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To: Transport Industry Operators

Chapter 46

Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance

In the transport industry, the contracts of carriage (e.g. Bills of Lading, Air Waybills) usually contain an exclusive jurisdiction clause for settling disputes. However, it is not uncommon that the shippers and consignees sue the transport operators in a court other than the one specified in the exclusive jurisdiction clause. In Hong Kong, the transport operators may rely on the Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance to tackle this kind of situation.

According to the Ordinance, a judgment given by a court of an overseas country in any proceedings shall not be recognized or enforced in Hong Kong if –

- (a) the bringing of those proceedings in that court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of that country; and
- (b) the person against whom the judgment was given –
 - (i) did not bring or agree to the bringing of those proceedings in that court; and
 - (ii) did not counter-claim in the proceedings or otherwise submit to the jurisdiction of the court.

The person against whom the judgment was given shall not be treated as having submitted to the jurisdiction of the overseas court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for any of the following purposes –

- (a) to contest the jurisdiction of the court;
- (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
- (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

For example, an NVOCC issued its Bill of Lading for a shipment from Hong Kong to Cartagena, Colombia, and the consignee sues the NVOCC in the Colombia court for cargo loss and damage. The NVOCC may choose not to fight the legal action in the Colombia court because the suit is in breach of the exclusive Hong Kong jurisdiction clause as stated in the Bill of Lading. The Hong Kong court would not recognize or enforce the Colombia court judgment even if the consignee obtains a favourable judgment in Colombia.

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

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