

Notice on the Trial Implementation of Non-Vessel Operating Common Carrier Security Deposit Liability Insurance

Jiao Shui Fa [2010] No. 533

To all non-vessel operating common carriers:

The system of administration for non-vessel operating common carriers was established by the Regulations on International Maritime Transport of the People's Republic of China (hereinafter "Regulations on International Maritime Transport") implemented on January 1, 2002. Currently, over 3,000 non-vessel operating common carriers (hereinafter "NVOCCs") have obtained the qualifications to become non-vessel operating common carriers via payment of security deposits. The implementation of the administration system for non-vessel operating common carriers has standardized the international maritime transport market effectively.

Based on the principle of "freedom of choice" between non-vessel operating common carrier security deposit liability insurance and NVOCC business security deposits, this ministry has consulted the China Insurance Regulatory Commission and has decided upon a trial implementation of a security deposit liability insurance system for NVOCCs as an option for them in addition to currently available security deposit methods for NVOCC businesses; this is done to further perfect the system of administration for NVOCCs, alleviate the capital pressures on NVOCCs, and safeguard the lawful rights of parties involved. As of November 1, 2010, NVOCCs may choose to apply for non-vessel operating common carrier qualifications by way of purchasing NVOCC security deposit liability insurance. Notice regarding the relevant items is hereby provided below:

I. Basic Principle

Non-vessel operating common carrier security deposit liability insurance for NVOCC security deposits are both proof of financial liability that may be used by applicants for non-vessel operating common carrier qualifications (hereinafter "Applicants"); both exist in parallel to be independently chosen by Applicants. NVOCCs that choose to remit security deposits are to do so in accordance with the system of security deposits currently in force.

II. Insurance Institutions

Insurance institutions administering NVOCC security deposit liability insurance must meet the following criteria:

- (I) Registered within the People's Republic of China;
- (II) Licensed by the China Insurance Regulatory Commission;
- (III) Insurance products licensed by the Ministry of Transport and submitted to the China Insurance Regulatory Commission for approval or recording on file;
- (IV) Sign the Letter of Commitment to Insure Non-Vessel Operating Common Carrier Security Deposit Liability Insurance (see Appendix), and fulfill the obligations associated with NVOCC security deposit liability insurance.

III. Forms of Coverage, Duration and Scope of Insurance

For ease of administration, in principle, Applicants applying for non-vessel operating common carrier qualifications and their subsidiary organizations are to use the same proof of financial liability, meaning that all are to utilize security deposits or security deposit liability insurance.

Duration of insurance is to be independently contracted by Applicants and insurance institutions, but must be a minimum of 1 year.

Non-vessel operating common carrier security deposit liability insurance is used only to settle debts of NVOCCs arising from non-fulfillment or improper fulfillment of carrier obligations, and cannot be used for payment of fines. NVOCCs are to pay fines separately if they are incurred.

IV. Operating Procedures

(I) New Applications for Non-Vessel Operating Common Carrier Qualifications:

After November 1, 2010, Applicants applying for non-vessel operating common carrier qualifications who opt to purchase NVOCC security deposit liability insurance are to follow the procedures stipulated in the Regulations on International Maritime Transport and Detailed Implementation Regulations on International Maritime Transport of the People's Republic of China (hereinafter "Implementation Details") and submit the insurance policy and insurance premium payment receipt issued by the insurance institution, as well as the materials stipulated in Article XI of the Implementation Details (excluding Item 5) and Article XIV (excluding Item 5).

(II) Cancelling Non-Vessel Operating Common Carrier Security Deposit Liability Insurance:

1. Procedures for policy cancellation by NVOCCs that have obtained qualifications to operate:

NVOCCs that have obtained qualifications to operate and that are applying to cancel their policies and terminate qualifications are to submit to the Ministry of Transport written applications that will be publicized on the Ministry of Transport's Web site (www.mot.gov.cn) for 30 days. The following materials are to be submitted when applying:

(1) Application (including account number for return of funds, signed and sealed with official seal by a legal representative);

(2) Photocopy of business license with cancelled "non-vessel operating common carrier business;"

(3) Original Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications (original, copies);

(4) Proof of cancelled receipts (Receipts for International Maritime Transport Use) for use by NVOCC businesses issued by the department of taxation (if not yet collected, submit proof from the department of taxation or a photocopy of the receipt purchase and collection record page in the Receipt Purchase and Collection Book);

(5) NVOCCs abroad must provide an agreement with a domestic institution for receiving returned funds.

