

Rotterdam Rules Vs. Hamburg rules

Siri Hashem - Senior Associate

- Al Khobar

Rotterdam Rules (the "Rules") is the new United Nation Convention on the carriage of goods by sea which involves other modes of carriage. The new convention came to the surface in 2008 after the last convention in 1978 (Hamburg Rules). The main aspect of the Rules is that it regulates the electronic documents related to the carriage contract which evidences and contains the contract of carriage and the receipt of goods by the performing party.

Despite the fact that the convention has not yet come into effect, it is worth considering its terms to determine whether or not it could be suitable for the marine industry.

Scope of application

Article 5 of the Rotterdam Rules deals with the scope of its application. The scope of application has changed so as to give regard to the places of receipt and delivery and the ports of discharge and loading that either of them is located in a contracting state. It is meant to distinguish between the place where the cargo is received by the carrier and loaded and the place where the cargo is discharged and delivered to the receiver. The most important thing is that the place of receipt and place of delivery are in different states and the port of loading and port of discharge are in different states.

Contrary to Hamburg Rules, the Rules disregard the place of issuance of the bill of lading to have effect on the application of the rules, taking into consideration the international aspect of the sea transport business.

Furthermore, the Rules did not give effect as to its application to any agreement in the contract of carriage incorporating the Rules to govern contract. In this case, it is not known whether the court hearing the dispute will apply the Rules where the shipper and the carrier as parties to the contract of carriage had agreed to apply the Rules and a dispute arises between the receiver (party entitled to receive the cargo) and the carrier. Let's assume that one party chose to invoke the Rules before the court hearing because his position is favored under the Rules and the other party dispute that. There will be no issue if the law of the country of the court hearing considers such agreement void, but the problem will arise if such agreement is considered valid. In this situation, the court will have difficulty interpreting the scope of application of the Rules in the sense that the Rules has limited its application without considering the agreement by the parties to apply the Rules as part of its application scope. In such case the court has two options of conclusion:

- 1) That the scope of application is concluded and limited in the Rules and hence the agreement in the contract of carriage to apply the Rules will have no effect; or
- 2) The Rules had kept silent on this issue and as long as it does not forbid such agreement the Rule may apply pursuant to the agreement of the parties.

Hamburg Rules have in advance resolved the dispute by including the agreement in the contract of carriage to apply such rules as part of the scope of its application

On which contracts the Rules apply

The Rules do not apply to the charterparties and the contracts for the use of a ship or of any space thereon in both liner and non-liner transportation. The Rules apply to Transport Document or an Electronic Transport Record as defined by the Rules. Both of them are defined as issued under a contract of carriage

and:

1. Evidence the receipt of the cargo by the performing party; and
2. Evidence or contain the contract of carriage.

Period of Responsibility of the Carrier

The carrier is responsible under the Rules and Hamburg Rules to carry the goods and deliver them to the consignee or the party entitled to receive the cargo under the contract of carriage. His obligation starts when he or the performing party receives the goods and ends when the goods are delivered.

In both the Rules and Hamburg Rules the responsibility of the carrier starts if he receives the cargo from the shipper or his representative directly, or, when the carrier collects the goods from a third party or an authority if the laws or regulation of the place of receipt (port of loading under Hamburg Rules) require the goods to be handed over to such third party or authority.

The responsibility of the carrier ends when the carrier delivers (hands over) the cargo to the consignee or his representative directly, or, when the carrier hands over the cargo to a third party or an authority if the laws or regulation of the place of delivery (port of discharge under Hamburg Rules) requires the goods to be handed over to such third party or authority.

Hamburg Rules had further presumed a situation and a solution of it where the carrier wishes to deliver the goods and the consignee does not appear or refuses to take delivery from the carrier. In such situation the Hamburg Rules considered the carrier as having the goods delivered if he places "them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge". Although, the term "disposal" is not conclusive enough to discharge the carrier from his responsibility since the courts may vary the interpretation of such term and whether the carrier has actually placed goods under the disposal of the consignee.

On the other hand the Rules in article 48 has dealt differently with such a case in the sense that it provides for situations when it is considered that the goods have not been delivered and the solutions available to the carrier as alternative to the actual delivery to the consignee.

The Rules created a new concept to determine the period of the carrier's responsibility under the contract of carriage in article 12 (3). The article allows parties to the contract to agree on the time and place of delivery to the consignee and receipt of goods by the carrier for carriage. In no way can they agree that time of receipt be after the beginning of the initial loading under the carriage contract nor can they agree that the time of delivery is to be before the completion of the final discharge under the carriage contract.

This article provides a preview of some aspects of comparison between Rotterdam Rules and Hamburg Rules..