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To: Transport Industry Operators

**FCR Seminar**  
**10 November 2009 – Q & A**

10 November 2009 saw almost 300 forwarders, shippers, lawyers and insurance companies patiently spent 2.5 hours attending the eighth annual seminar of Sun Mobility (SMIC). This was the fourth seminar organised jointly with the Hong Kong Shippers' Council.

SMIC never depart from the avowed objective of broadcasting the importance of understanding the various rules of the transport game. Following the previous Bill of Lading and Air Waybill seminars, we hand picked Forwarder Cargo Receipt (FCR) for discussion in this seminar in view of its different applications in the freight industry conducing to great deal of confusions as to the role and function of the document in different scenarios. The FCR in its original form is just but a simple cargo receipt. The real life usage of it however has undergone a lot of modifications as forwarders are susceptible to the demand of exporters and importers. A grasp of the FCR essence is therefore important to help to ensure immediate smooth operations and long term loss prevention.

The seminar had provided good opportunity to illustrate the difference between various types of FCR in contrast to a bill of lading. The YMCA assembly hall time slot was barely sufficient to cover the vastness of the topic. 15 questions were timely passed to us from the floor before the seminar adjourned; 2 of which were dealt with on the spot. We did not end there instead the remaining 13 questions were studied in depth before we emailed back our views to the participants after the seminar. These questions and answers are compiled in this issue of the Chans Advice for sharing among readers.

**Q1. FCR is transferable?**

A. It all depends on the terms of the particular FCR. However, we have not seen any FCR stating that it is transferrable. We think this is mainly due to the fact that most of the FCRs in the market are not documents of title to the cargoes, and hence not being able to go even one step further to be transferable. Nevertheless, there is no law disallowing a FCR to be transferable. It is all about freedom of contract, and up to the decision of the parties (e.g. the forwarder, shipper and consignee) to the contract.

**Q2. If shipper make a valid change request and the consignee claims delivery both at the same time - who should us entertain? What can we do to protect our interests.**

A. The forwarder would not be in the position to decide whether to follow the shipper's new instruction or the consignee's cargo delivery demand. The reason is: the forwarder does not know whether the shipper or the consignee is the cargo owner. When the shipper and the consignee are competing for the cargoes. The forwarder should advise the shipper and the consignee to sort out the problem between themselves, and thereafter to give a joint instruction to the forwarder as to how to deal with the cargoes. In case the shipper or the consignee sues the forwarder for cargo delivery, the forwarder should join the other party to the same legal proceedings and let the court decide which party i.e. the shipper or the consignee has the right to take cargo delivery. Alternatively, the forwarder may take the initiative to commence an interpleader action in

court against the shipper and the consignee, asking the court to decide to which party the forwarder should deliver the cargoes.

Q3. Buyers consolidation - consignee can issue OBL consolidated many FCRs hence forwarder has no control the shipment once it has sent to terminal. If shipper request to surrender of FCR, forwarder can not entertain, what to do?

A. If it is the agreement between the parties (i.e. the forwarder, shipper and consignee) that the forwarder needs to issue its FCR to the shipper after the forwarder receives the cargoes from the shipper, then the forwarder should honour the agreement and go ahead to issue the FCR to the shipper. As it appears that the consignee is responsible for the subsequent consolidation and ocean carriage of the cargoes, it is likely that the FCR issued should state clearly that the forwarder is on behalf of the consignee to receive the cargoes from the shipper. In other words, once the cargoes are received by the forwarder, they are received by the consignee; hence the subsequent consolidation and sea carriage arranged by the consignee.

Q4. What are the laws governing the FCR (with blank back page) in China?

A. We think the PRC Maritime Code and the PRC contract laws would apply to FCRs in China.

Q5. What are the reference books or web sites that can introduce the FCR in China?

A. We are sorry that we have no information on these. However, we think the FCR in China is still after all a matter of contract and agreement among the parties (i.e. the forwarder, shipper and consignee).

Q6. What are the laws governing the FCRs (with blank back pages) in the other countries (e.g. Turkey)?

