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To: Transport Industry Operators

**Updated PRC legal position
Cargo delivery without B/L**

On 26/2/2009, China's Supreme People Court announced certain Rules to deal with the cases of cargo delivery without production of original bill of lading. These 15 latest Rules have been effective since 5/3/2009.

The most important change is that the carrier can no longer rely on the PRC Maritime Code's liability limitation (i.e. whichever is the higher of 666.67 SDR/package or 2 SDR/kg of the cargoes) to limit liability for cargo delivery without production of original bill of lading (no matter it is a straight, order or bearer bill of lading). In other words, the carrier has to bear full liability of cargo value each and every time.

We suggest shipping companies and freight forwarders carry out loss prevention measures without any delay e.g.

1. buy transport liability insurance to cover their liability for cargo misdelivery in order that the risks can be transferred to the transport liability insurers;
2. choose reliable and professional cargo delivery agents; and
3. send clear standing cargo delivery instructions to all the agents (demanding them to deliver cargoes to consignees only against production of original bill of lading; otherwise, the agents have to bear full liability).

We would like to summarise the 15 Rules as follows:

1. The bills of lading referred to in this set of new Rules include straight, order and bearer bills of lading.
2. The holder of original bill of lading is entitled to have the carrier bear civil liability for losses resulting from cargo delivery without production of original bill of lading.
3. For cargo delivery without production of original bill of lading, the holder of original bill of lading is entitled to require the carrier to bear liability in contract or in tort. The PRC Maritime Code and other laws are applicable to cargo delivery without production of original bill of lading.
4. The carrier cannot rely on Article 56 of the PRC Maritime Code to limit liability for cases of cargo delivery without production of original bill of lading.
5. For cargo delivery against production of forgery bill of lading, the consignee holding the original bill of lading is entitled to require the carrier to bear civil liability on the basis of cargo delivery without production of original bill of lading.
6. The carrier's compensation amount to the original bill of lading's holder for cargo delivery without production of original bill of lading is the value of the cargoes upon loading on vessel plus freight charges and cargo insurance premium.
7. When the carrier has to deliver the cargoes to the bill of lading discharge port's Customs or Port authorities in accordance with the local laws / regulations, the carrier is not to bear any civil liability for cargo delivery without production of original bill of lading.
8. When the Customs sells / disposes of the cargoes which have no party to do timely customs clearance or when the court orders the auction of cargoes liened by the carrier, the People Court should support the carrier to deny any responsibility of cargo delivery.

9. For the straight bill of lading, when the carrier complies with the shipper's instructions of stopping the carriage, returning the cargoes, changing the destination or delivering the cargoes to another consignee, the People Court does not support the consignee holding the straight bill of lading to claim against the carrier for cargo delivery without production of original bill of lading.
10. When the carrier issues a set of several originals of bill of lading and then delivers the cargoes to the party which first surrenders original bill of lading, the People Court does not support other parties holding original bills of lading to claim against the carrier for cargo delivery without production of original bill of lading.
11. The holder of original bill of lading is entitled to demand the carrier and the party which took cargo delivery to bear joint and several liability for cargo delivery without production of original bill of lading.
12. When the shipper actually delivers the cargoes to the carrier and then holds the original order bill of lading, the People Court should support such shipper to claim against the carrier for cargo delivery without production of original bill of lading even though such shipper is not named as shipper in the bill of lading.
13. After the carrier delivers the cargoes without production of original bill of lading, the holder of original bill of lading and the party which took cargo delivery enter into an agreement to settle the cargo value. However, the holder of the original bill of lading later on cannot get compensation under the settlement agreement. Such does not affect the original bill of lading holder's claim against the carrier for cargo delivery without production of original bill of lading.
14. The original bill of lading holder's claim against the carrier for cargo delivery without production of original bill of lading is subject to the PRC Maritime Code's (Article 257) suit time limit of one year counting from the date the cargoes should have been delivered by the carrier. This one year suit time limit also applies when the holder of original bill of lading claims against the carrier in tort.
15. The original bill of lading holder's claim against the carrier for cargo delivery without production of original bill of lading is subject to Article 267 of the PRC Maritime Code concerning the suspension of the suit time limit. When the holder of the original bill of lading claims against the carrier in tort, the same suspension of suit time limit applies.

If you have any questions or want to have a copy of the Supreme People Court's 15 Rules, please feel free to contact us.

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It goes without saying the economy is heading further south as 2009 sets sail into the second quarter.

Unrealistic it is to expect turnaround any time soon. Before we see the lights, we see rising number of E&O, uncollected cargo and completion of carriage claims. The global credit crunch has created chain effects leading to, forced or otherwise, found or unfounded, breach of contracts and obligations along the logistics chain. Our claims team are on full gear recently in dealing with those claims.

If you are in need of a cost effective service in defending claims lodged against you, SMIC is just a phone call away.