

20<sup>th</sup> April, 2001  
Ref: Chans advice/04

To: Transport Industry Operators

## Sub-bailment

Can a container depot rely on its own Standard Trading Conditions to deal with a claim directly from the cargo owner which however has no contract with the depot? The Court of Final Appeal of the Hong Kong SAR said yes in its Judgment dated 5/11/1998 concerning the case (FACV No. 4 of 1997).

In 1993 the Plaintiff contracted with a freight forwarder to ship its four new left hand drive motor cars from Hong Kong to Shanghai. The freight forwarder in turn contracted with the Defendant container depot to receive the cars from the Plaintiff, to stuff the cars into containers and to store them pending the loading of the laden containers aboard ship.

On 6 November 1993, some men entered the depot, overpowered the watchman, broke open the containers and stole the cars. The Plaintiff sued the Defendant depot for US\$139,000 being the C.I.F. value of the four cars. At first instance judgment in the full sum was given in favour of the Plaintiff but this was reversed by the Court of Appeal which held the Defendant not liable. The Plaintiff appealed to the Court of Final Appeal (CFA).

The Defendant depot had its Standard Trading Conditions (STC) incorporated into all transactions. According to its STC, the depot should not be liable for any loss due to theft unless by employees of the Defendant, its agents, servants or sub-contractors. The CFA held that the Defendant depot's STC applied to the Plaintiff's claim even though there was no contractual relationship between the Plaintiff and the Defendant and that the appeal was dismissed with costs.

We recommend that depot and terminal operators should have their own set of Standard Trading Conditions reasonably limiting or exempting their liability and also should incorporate their STC into all business e.g. by printing a sentence referring to STC in all of their stationeries.

Please feel free to contact us if you would like to have a copy of the Judgment or you have any other questions in relation to STC and its incorporation.

Simon Chan and Richard Chan

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Coming from a strong shipping and air transport background, Richard and Simon were the heads of claims and underwriting divisions at the Hong Kong regional office of 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, and container lessors** in Asia Pacific. Richard and Simon are now independent risk management advisors able to offer full array of risk management services, **including full-scale professional claims handling, loss prevention advice and prudent sourcing of insurance for your ease of mind. Their blended transport and insurance expertise are unique in the market.** They are eager to answer whatever claims handling and insurance needs you may have as a transport operator.