A. We think the local contract laws in the particular country would govern the FCRs.

Q7. If we issue FCR (purely as cargo receipt for the consignee) to our customer, and the FCR is on our letterhead paper with no back page terms, will there be any problems?

A. Provided that your FCR front page states clearly (i) you act for the consignee to receive the cargoes and (ii) your receipt of cargoes means the consignee's receipt of cargoes, the absence of the back page terms should be acceptable as (i) you do not have the contract with the shipper but the consignee and (ii) you will have separate subsequent contract terms with the consignee e.g. warehousing contract, local distribution contract, booking agency contract, or contract of carriage evidenced by your HB/L as appropriate in accordance with the consignee's instructions. Moreover, you can also print at the bottom of the FCR front page referring to e.g. you are doing all your business subject to your standard trading conditions (a copy is available upon receipt) which may limit or exempt your liability in certain circumstances.

Q8. The consignee under the FCR actually gives an instruction to the forwarder transporting the goods by air to a third party which will be stated as consignee under the air waybill. Therefore, the consignee under FCR and air waybill will be different, will there be any conflict?

A. If the FCR is a pure cargo receipt issued by the forwarder for the consignee (i.e. the forwarder on behalf of the consignee receives the cargoes from the shipper), there will be no conflict as the forwarder needs to listen to the consignee's instructions after the forwarder's receipt of the cargoes from the shipper. It so happens that the consignee subsequently instructs the forwarder to ship out the cargoes by air to a third party as consignee under an air waybill where the consignee under the FCR becomes the shipper.

Q9. Can the shipper and consignee under a bill of lading be the same company?

A. Yes, this should be perfectly acceptable. There is no reason nor law disallowing one party sending its own cargoes to itself. For example, if you buy one table in Paris, and want to send it back to your home in Hong Kong by sea, you will be both the shipper and consignee under the bill of lading.

Q10. For example, we act as NVOCC and issue HB/L for waste products. Consequently the goods at destination unclaimed & the parties concerned eventually untraced. On the other hand, we are facing the claim from the shipping co under either an ocean B/L or SWB. Shall we apply the customers indemnities with contract of carriage (FCR) for defense and/or waiver of liability?

A. The Ocean B/L / SWB on one hand and the HB/L / FCR on the other are two separate contracts. The former is the contract between you and your subcontractor i.e. the shipping company whereas the latter is the contract between you and your customers i.e. the shipper and consignee. When the shipping company bases on its Ocean B/L / SWB to claim against you for extra costs (e.g. demurrage charges, storage charges...) resulting from the cargoes being uncollected, you cannot use the terms of your HB/L / FCR to defend yourself or to deny liability. Instead, you have to deal with the shipping company's claims in accordance with its Ocean B/L / SWB terms. The usual problem in this kind of claims is the very high demurrage charges claimed by the shipping company e.g. US\$100/day or even US\$200/day. This should not represent the shipping company's actual losses. It is well known in the shipping industry that the daily rental of e.g. a 20' container should be around US\$2 or US\$3. The demurrage charges of say US\$100/day (even if written in the shipping company's tariff and agreed by the forwarder beforehand) should be a penalty clause which is not legally enforceable as it does not represent a genuine pre-estimate of the actual losses of the shipping company. Accordingly, the forwarder should have no legal liability for the shipping company's penalty clause of say US\$100/day of demurrage charges.

Q11. Different of on board FCR & Cargo Receipt FCR.

A. We think the on board FCR should have at least the contract of carriage function i.e. the forwarder received the cargoes from the shipper, and carries the cargoes to the consignee at the destination. On the other hand, it seems the name of Cargo Receipt FCR would mean that this FCR is purely having the receipt of cargoes function.

Q12. It is not required to present original B/L to take delivery of cargo in the USA. Is it correct that HB/L = FCR for shipments with discharging place in the USA?

A. For the straight B/L i.e. the one with a named consignee, the USA law allows the carrier to deliver the cargoes to the named consignee without production of the original B/L. However, for the "To order" B/L, the carrier still needs to require the consignee to surrender the original B/L for taking the cargo delivery even under the USA law.

