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To: Transport Industry Operators

Unmanifested Cargo

It appears that the Customs & Excise Department is putting more effort into its enforcement of the law relating to the unmanifested cargo.

According to Section 18 of Import and Export Ordinance (Chapter 60),

- (1) Any person who-
 - (a) imports any unmanifested cargo; or
 - (b) exports any unmanifested cargo,

shall be guilty of an offence and shall be liable-

- (i) on summary conviction to a fine of HK\$500,000 and to imprisonment for 2 years;
 - (ii) on conviction on indictment to a fine of HK\$2,000,000 and to imprisonment for 7 years.
- (2) It shall be defence to a charge under this section if the defendant proves that he did not know and could not with reasonable diligence have known that the cargo was unmanifested.

The Customs & Excise Department performs random inspection of the import and export goods. When the goods are found inconsistent with the declaration as stated in the manifest, the transport operators e.g. shipping companies, airlines or forwarders may be prosecuted for violating the above Ordinance.

The transport operators in most cases receive the goods in a form already packed by their customers e.g. in cartons. The transport operators have no idea of the goods inside. They have to rely on the declaration made by their customers.

It appears that the Customs & Excise Department is taking the view that the transport operators need to open the cargo packing to inspect the goods inside and make sure the goods match the manifest as declared. If this is really the requirement in order to comply with the law, it seems that the transport operators are being asked to do the job of the Police or Customs to investigate the possible criminal activities. However, such is contrary to the transport industry's universal customary practice that the transport operators do not open the cargo packing for cargo inspection. Actually, without their customers' prior approval, the transport operators have no right to open the cargo packing for inspection. There will be a lot of claims against the transport operators by the customers e.g. cargo loss, damage or delay resulting from the unauthorised cargo inspection.

To prevent the transport operators from being further prosecuted, we suggest the transport industry associations discuss with the Government to change the law or the prosecution policy. Otherwise, the transport operators have to make agreement with their customers allowing the opening of cargo packing and the cargo inspection and of course have to actually inspect the goods. If no action is taken at all, it seems that the transport operators will continue to break the law every day.

Should you have any questions, please feel free to contact us.

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