

Introduction of Three New Regulations related to Freight Forwarder in China

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- New provisions regulating the trial of sea freight forwarding disputes
- Implementation Opinions on encouraging and guiding the entry of private investment into the field of logistics
- The new measures of China's customs clearance reform



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PART 1: New provisions regulating the trial of sea freight forwarding disputes

- ◆ Background
- ◆ Key Points
- ◆ Suggestions for Freight Forwarder
- ◆ Suggestions on Regulating the Freight Forwarder Industry



Background

- China's freight forwarding industry has significantly developed since the opening-up policy:
 - Up to May 2011, China's international freight forwarders filed in record have reached 27,000, with 2 million employees
 - However, the rapid development brings problems:
 - Disorderly competition
 - Unsound legal framework
 - Lack of supervision
 - Different trial criteria
 - On 18 March 2012, the Supreme Court of PRC released provisions on the trial of sea freight forwarding disputes which has become effective on 1 May 2012
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Key Points

- **Scope of Application**

- Apply to disputes over carriage of goods by international sea freight forwarding, specifically 5 types of disputes
- Not be applicable to the disputes involving in Chinese domestic coastal and inland water transportation of goods

- **Applicable Laws**

- Relevant legal provisions in Civil Rules, Contract Laws and Maritime Laws shall apply to the freight forwarder who provide service as agency, carrier or warehousing operator
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Key Points

- Jurisdiction

- Chinese Maritime Courts have jurisdiction over:

- ✓ Disputes of sea freight forwarding

- ✓ Freight forwarding disputes of storage and road transport with sea leg

- Identification of freighter forwarder , agent or carrier ?

- ✓ Right and obligation clauses specified in the written contract

- ✓ The identity and ways of charging the fees by freight forwarder

- ✓ Invoice type and item

- ✓ Mutual dealing practice in the past

- ✓ Performance of the contract

Key Points

● Reconsignment

- Reconsignment is generally prohibited in the new Provisions,
 - ✓ Exception:
 - ✓ mutual agreement in which the scope of reconsignment is clearly specified, or
 - ✓ If no mutual agreement, the court cannot uphold the argument that the reconsignment has been accepted by the principal on the ground that the principal knows the reconsignment but no objection to it.

● Delivery of transport documents under FOB terms

- The Provisions is designed to protect the benefit of the actual shipper (FOB seller) .
Under FOB terms, When freight forwarder acts as agent for FOB seller (actual shipper) to deliver the goods to a carrier, meanwhile acts as agent for FOB buyer (contractual shipper) to conclude the carriage contract, FOB seller is entitled to require the delivery of transport documents .

Key Points

- Detention of Documents

- If there is a mutual agreement between the parties, such agreement governs
- In absence of mutual agreement, freight forwarder is entitled to detain the documents if the principal fails to pay, BUT the detention of transport documents like B/L is prohibited.

- Presumption of Fault

- Freight forwarder shall be liable for the principal's losses unless he can prove he is innocent.
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Key Points

- Liability of Freight Forwarder for Selecting NVOCC without qualification
 - If freight forwarder improperly selects a NVOCC who fails to register its bill of lading in and obtains no qualification from the Ministry of Transport of PRC,
 - He shall bear corresponding liability to the principal, and bear a joint and several liability with the unqualified NVOCC for the losses occurred

Suggestions for Freight Forwarder

- Freight forwarder should sign written commission agreement with the principal
 - with no ambiguous terms
 - Documents Issuing and approval process should be established and strictly followed
 - Before issuing transport documents on behalf of carrier, thorough background check should be conducted on the carrier
 - Written commission contract
 - Keeping record of all relevant documents
 - Verifying the registration status of the NVOCC
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Suggestions for Freight Forwarder

- Refuse to deliver or detain the shipping documents
 - Effective but with high legal risk
 - Focus on the management of customer's credit risk to get scheduled payment.
 - Standard provisions concerning detention should be included in the freight forwarding contract
 - Legal staff should participate in the process of detention
- Wrong Delivery of Transport Documents
 - In freight forwarding business, if a freight forwarder on behalf the contractual shipper to conclude a sea carriage contract with a carrier, meanwhile in the actual shipper's name to deliver the goods to a carrier, the wrong delivery of transport documents is easily happened. To avoid this legal risk, the freight forwarder should
 - indicate the specific freight forwarding operation in the contract
 - require the principal to provide the Letter of indemnity for high-value goods
 - consulting legal staff upon the request to deliver shipping documents by non-party of the contract

Suggestions for Freight Forwarder

● Exercising Due Care When selecting NVOCC

- the NVOCC selected shall have his bill of lading registered in the Ministry of Transport of PRC and obtain the NVOCC qualification.
 - The NVOCC has good credit.
 - It is prohibited to conclude the sea carriage contract with the unqualified NVOCC who are actually engaged in the NVOCC business.
 - For the qualification of a NVOCC, please check on <http://www.mot.gov.cn/> (the website of the Ministry of Transport of PRC)
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Suggestions on Regulating the Freight Forwarder Industry in China

● Enhancing Legal System of Freight Forwarding Laws

- To add freight forwarding contract as “famous contract” under Contract Law of PRC, defining the rights and obligations
- Ministry of Commerce of PRC should revise the current “China International Freight Forwarding industry management regulations ” and “ implementation rules” as soon as possible, which has been backward from the reality.

