

No. 3 2006/2007 - The Hamburg Rules

May 2006

Dear Sirs

THE HAMBURG RULES

In September of 1992 the International Group Clubs issued a circular to Members (West of England Notice to Members No. 5 1992/93) concerning the coming into force, following the 20th ratification in November 1991, of the United Nations Convention on the Carriage of Goods by Sea 1978 (the "Hamburg Rules") and the availability or otherwise of Club cover for liabilities arising in respect of the carriage of cargo on terms less favourable than those contained in the Hague or Hague-Visby Rules.

The circular recommended the use of two forms of clause (set out below) for use in bills of lading and other contracts for the carriage of goods: Form A where Members wished to contract on the terms of the Hague/Hague Visby rules in preference to the Hamburg Rules and Form B for trade solely between states which were contracting parties to the Hamburg Rules.

The Managers consider that the use of these clauses is no longer appropriate. Accordingly they are no longer recommended and Members using or intending to use them in bills of lading or other contracts of carriage are advised to contact the Managers. We will be happy to advise Members whether, and if so in what form, a clause dealing with these matters should be inserted in any bill of lading or other contract relating to the carriage of goods. The clauses set out below therefore should no longer be used.

CLAUSES NO LONGER RECOMMENDED BY THE MANAGERS

FORM A

1. This bill of lading shall have effect subject to any national law making the International Convention for the Unification of the Law relating to the Bills of Lading 1924 (the Hague Rules) or the Hague Rules as amended by the Protocol signed at Brussels on 23rd February 1968 (the Hague-Visby Rules) applicable to this bill of lading. If any term of this bill of lading be repugnant to that legislation to any extent, such term shall be void to that extent. This bill of lading shall apply to this contract where the goods carried hereunder consist of live animals or cargo which by this contract is carried as such.
2. Save where the Hague or Hague Visby Rules apply by reason of (1) above, this bill of lading shall take effect subject to the United Nations Convention on the Carriage of Goods by Sea 1978 (the Hamburg Rules) which shall nullify any stipulation derogating therefrom to the detriment of the cargo interest.
3. Where the Hague, Hague Visby or Hamburg Rules are not compulsorily applicable to this bill of lading, the carrier shall be liable in accordance with the provisions contained in Articles I to VIII of the Hague Rules, save that the limitation sum for the purposes of Article IV Rule 5 of the Hague Rules shall be the sum of 100,000 SDR per package or unit or 900,000 SDR per gross weight of 100 metric tons, whichever is the higher.

FORM B

1. This bill of lading shall have effect subject to any legislation making the United Nations Convention on the Carriage of Goods by Sea Act 1924 (the Carriage of Goods by Sea Act) in force in the United Kingdom and in such circumstances the said Rules nullify any stipulation derogating therefrom to the detriment of the cargo owner. If, in the absence of such legislation, the term of the bill of lading purports to incorporate the Rules, the term shall be void to that extent but no further.
2. Save where the Hamburg Rules apply by reason of (1) above, this bill of lading shall have effect subject to any national rules of law relating to bills of lading signed at Brussels on 25th August 1924 (the Hague Rules) or the Hague Rules as amended (the Hague Visby Rules) compulsorily applicable to this bill of lading. If any term of this bill of lading be repugnant to the Rules, the term shall be void to that extent but no further. Neither the Hague Rules nor the Hague Visby Rules shall apply to this contract where the goods carried hereunder are being carried on deck and are so carried.
3. Where the Hague, Hague Visby or Hamburg Rules are not compulsorily applicable to this bill of lading, the carrier shall be liable in accordance with the provisions contained in Articles I to VIII of the Hague Rules, save that the limitation sum for the purposes of Article IV Rule 5 of the Hague Rules shall be the sum of 100,000 SDR per package or unit or 2,000 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher.

Yours faithfully

West of England Insurance Services(Luxembourg) S.A.
(As Managers)

R J B Searle
Director