

To: Transport Industry Operators

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Ref: Chans advice/08

## BVI Carrier

It is quite common that transport operator sets up a BVI company to act as the Carrier under the B/L.

In his Judgment dated 31/7/2001 regarding Commercial Action No. 146 of 1999 in the High Court of the Hong Kong SAR, Judge William Stone held that the forwarder instead of the BVI company was liable to pay US\$301,102.90 plus costs and interest to the Shipper for the release of goods (optical frames and sunglasses) without production of the original bills of lading.

On the bills of lading, it was printed :

“As Agent for the Carrier  
[The BVI company’s name]  
[The forwarder’s name]”.

The Judge held that the forwarder rather than the BVI company was the Carrier because :

1. the BVI company had nothing to do with the carriage of the goods from Shanghai to Miami;
2. the bills of lading did not clearly define the BVI company as the Carrier;
3. if the forwarder was an agent at all, it was an agent for an unnamed principal. Non-disclosure of the principal’s name leads to the liability of the alleged agent;
4. the Judge attached little serious credence to the Agency Agreement between the forwarder and the BVI company;
5. the forwarder was named as the Shipper in the shipping companies’ bills of lading; and
6. the forwarder had a clear agency relationship with the Miami agent.

The Judge concluded that the BVI company was no more than the barest cipher for the forwarder and that it was as plain as a pikestaff the real principal under the bills of lading was the forwarder.

It seems that it may not be a good idea for transport operators to set up BVI companies in an attempt to avoid liability. A better passive risk management measure should be to take out transport liability insurance.

Please feel free to contact us if you have any questions or you would like a copy of the Judgment.

Simon Chan and Richard Chan

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Coming from a strong shipping and air transport background, Richard and Simon 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 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.