	Worse Than ZOC 'C'		Full area search not achieved, large depth anomalies may be expected.	Poor quality data or data that cannot be quality assessed due to lack of information.	
U	Unassessed - The quality of the bathymetric data has yet to be assessed.					

*\*In practice, it is usually assumed that the reliability error of bathymetric data measurements estimated for ZOC (D) and ZOC (U) zones assumes values at least 10% higher than the values estimated for the ZOC zone (C), which can also be recorded as: (2.0m ± 5% · d) · 1.1.*





# Thank you, in any case

## Richard Oakley

Partner & Master Mariner

D +852 2509 5222

T +852 9686 0722

E richardoakley@incegd.com

## Office

Hong Kong Office

4404-10, 44th Floor

One Island East

18 Westlands Road, Taikoo Place

Hong Kong

T: +852 2877 3221

F: +852 2877 2633

Ince is a trading name of Ince & Co, a firm of solicitors regulated by the Law Society of Hong Kong.  
Ince & Co是香港合伙制律师事务所，受香港律师会规管。

E: firstnamelastname@incegd.com / incegd.com

24 Hour International Emergency Response Tel: + 44 (0)20 7283 6999

LEGAL ADVICE TO BUSINESSES GLOBALLY FOR OVER 150 YEARS.

©Ince

24小时国际紧急事件响应电话 + 44 (0) 20 7283 6999

为全球企业提供法律服务超过150年

©Ince

Disclaimer Notice: The contents of this document and any attachments are strictly confidential to the intended recipient(s) and may be privileged. If you are not the intended recipient(s) please do not use or publish its contents and notify us as soon as possible. If received by email, please also delete the message from your system and destroy any copies.

免责声明: 以上资料 and 任何附件是对特定接收方严格保密, 而且享有特权。如果你不是指定接收方, 请不要使用或发布此讯息, 并请尽快联络我们。如果以电邮的方式接收, 请从你的系统上删除此讯息, 并销毁任何复印本。以上信息不针对也不构成任何法律意见, 仅作参考用途。本所尽力提供最新及正确的咨询, 但不对这些资料的精准性和准确性负任何责任, 也不会对任何依赖这些咨询而造成的后果负任何法律责任。如果有任何问题, 我们强烈建议读者寻求法律意见或与本所的联络人取得联系。