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## **An Important Step to Improve Freight Forwarding Standards CIFA and CMAC Released Freight Forwarding Model Agreement**

Freight forwarding has become a crucial business in the global economy. While the implementation of the “Belt and Road” Initiative will present to global freight forwarders even greater opportunity and market, more legal risks will inevitably emerge. A model contract is an important way of defending the interests of our shipping industries, and will mark the transition of China from a big nation in shipping to a strong one as its soft power rises.

On April 26, China Maritime Arbitration Commission (CMAC) and China International Freight Forwarders Association (CIFA) held a press release of CMAC Freight Forwarding Model Agreement and the Seminar on Legal Practices in Freight Forwarding. 120 deputies from companies and the press participated in the meeting. The meeting was chaired by Chen Bo, Vice Director of Arbitration Department of the CMAC. Yu Jianlong, Vice Chairman and Secretary General of CIETAC and CMAC and Liu Xuede, Secretary General of CIFA delivered speeches. Expert drafting the contract Zhang Jiasheng interpreted the Model Agreement clause by clause. Yang Yuntao, General Counsel of Sinotrans & CSC presented on how freight forwarders fend off legal risks. At the end the speakers engaged in heated discussion and with company representatives on freight forwarding practice and legal matters most cared about at present.

At the beginning of 2015, CMAC Shanghai started research and visits and initiated the project to commission experts to draft the Freight Forwarding Model Agreement. During the process, CMAC Shanghai held several expert panels and redrafted multiple times. The final model text that includes standard clauses, simple contracts and shipping orders was formed based on the advice and feedback from state-owned, private and foreign freight forwarders, associations, colleges, courts, government agencies and attorneys, sponsored by CIFA and Shanghai International Freight Forwarders Association. The purpose is to provide a standardized contract that is in accordance with business practices, guarantees fulfillment and limited legal risks, and ensures legitimacy and fairness while reflecting the speciality and complexity of the business.

Yu Jianlong said, in order to meet the needs of companies of all scales and for the agreement to be able to serve as guidance and reference, they also drafted a simple version of the more complex Freight Forwarding Agreement. In light of the necessity and importance of shipping orders in practice, and the fact that often there are cases of commission with only an order and not an agreement, they also drafted a general-purpose shipping order for freight forwarders to reference in practice.

Because logistics cover many sectors like sea, land and air transport, storage, loading and unloading, processing, information, agency and insurance, jurisdiction over logistic disputes are scattered, and it makes such disputes even more difficult to solve as these areas are very professional. Since international freight forwarding is complex and prone to disputes, adopting arbitration as the way of solving disputes in the model text will save time and money for the parties, given the advantages of arbitration being authoritative, flexible and easy to execute.

Maritime arbitration clauses that exercises jurisdiction over logistic and freight forwarding disputes will help avoid uncertainty in jurisdiction and award and unnecessary procedural delays, so that the parties could solve their disputes at one stroke.

Zhang Jiasheng said that the model text consists of 10 parts and more than 70 clauses, including definition, commissioned items, obligation on the two parties, settlement of fees, breach liability, special agreement, other agreement, applicable laws, dispute settlement, and the entry into force, amendment and termination of the agreement. The agreement makes explicit some key areas such as whether commission procedures and contents are full; whether the responsibility during and after the handover is clear; basis for fee calculation; liability in the event of default; damages for short or damaged goods and delays during the carrier's responsibility period; the exemption of liability and limitation of liability for the entrusted, and dispute settlement methods.

Apart from that, the model text makes special arrangement on issues that are prone to conflicts in practices, in accordance with the SPC's Rules on Several Issues in the Trial of Maritime Freight Forwarding Dispute Cases. For example, Article 6.7 states that Party B could re-entrust; Article 3.6 states that Party B should deliver transport documents if actual shippers request them; Article 5.2 states that if Party A defaults on payment, Party B is entitled to hold any goods or document in detention; Article 5.9 states that costs and risks accrued because nobody claims the goods at the destination port shall be borne by Party A.

Liu Xuede emphasized that the Model Agreement is important in two ways to standardize operation and avoid legal risks in the freight forwarding business.

First, the Model Agreement clarifies the responsibilities, obligations, fee settlement, liabilities and special arrangements for related parties, taking into consideration different methods and segments in existing freight forwarding logistic trains, and has clear set rules with respect to service information, quality requirement, responsibility monitoring and liability settlement. The Model Agreement is a good supplement and improvement to the standard transaction terms, or national recommended terms, and will become the new norms of the business. As long as companies refer to the Model Agreement in drafting their own agreements, they could have standardized management of their commission business, ward off risks and avoid losses.

Second, the Model Agreement reinforces the existing system, as it becomes a supplement with sectorial traits under the Contract Law. The SPC's Rules released on May 1 2013 marks the inclusion for the first time of freight forwarding in the judicial system, establishing the legal responsibility of parties, scope of application and applicable laws. But as the applicable law is the Contract Law, which is general legislation, the clauses are not detailed enough to all sectors and contracts involved in freight forwarding. As a standard agreement for freight forwarding transactions, the Model Agreement serves as a standardized professional extension of the Contract Law, and will become an important reference in judicial and arbitral cases.