During the publication period, involved parties who feel that the NVOCC did not fulfill or improperly fulfilled carrier obligations, and must be held liable for compensation, are to obtain, within the

aforementioned period, a judgment in effect from a judicial authority or a ruling by an arbitration organization upheld by a judicial authority for payment by the insurance institution as stipulated in the insurance contract.

At the end of the publication period, in cases where there are no circumstances as described in the previous provision, the Ministry of Transport will send written notification to the insurance institution to handle the procedures for policy cancellation, collect the Certificate of Registration for NVOCCs Business Qualifications, invalidate the NVOCC business qualifications, and publicize the results on the Ministry of Transport's Web site. The insurance institution is to complete the procedures for policy cancellation within seven business days after receiving written notification from the Ministry of Transport, and to inform the Ministry of Transport in writing regarding the results.

2. Procedures to Cancel Policies for Which Applications for Non-Vessel Operating Common Carrier Business Qualifications Are Discontinued:

Applicants who discontinue their applications for business qualifications for cause are to submit to the Ministry of Transport a written application that indicates the account number for receiving returned funds and that is signed and sealed with an official seal by a legal representative. After completing the review procedures, the Ministry of Transport notifies the insurance institution in writing to handle the policy cancellation procedures. The insurance institution completes the procedures for policy cancellation within seven business days after receiving written notification, and informs the Ministry of Transport in writing regarding the results.

(III) Existing NVOCCs continuing to undertake non-vessel operating common carrier business by purchasing insurance:

NVOCCs that obtained business qualifications before October 31, 2010 and that opt to continue undertaking non-vessel operating common carrier business via purchasing NVOCC security deposit liability insurance may apply for a refund of security deposits already paid, but must first handle the procedures for purchasing insurance. The following materials are to be submitted in applications for refunds of security deposits and to maintain NVOCC business qualifications via purchase of insurance:

1. Insurance policy and policy premium payment receipt issued by the insurance institution;
2. Written application for a refund of the security deposit: the application is to indicate the company's account number for refunds, and must be signed and sealed with an official seal by the company's legal representative;
3. Original Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications (original and copies).

After receipt of the aforementioned materials, the Ministry of Transport publicizes for 30 days the NVOCC's application for security deposit refund.

Where no instances of Article XX, Item 2 of the Implementation Details arise during the publication period, the Ministry of Transport notifies the bank of the account holding the NVOCC's security deposit to handle the security deposit refund procedures, and re-processes the Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications (indicating the words "Liability Insurance") for the NVOCC.

(IV) Procedures for changing the NVOCC's name:

Applications for name changes by NVOCCs that have applied for and obtained business qualifications using security deposit liability insurance are to be submitted to the Ministry of Transport, along with the following materials:

1. Application for non-vessel operating common carrier name change;
2. Original Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications (original and copies);
3. Old version of bill of lading, and sample of new version;
4. Domestic NVOCCs must submit a Notification of Name Change Approval, and photocopies of business licenses with the original name and new name.

Foreign NVOCCs must submit evidentiary documentation of name change issued by the relevant department of the nation in which the enterprise is registered (must be notarized by a local notary authority).

The Ministry of Transport will issue to the NVOCC a Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications under the new name and notify the insurance institution in writing of the NVOCC's name change.

The insurance institution is to inform the Ministry of Transport in writing regarding the results of the change within seven business days after receiving written notification of the change from the Ministry of Transport.

(V) Procedures for NVOCC extension:

Applications for extensions by NVOCCs that have applied for and obtained business qualifications using security deposit liability insurance are to be submitted to the Ministry of Transport 30 days before the end of the business qualifications validity period, along with the following materials:

1. Application for extension;
2. Description of NVOCC business efforts during the business qualifications validity period;
3. Evidentiary materials of security deposit liability insurance renewal (insurance policy and insurance premium payment receipt issued by the insurance institution);
4. Original Certificate of Registration for Non-Vessel Operating Common Carrier Business Qualifications (original and copies);
5. Domestic NVOCCs submit photocopies of business license with "non-vessel operating common carrier business" added; foreign NVOCCs submit photocopies of proof of the company's commercial registration;
6. Ten photocopies of original signed and issued bills of lading.

The Ministry of Transport will not process name changes or other procedures for NVOCCs that have not processed extension procedures before the end of the business qualifications validity period, and their non-vessel operating common carrier business qualifications will be terminated after the validity period ends.

