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To: Transport Industry Operators

Hague Visby Rules

In the issue of our Chans advice last month, we talked about the major provisions of the Montreal Convention (which is for the international carriage of goods by air). In this issue, we would like to discuss the major terms of an equally important international convention for the international carriage of goods by sea, viz. the Hague Visby Rules.

Hague Visby Rules ("HVR")

The **International Convention for the Unification of Certain Rules of Law relating to Bills of Lading** signed at Brussels on 25/8/1924 as amended by the Protocol signed at Brussels on 23/2/1968 and by the Protocol signed at Brussels on 21/12/1979.

HVR Application

It applies only to contracts of carriage of goods by sea covered by a **bill of lading** or any similar document of title.

It does not apply to **live animals and cargo** which by the contract of carriage is stated as being carried **on deck** and is so carried.

It covers the period from the time when the goods are **loaded on to** the time they are **discharged** from the ship. A carrier may enter into agreement with a shipper as to the responsibility and liability of the carrier or the ship for loss or damage to, or in connection with, the custody and care and handling of goods **prior to the loading on**, and **subsequent to the discharge** from, the ship.

The HVR shall apply to every bill of lading relating to the carriage of goods between **ports in two different States** if-

- (a) the bill of lading is **issued in a contracting State**, or
- (b) the carriage is **from a port in a contracting State**, or
- (c) the contract contained in or evidenced by the **bill of lading provides that these Rules** or legislation of any State giving effect to them are to govern the contract.

Carrier's Duties

According to paragraph 1 of Article III of the HVR, the carrier shall be bound **before and at the beginning of the voyage** to exercise due diligence to-

- (a) Make the ship **seaworthy**.
- (b) **Properly man, equip and supply** the ship.
- (c) **Make the holds**, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, **fit and safe** for their reception, carriage and preservation.

The carrier shall properly and **carefully load, handle, stow, carry, keep, care for, and discharge** the goods carried.

Bill of Lading

After receiving the goods into his charge the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things-

- (a) The **leading marks** necessary for identification of the goods as the same are furnished in writing

- by the shipper**, provided such marks are stamped or otherwise shown clearly upon the goods.
- (b) Either the number of **packages or pieces, or the quantity, or weight**, as the case may be, as furnished in writing **by the shipper**.
- (c) The **apparent order and condition** of the goods.

Provided that no carrier shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has **reasonable ground for suspecting** not accurately to represent the goods actually received, or which he has had **no reasonable means of checking**.

Such a bill of lading shall be **prima facie evidence of the receipt** by the carrier of the goods as described in accordance with paragraph (a), (b) and (c) above. However, proof to the contrary shall not be admissible when the bill of lading has been **transferred to a third party acting in good faith**.

The **shipper shall guarantee** to the carrier the **accuracy** at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

Null and Void

Any clause in a contract of carriage **relieving the carrier** or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations or **lessening such liability** otherwise than as provided in the HVR shall be **null and void** and of no effect.

Notice Time Limit

Unless notice of loss or damage be given in writing to the carrier before or at the time of the delivery of the goods, or, if the loss or damage be not apparent, within **three days**, such delivery shall be **prima facie** evidence of the delivery by the carrier of the goods as described in the bill of lading.

Suit Time Limit

The carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within **one year** of their delivery or of the date when they should have been delivered. This period may, however, be **extended** if the parties so agree.

An action for **indemnity against a third person** may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be **not less than three months**, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

Exemption of Liability

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from **unseaworthiness** unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-

- (a) **Act, neglect, or default** of the master, mariner, pilot, or the servants of the carrier in the **navigation** or in the **management** of the ship.
- (b) **Fire**, unless caused by the actual fault or privity of the carrier.
- (c) **Perils, dangers and accidents of the sea** or to the navigable waters.
- (d) **Act of God**.
- (e) Act of **war**.
- (f) Act of **public enemies**.
- (g) Arrest or restraint of **princes, rulers** or people, or seizure under legal process.

- (h) **Quarantine** restrictions.
- (i) **Act or omission of the shipper** or owner of the goods, his agent or representative.
- (j) **Strikes** or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) **Riots** and civil commotions.
- (l) Saving or attempting to **save life or property** at sea.
- (m) Wastage in bulk or weight or any other loss or damage arising from **inherent defect, quality or vice of the goods**.
- (n) **Insufficiency of packing**.
- (o) **Insufficiency or inadequacy of marks**.
- (p) **Latent defects** not discoverable by due diligence.
- (q) **Any other cause arising without the actual fault or privity of the carrier**, or without the fault or neglect of the agents or servants of the carrier.

Limitation of Liability

Unless the nature and **value** of such goods have been **declared by the shipper** before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding **666.67 special drawing right per package** or unit or **2 special drawing right per kilogram** of gross weight of the goods lost or damaged, whichever is the higher.

Where a **container, pallet or similar article of transport** is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units. Except as aforesaid such article of transport shall be considered the package or unit.

Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability if the damage resulted from an act or omission of the carrier done with **intent to cause damage, or recklessly** and with knowledge that damage would probably result.

Tort

The defences and limits of liability provided for in the HVR shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in **contract or in tort**.

Please feel free to contact us if you have any questions about the Hague Visby Rules.

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