

## Hanjin Shipping - What Should I do with my Container?

Last week's application by Hanjin Shipping for receivership and bankruptcy protection will create a number of headaches for cargo interests who have consignments either booked for shipment or already shipped on Hanjin Shipping's vessels.

Hanjin Shipping's vessels have already been turned away by terminal operators, ports and cargo handlers around the world for fear that they will not be paid. In Australia as of 5 September 2016, Hanjin Shipping has confirmed that it will not be accepting any further export bookings, and that it will be cancelling all current bookings.

As the seventh largest shipping company in the world, Hanjin Shipping's bankruptcy will be the largest in the history of the container shipping industry and is likely to affect a large number of cargo interests, that is the buyer or seller of goods. Below we detail some of the issues which could arise. Whether or not these issues impact you as the buyer or seller will depend upon whether risk has passed in the goods under the contract of sale.

### Goods Sold on FOB or CIF Terms

If a seller has sold goods on FOB or CIF terms, and booked these goods for shipment with Hanjin Shipping but not yet shipped them, the seller will need to reorganise the shipment of these goods to the buyer at their own cost to ensure delivery under the contract of sale. Any pre-paid freight is most likely to be lost, considering any funds of Hanjin Shipping will be distributed to secured creditors first (the financiers) followed by unsecured creditors if there are any funds left over, which is unlikely.

If a seller has sold goods on FOB or CIF terms, and these goods have been loaded onto Hanjin Shipping vessels, then delivery under these contracts of sale has been made. Accordingly, the buyer will need to transship the goods at their own cost. Hanjin Shipping has advised it will not be organising any transshipments. While the buyer would be able to make a claim against Hanjin Shipping for any additional costs, given secured creditors are likely to be paid out first, it is unlikely any damages will be recovered from Hanjin Shipping.

If the carriage has been arranged through a forwarder or another shipping line, then that forwarder or shipping line has to organize any new shipment or transshipment at their own cost. However, they may have incorporated terms and conditions in which the buyer or the seller of the goods is required to indemnify the forwarder or shipping line for these costs. You will need to review the contract terms with your forwarder or other shipping line.

### Goods Sold on DDP terms

With the seller delivering the goods to the buyer at a named place of destination and not unloaded from any arriving transport, depending on the terms of the contract of sale, the seller may have to do the following:

- reorganise the shipment of these goods to the buyer at their own cost if the goods have been booked but not shipped;
- arrange the transshipment of the goods if the goods have been shipped but not yet delivered; and
- arrange for the discharge of the goods from Hanjin Shipping vessels if the place of destination is some other point other than a port into which a Hanjin Shipping Vessel is to call.

If the named place of destination is a port into which a Hanjin Shipping vessel is to call, then the seller will need to arrange for the discharge of the cargo from the vessel.

## Container Deposits

Hanjin Shipping has been requesting that cargo interests pay a refundable bond on containers. It is not recommended that any funds be paid to Hanjin Shipping given its financial position. Rather, a bank guarantee or solicitor's guarantee letter should be provided in the alternative. It has been reported that Hanjin Shipping is accepting such guarantees.

## Container Detention

If a container is not returned by a buyer or seller of goods within the "free time" provided, then the buyer or seller will still be liable to pay container detention. It is likely that any receiver or liquidator of Hanjin Shipping will be instructed to attempt to recover any container detention fees due. Accordingly, a buyer or seller should still return containers to Hanjin Shipping within the free period provided to avoid potential liability for container detention.

## Ownership of Goods

Depending on the terms contract of sale for the goods, even when goods are onboard a Hanjin Shipping vessel, these goods will be owned by either the buyer or seller. Hanjin Shipping will not have any rights to the goods unless it has a right to exercise a lien over the goods for unpaid freight or other fees.

If a Hanjin Shipping vessel is arrested, the arresting party will not be able to assert a claim over the cargo because Hanjin Shipping does not own it. Accordingly, any buyer or seller who is entitled to immediate possession of the cargo may apply to the admiralty marshal to discharge its cargo from the arrested ship. However, the buyer or the seller will have to pay the costs associated with the discharge of the goods from the vessel. While the buyer or seller will be able to make a claim against Hanjin Shipping for the costs associated with discharge, as secured creditors of Hanjin Shipping will be paid first it is unlikely any funds will be recovered from Hanjin Shipping.

## Marine Insurance Cover for Loss or Damage

Although each marine cargo policy is different, many marine cargo insurance policies the kinds of loss or damage which are likely to result as a result of Hanjin Shipping's financial difficulties could be excluded from cover.

If the 1982 Institute Cargo Clauses (A) apply the following is excluded:

- Loss or damage or expense proximately caused by delay; and
- Loss or damage or expense arising from insolvency or financial default of the owner's managers, charterers or operators of a vessel.

If the 2009 Institute Cargo Clauses (A) apply, the following is excluded

- Loss or damage or expense proximately caused by delay;
- Loss or damage or expense arising from insolvency or financial default of the owners managers, charterers or operators of a vessel where at the time of loading of the subject matter insured on board a vessel, the Assured are aware, or in the ordinary course of business should be aware that such insolvency or financial default could prevent the normal prosecution of the voyage. However, this exclusion will not apply where the contract of insurance has been assigned.

## Other Important Insurance Policy Coverage Points to Note

The Institute Cargo Clauses contain provisions for cover where there has been a termination of the contract of carriage and/or a change in voyage, both of which are possible outcomes arising from Hanjin Shipping filing for receivership. These cover provisions relate to the continuity of coverage and both require that prompt notice is given to the Insurer. Cargo owners need to be mindful of this and ensure the necessary representations are made to their insurers so the appropriate cover can be obtained.

Most cargo policies will also include an accumulation clause which allows for an increase in the policy limit where an accumulation of cargo occurs beyond the control of the Insured. However, right to such increase is typically subject to prompt notification to Insurers, so cargo owners should be mindful of this and make the necessary representations to their Insurer.

## Contact us

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