V. Use of Non-Vessel Operating Common Carrier Security Deposit Liability Insurance

Non-vessel operating common carrier security deposit liability insurance is one option for proof of financial liability offered to applicants for non-vessel operating common carrier business qualifications;

when a NVOCC fails to fulfill carrier obligations or improperly fulfills obligations, it is used to satisfy compensation on the basis of a judgment in effect from a judicial authority or a ruling by an arbitration organization upheld by a judicial authority calling for compensation, and may not be used for repayment of other obligations.

VI. Competent Authority and Contact Information

Competent Authority: Water Transport Bureau of the Ministry of Transport

Tel: 010-65292650 65292655

Fax: 010-65292648

Ministry of Transport, People's Republic of China

September 28, 2010

Appendix

Non-Vessel Operating Common Carrier Security Deposit Liability Insurance

Letter of Commitment to Insure

To reduce non-vessel operating common carrier liability risks, alleviate the financial burdens of non-vessel operating common carriers, safeguard the financial interests of the principals, and to cooperate with the State Council's transport authority to achieve non-vessel operating common carrier administration, the following commitments for covering non-vessel operating common carrier security deposit liability insurance are hereby made:

- I. This institution is registered domestically in the People's Republic of China, approved by the China Insurance Regulatory Commission, and is an independent legal entity having lawful qualifications to work in insurance.
- II. With reference to the functions associated with non-vessel operating common carrier business security deposits stipulated in the International Maritime Transport Regulations of the People's Republic of China, we will proactively develop and perfect non-vessel operating common carrier security deposit liability insurance products. The non-vessel operating common carrier security deposit liability insurance products provided are to be approved by the State Council's transport authority and licensed (on record) by the China Insurance Regulatory Commission.
- III. In strict adherence to the requirements of the Notification on the Trial Implementation of Non-Vessel Operating Common Carrier Liability Insurance (Jiao Shui Fa [2010] No. 533) by the Ministry of Transport of the People's Republic of China, we will cover non-vessel operating common carrier security deposit liability insurance and ensure the truthfulness and validity of insurance policies, insurance premium receipts, and associated documentation.
- IV. No insurance policy cancellations for non-vessel operating common carriers will be processed during the coverage period of non-vessel operating common carrier security deposit liability insurance without approval by the State Council's transport authority.
- V. To begin the process of public notification of insurance termination, we will notify the State Council's transport authority in writing regarding the list of non-vessel operating common carriers and end of coverage period 30 days before the termination of the non-vessel operating common carrier security deposit liability insurance. We will promptly inform the State Council's transport authority in writing of non-vessel operating common carriers that have not extended their coverage upon the end of the security deposit liability insurance coverage term.

VI. In claims cases against non-vessel operating common carriers where judicial assistance from a judicial authority is sought, we will transfer within seven business days the compensatory funds to the account designated by the judicial authority for those cases that have been determined by the State Council's transport authority to be liable for compensation and for which written notification of compensation liability has been received; failure by the non-vessel operating common carrier to fulfill the obligations stipulated by the insurance clauses will not be used as an excuse to refuse payment of compensatory funds; the State Council's transport authority is to be notified in writing regarding the compensation payment status.

VII. We will process name changes within seven business days of receipt of the non-vessel operating common carrier name change notification from the State Council's transport authority, and will inform the Ministry of Transport in writing of the results of the change.

VIII. We will establish and maintain a web platform for non-vessel operating common carrier security deposit liability insurance services to provide policy purchase information and to allow the State Council's transport authority and non-vessel operating common carriers to look up information.

IX. As needed by the State Council's transport authority, we will regularly provide statistical data of insurance policies in effect (including information such as the names of the insured and coverage durations) and other necessary information on coverage and settlements.

X. In response to the requirements of the State Council's transport authority, we will cooperate in the efforts to publicize the non-vessel operating common carrier security deposit liability insurance and provide the necessary insurance counseling and training to non-vessel operating common carriers.

XI. We bear the obligation to maintain confidentiality of information and materials involving commercial secrets that are revealed during coverage of non-vessel operating common carrier security deposit liability insurance. These may not be disclosed to any third party without consent from the State Council's transport authority and the parties involved.

XII. We will promptly report to the State Council's transport authority regarding matters not mentioned in this commitment letter as well as uncertainties that appear during actual coverage of non-vessel operating common carrier security deposit liability insurance, and will communicate to resolve these issues.

XIII. We agree to assume the liabilities resulting from any failures to fulfill the obligations of this commitment letter, if they occur.

Promisor (seal):

Authorized Representative (signature):

Year Month Day

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