● Improving Industry Supervision and administration

- Joint efforts of Ministry of Commerce, Ministry of Transport, General Administration of Customs of PRC to establish a freight forwarding administration system with uniform policy, clearly-divided responsibility and high-efficiency.

● Strengthening Guidance of Industry Association like CIFA

- To promote standard terms and documents; communication and learning; legal and vocation training;

● Promoting Freight Forwarder Liability Insurance

- Replacement of the current minimum registered capital and deposit system

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PART 2: Implementation Opinions on encouraging and guiding the entry of private investment in the field of logistics (Opinions)

- ◆ Purpose of Opinions
- ◆ Main Points
 - ◆ To guide the entry of private capital in the field of third-party logistics
 - ◆ To formulate the administrative system to support the entry of private capital in the field of logistics
 - ◆ To promote fair and standard economic competition for private logistics enterprises
 - ◆ To encourage the development of the private logistics enterprise



Purpose of Opinions

- To implement a series of policies and measures such as
 - [Several Opinions of the State Council on Encouraging and Guiding the Healthy Development of Private Investment](#) ((No.13 [2010] of the State Council)), and
 - [Opinions of the General Office of the State Council on the Policies and Measures for Promoting the Sound Development of the Logistics Industry](#) (No. 38 [2011] of the General Office of the State Council)
 - To encourage and guide the entry of private capital the field of logistics
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Main Points

- To guide the entry of private capital in the field of third-party logistics
 - To encourage the participation of private capital in the field of social logistics service.
 - To support the entry of private capital to the key fields of logistics industry.
 - To support the entry of private capital to the field of logistics infrastructure.

Main Points

- To formulate the administrative system to support the entry of private capital in the field of logistics
 - To break the administrative bottleneck that blocks the integration and utilization of logistics facilities and resources.
 - To encourage the storage and transportation facilities that only provide services within the industry to be opened to the outside market
 - To encourage private capital to invest and participate the integration and utilization of logistics facilities and resources and to provide open logistics services.

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- To improve the administration of qualification examination and approval.
 - To clearly define the examination and approval items for the qualification of logistics enterprises, and provide convenience for private logistics enterprises to establish branches
 - To regulate examination and approval procedures related to transportation, public security, environmental protection, quality control, and fire control, to shorten the time and improve the efficiency
 - If the headquarter of a private logistics enterprise has applied and obtained the qualification, its non-corporate bodies may obtain the qualification by filing with relevant local departments.
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- To simplify registration and operation procedures.
 - If the headquarter has completed registration with the administration authority for industry and commerce and the examination and approval procedures for operation, its non-corporate body may, with documents issued by the headquarter, directly apply for registration with the local industry and commerce administration authority with no need for transfer procedure from the headquarter's administration authority for industry and commerce.
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Main Points

- To promote fair and standard economic competition for private logistics enterprises
 - To effectively alleviate the tax burden of private logistics enterprises, including:
 - improving the piloting of Value-Added Tax (VAT) reform;
 - the qualified private logistics enterprise will equally enjoy the balance payment of business tax;
 - the private logistics enterprise will equally enjoy tax halved policies for urban land use by storage facilities for bulk commodities.
 - To give more supporting policy for the land use of the logistics industry.
 - To improve the financing environment of private logistics enterprise.
 - To promote smooth running of private logistics enterprise's vehicles.
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Main Points

- To encourage the development of the private logistics enterprise
 - To accelerate the upgrade of private logistics enterprise to modern logistics enterprise.
 - To actively support the private logistics enterprise to develop international cooperation.
 - To make the Industry association an important role in supporting the private logistics enterprises.
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PART 3: The new measures of China's customs clearance reform

◆ Measure 1

- ◆ To implement the classification clearance policy in a nationwide scope from August, 2012

◆ Measure 2

- ◆ To start the paperless customs clearance pilot reform from 1st August, 2012



Measure 1-- To implement the classification clearance policy in a nationwide scope

- Overview of China's classification clearance reform

- started in 2009
- firstly piloted in the export sector, and gradually piloted in the import sector
- to classify the goods based on risk level, which is determined by certain risk factors, like the type of enterprise, classification of goods, price, country of origin, trade country, the logistics information
- Low-risk goods are cleared by computer automatically, high-risk goods have to be inspected and checked by Customs of China.

Measure 1-- To implement the classification clearance policy in a nationwide scope

- The benefit of classification clearance reform

- To save the time for goods customs clearance
- To reduce the cost of logistics enterprise
- In 2011, the average time of export classification clearance was 1.5 hours, which was 0.42 hours shorter than before of that, and average time of import classification clearance was 17.9 hours, which was 15.2 hours shorter than before.

- Based on achievement of three-year pilot, the Customs of China will fully implement the classification clearance reform in a nationwide scope from August 2012.

- Scope of the pilot enterprises

- import and export enterprises and customs declaration enterprises that are classified as Class AA and Class A by Customs of China

- Benefit of paperless customs clearance

- saving time and labor costs for enterprises
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Measure 2-- To start the paperless customs clearance pilot reform

● Procedure of paperless customs clearance

- The enterprises will send the electronic data to Customs, and need not print the relative documents, for example, contracts, invoices
- Customs will receive the electronic data from the enterprises directly
- Customs will send the clearance information to both the Customs supervision places and the enterprises
- The enterprises will take the goods directly from the supervision places.

● Fully application

- Paperless clearance operations will apply to all the Customs and all import and export enterprises in China before 2015
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Thank You!