For the FCR which is a receipt of cargoes and the best evidence of the contract of carriage but not a document of title to the cargoes, you may take it somewhat like as a straight B/L under the USA law as far as these three functions are concerned. However, the major difference is not about the USA law but the law of the other end e.g. the load port. For example, there is a shipment from Hong Kong to San Francisco. The Hong Kong Court would hold the carrier liable to compensate the cargo value to the shipper holding the full set of the straight B/L if the carrier released the cargoes to the named consignee without production of the straight B/L. However, if it is only a FCR, the Hong Kong Court would not hold the carrier liable if the cargoes are released to the named consignee without production of the original FCR. Moreover, as far as the application of the Hague Rules and Hague Visby Rules is concerned, there is also a big difference. Both these two Rules apply to B/L or similar document of title. Accordingly, the two Rules apply to the straight B/L but not the

FCR. Therefore, the FCR will not automatically allow the carrier to have the benefit of the liability exemption of e.g. navigational error under the two Rules.

In short, we think it is not appropriate to say HB/L = FCR for shipments with discharging place in the USA.

Q13. We currently handling Triangle shipments of a client at Sweden. Procedure of handling the shipments: 1) receive booking from shipper; 2) confirm booking with the client and ask for instruction to forward the shipment to worldwide; 3) wait of arrival of cargo from the shipper; issue FCR to the shipper; 4) contact nominated co-loader to arrange / export the shipment as per instruction of the client; 5) handling the shipment similar to a general outbound shipment, but will request the co-loader to issue direct HB/L (our company O/B the client as shipper); 6) since the shipper has finished their section of the shipment after they received our FCR, we need to lodge export declaration O/B the client; 7) the direct HB/L often has been surrendered at HKG. We send pre-alert to the client, this shipment is over. According above our flow of handling the shipment, which standard trading conditions we MUST mention on our FCR? Which type of FCR we are issuing actually? Our FCR is just simply issued on our company letter, which does not contain any condition, is it not suggested? Will there be any risk to our company?

A. It is quite clear a type of pure receipt of cargoes for the forwarder's client i.e. when the forwarder has received the cargoes from the shipper, that means the forwarder's client has received the cargoes. This FCR is not a contract of carriage nor document of title to the cargoes. It is simply a receipt that the forwarder on behalf of the client has received the cargoes from the shipper, and no more. It is important to state this role and function clearly on the FCR to avoid any misunderstanding especially of the shipper that the forwarder will carry the cargoes and deliver the cargoes to the client upon production of the original FCR. Usually, the back page terms of this type of FCR will be the forwarder's standard trading conditions. Provided that the roles, functions, and standard trading conditions are stated clearly on the FCR, it does not matter whether it is issued on the forwarder's company letter.

The short span of the FCR seminar attempted only to give a quick illustration of the various real life usages of the document. For proper application of the FCR variants in real circumstances, forwarder are encouraged to seek professional and legal advisory for a proper draft of the appropriate form and back conditions to meet the need of the intended applications. Copying peers without consulting professionals would render the forwarder exposing to unnecessary risks. Please feel free to talk to us by contact anyone of us at [www.sun-mobility.com](http://www.sun-mobility.com).

Simon Chan  
Director  
E-mail: [simonchan@smicsl.com](mailto:simonchan@smicsl.com)

Richard Chan  
Director  
E-mail: [richardchan@smicsl.com](mailto:richardchan@smicsl.com)

10/F., United Centre, Admiralty, Hong Kong. Tel: 2299 5566 Fax: 2866 7096

E-mail: [gm@smicsl.com](mailto:gm@smicsl.com) Website: [www.sun-mobility.com](http://www.sun-mobility.com)

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As 2009 goes into the fourth quarter, there seems to be economic improvement worldwide in the wake of unprecedented size of injections by worldwide governments.

As we predicted in the beginning of the year, 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 need a cost effective professional service to defend claims against you, SMIC is just a phone call away.