

February 12, 2014

**Re: The Circular No.64 [2013] on the Implementing Rules of the International Container Liner Precise Freight Filing**

**Dear Christian,**

The *Circular No.64 [2013] on the Implementing Rules of the International Container Liner Precise Freight Filing* (hereinafter referred as the Rules) were issued by the Ministry of Transport of the People's Republic of China (hereinafter referred as MOT) on October 15<sup>th</sup>, 2013 with an aim to promote fair practice in the international maritime transportation market. And it shall enter into force on November 15<sup>th</sup>, 2013 with three months lenient period, i.e. on February 15<sup>th</sup>, 2014.

Pursuant to the Rules, international container carriers are required to observe and implement precise freight filing on all export shipments from China effective February 15, 2014.

Shanghai Shipping Exchange (SSE) has been appointed by the MOT to handle ocean freight filing (including freight rate and related ocean surcharges) from carriers in the designated format as consented by the MOT. The filed tariff rates shall take effect as of thirty (30) days after the date when such filing is accepted. The negotiated rates shall enter into force as of twenty four (24) hours after the acceptance of the filing. However, the first filed freight rates after the Rules entry into force shall immediately become effective on the date of acceptance. Before new or increase of surcharges, the freight filing obligor is to well communicating and negotiating with paying parties and provide in filing reasonable explanation of such new or increased surcharges.

**1. How the Rules may affect a Skuld Owner and/ or Charterer Member;**

MOT will adhere to the following new regulations in the Rules and review the liner operators' bookings for full compliance with the Rules that will come into force on February 15<sup>th</sup>, 2014. Thus, the owner and/ or the charterer member of the club shall be required to take notice of the below items: -

- 1) The owner member and/ or the charterer member of the club involved in liner operation shall make sure the liner operation go through filing formalities as per the Rules.
- 2) The owner member and/ or the charterer member of the club involved in liner operation shall apply the freight rates as duly filed with SSE.
- 3) When the owner member of the club as the carrier enters into liner operation contracts with NVOCC

in China or from overseas, a MOT license and/ or its copy might be required. Thus, the owner member of the club who engaged in liner operation services as the carrier shall register with MOT or, if already registered, shall double check that they were duly registered with MOT, and that they have the MOT license issued by MOT. And the charterer member of the club shall check that the carrier with whom they would like to enter into liner operation contracts is duly registered with the MOT. When the charterer member of the club enters into contracts regarding liner shipping services with an owner in China, the charterer shall ask the owner to provide their MOT license and its copy.

- 4) According to the Rules, the filed tariff rates shall take effect as of thirty (30) days after the date when such filing is accepted, and the negotiated rates shall enter into force as of twenty four (24) hours after the acceptance of the filing. Thus, the owner member and/ or the charterer member of the club are suggested to arrange booking orders or rate negotiations in advance. However, the first filed freight rates after the Rules entry into force shall immediately become effective on the date of acceptance.
- 5) Before new or increase of surcharges, the owner member of the club as the carrier involved in liner operation shall well communicate and negotiate with paying parties. And a reasonable explanation of such new or increased surcharges shall be provided in filing. Meanwhile, the charterer member of the club involved in liner operation shall also ask the freight filing obligor to provide and file a reasonable explanation of such new or increased surcharges.

## **2. The involved Chinese Laws and Ministries**

In addition to the Rules itself, the involved Chinese Laws mainly include the *Regulations of the People's Republic of China on International Maritime Transportation* (hereinafter referred as the Regulations). And the below contents of the Rules concerns the Regulations: -

- 1) Any enterprise in breach of the Regulations shall be required by the provincial authorities in charge of transport as well as port and shipping affairs for rectification within a certain time limit and the case shall be reported to MOT.
- 2) The liner operators shall, in case of failure to go through filing formalities or apply the freight rates as filed, be required to rectify within a certain time limit with penalty of no less than RMB20,000 but no more than RMB100,000 in accordance with Article 49 of the Regulations.
- 3) Where the filed freight rates go beyond the normal and reasonable scope, which seriously deviate from the average level of the filed rates by the liner operators of the same scale offering the same service and may impair the market fair competition, MOT will conduct investigation as per Chapter V of the Regulations.
- 4) During the investigation, the liner operator in question shall faithfully provide the investigatory authorities with all the transport documents, freight invoices, service contracts, account billings and other relevant materials of each voyage without any refusal, concealment or misstatement. In case of refusal of investigation or unfaithful providing materials, the liner operator in question shall be

required to rectify within a certain time limit with penalty of no less than RMB20,000 but no more than RMB100,000 in accordance with Article 53 of the Regulations.

- 5) Pursuant to Article 40 of the Regulations, MOT may adopt restrictive or prohibitive measures such as limiting voyage frequency, suspension of tariff rate application, suspension of freight filing acceptance towards the liner operator that impairs fair competition.

In accordance with the Rules and the Regulations, the involved Chinese Ministries include: -

- 1) According to Article 2 of the Rules, MOT is in charge of issuing the MOT license;
- 2) Pursuant to Article 6 of the Rules and Article 36 of the Regulations, MOT and The State Administration for Industry and Commerce and the Department of price is in charge of conducting investigation, where the filed freight rates go beyond the normal and reasonable scope, which seriously deviate from the average level of the filed rates by the liner operators of the same scale offering the same service and may impair the market fair competition;
- 3) According to Article 4 of the Rules, SSE is the agency to accept freight filing, which are to formulate operating guidelines and provide technology service according to the Rules;
- 4) As per Article 5 of the Rules, the provincial authorities in charge of transport as well as port and shipping affairs preside over at the supervision over their local international maritime transport market and the on-site inspection.

In conclusion, the core content of the Rules is to cancel the former system of "filing a range of freight" stipulated in the *Circular No.20 [2009] on the Implementing Rules of the International Container Liner Freight Filing* issued by MOT, and adopt a more strict "filing precise freight" model. Pursuant to the Rules as introduced by MOT, the international container carriers are required to observe and implement precise freight filing on all export shipments from China.

If you have any further query, please feel free to contact us.

Best regards,

Lawrence Chen, Cassie Liu

**Wintell & Co**