

To: Transport Industry Operators

HOW COULD TRANSPORT OPERATOR REDUCE ITS OPERATIONAL LIABILITY WITHOUT BUYING INSURANCE

How could a transport operator **reasonably protect** itself from operational liability **WITHOUT BUYING INSURANCE**? This issue of Chans Advice tells you how **Active Risk Management** (ARM) could help. What is it?

Risk Management (RM) has been business school buss words for bankers and financial institutions now turn common and applicable to many walks of life. A good RM policy consists of ARM and Passive Risk Management (PRM). ARM forms an integral part of any RM process.

In simple terms, ARM is management of risks before they occur; PRM is transfer of risks when they do occur. Transfer of risks is usually fulfilled by insurance. ARM and PRM complement each other. Good ARM reduces your risks and hence your PRM, or insurance costs.

You have good ARM if majority of your answers to the following questions is positive. Conversely, you may need to review your ARM to reduce your exposure to possible FULL COMPENSATION in case a claim does strike against your company.

1. Are your document drafted by professionals?
2. Are you confident that the terms and conditions at the back of your transport documents could protect your hard-earned goodwill in case of a claim?
3. Will you review periodically your own house bills of lading, house air waybill, warehouse receipt, dock receipts, shipping orders, shipper's instruction form, and other documents?
4. Have you been advised that you should not use the same terms and conditions as you did 10 years ago for your documents?
5. Are these documents reflecting your roles as a principal, as agent, as ocean, air carrier or as freight forwarder?
6. Could you be liable for damage to a shipment before any HBL or HAWB is issued?
7. In such cases, do you know whether you could limit your liabilities?
8. Can you imagine your invoice may help you in a claim?
9. What is the impact of the "Control of Exemption Clauses Ordinance" in the law of Hong Kong on your transport documents?
10. Do you think you could safely SELL cargo if the consignee does not show up to collect arrived cargo after a period of time?

If your answers to the above questions are negative, our recommendations are as follows: -

1. Hire a professional to re-draft your documents.
2. Make sure by reviewing the terms and conditions of your documents and make amendments so that you could limit your liability in most if not all eventualities.
3. Transport documents should be reviewed periodically to follow legal development based on court cases and changes of law. Clear terms avoid ambiguity and enhance your chance of limiting liability.
4. Make sure your documents are updated from time to time by professionals, or by your risk management advisors.
5. Confirm this with your risk management advisor or professionals.
6. A forwarder can be liable before a shipment commences its journey, say in pre-shipment handling like warehousing, trans-loading, consolidation, haulage, pickup etc.
7. You are protected only if you have your Standard Trading Terms and Conditions incorporated.
8. By printing a clause on your invoice like “ all transactions are subject to the Company’s standard trading terms and conditions” could help incorporate those terms and limit your liability in case of a claim where your HBL or HAWB has not been issued or terms are not applicable.
9. Your limitation of liability should not be too low to survive the ordinance. Limitation of liability should be set fairly preferably in line with the industry practice.
10. You can sell unclaimed cargo without consulting a lawyer ONLY IF your transport documents expressly give you this right. Such right is given only by professionally drafted conditions. Wrongful sales of shipments may render compensation to cargo owner in millions.

THE QUALITY OF YOUR TRANSPORT DOCUMENTS AFFECTS YOUR BOTTOM LINE in

1. Liability exposure.
2. How quick a claim could be handled.
3. Satisfaction level of customers.
4. Cut handling time and costs.
5. Long-term liability insurance costs.

Talk to us for a FREE REVIEW of your Transport Documents, and/or seek for a liability insurance proposal to complete your Risk Management program.

Simon Chan and Richard Chan

Coming from a strong transport background, the two Chans were respectively the heads of underwriting and claims/loss prevention at the Hong Kong regional office of the Through Transport Club or better known as the TT Club for more than 11 years. The Chans have ample experience in designing liability and property insurance for forwarders, logistic service providers, shipping companies, feeder operators, air cargo terminals, container terminals, container lessors in Greater China and Asia. Richard and Simon are now independent risk management advisors able to offer full array of risk management service packages available in the market, plus, objective advice using their well developed and popular risk management skills, to the best interests for operators in the transport fraternity. We are eager to answer whatever insurance needs you may have as a transport operator.