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Guidance on the addition of COVID-19 specific clauses in bills of lading

In the context of the unprecedented COVID-19 crisis, companies may consider the insertion of additional clauses specifically focused on COVID-19 as an addendum to their bill of lading terms and conditions. Such clauses may include notification of potential delays or disruption in the carriage of cargo. Moreover, they may specify who bears the risk of additional costs including storage and demurrage.

FIATA's recent guidance¹ on force majeure pointed to the potential applicability of certain force majeure clauses to the COVID-19 crisis, such as in the FIATA Bill of Lading². Each case is different, and the applicability of such clauses is very much dependent on the particular wording, circumstances, and whether causation is present. As such, carefully crafted addendums geared specifically towards COVID-19 may in some instances provide greater clarity, insofar as they are conspicuous, clear, and consistent with other applicable terms and conventions. Below are some factors to consider:

1. Ensure the additional clause is clearly and conspicuously noted

To ensure that it is properly incorporated into the contract, any additional clause must be clear and conspicuous, such that the other party has notice of it upon reasonable inspection of the bill of lading. The particular significance of the clause in the current climate makes this especially important to prevent any issues in enforceability should a dispute arise – courts will not be favourable to fine print terms.

2. Stay consistent

When introducing an addendum to the bill of lading, care must be taken to ensure that the wording is consistent with the other terms and conditions, as well as applicable conventions and laws. In practice, this means that the terms on whole should be capable of being fairly or sensibly read together. In the event of a conflict, however, Point 1 above on ensuring the other party has notice of the additional terms will be a decisive element – the specific addendum may still prevail over the standard terms if it is considered to be a specially negotiated term between the parties.

¹ FIATA, '[Invoking force majeure in the coronavirus crisis: Some practical tips](#)', FIATA, 20 March 2020

² Standard Conditions (1992) governing the FIATA Multimodal Transport Bill of Lading, Art. 6.2



3. Beware of back-to-back liability

It is crucial that the terms in all carrier transport documents are identical to ensure that all parties are on notice in relation to a new COVID-19 force majeure addendum. Any variation will not be binding on those who do not have notice of it. Failure to do so may render such clause ineffective and will instead place the freight forwarder at risk of liability for delays and variations in performance, even if its customer has agreed to the new term.

Summary

In summary, inclusion of a specific COVID-19 addendum may in certain circumstances be considered helpful protect freight forwarders when navigating today's volatile supply chain. However, care must be taken to ensure that it is properly incorporated and enforceable, to avoid any potential issues should a dispute arise. Getting it right is important, and freight forwarders should consider obtaining legal advice to ensure that it is appropriately suited to the specific contract.