



Covid-19 Insights

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CONTRACTS FOR THE INTERNATIONAL CARRIAGE OF GOODS BY RAIL (“CIM”) AND FORCE MAJEURE

The disruptions caused by the Covid-19 epidemic and the related government restrictions will affect also transport activities including the carriage of goods by rail, governed by the Uniform Rules Concerning the Contract of International Carriage of Goods by Rail (“CIM”).

Art. 16 of the Convention provides that the consignor and the carrier shall agree the transit period. In the absence of an agreement, the transit period must not exceed that which would result from the application of (i) the maximum transit periods and (ii) the additional transit periods.

The carrier may fix additional transit periods of specified duration in case of “exceptional circumstances causing an exceptional increase in traffic or exceptional operating difficulties.” The duration of the additional transit periods must appear in the general conditions of carriage: this provision guarantees that the carrier cannot unilaterally set additional periods after having concluded the contract of carriage and having agreed the transit periods. Restrictions imposed by the Covid-19 may be

considered “exceptional operating difficulties” allowing additional transit periods, but such events shall be previously indicated in the general conditions (eg. force majeure clauses).

The last paragraph of art. 16 indicates that the transit period shall start to run after the taking over of the goods and it shall be extended by the duration of a stay caused without any fault of the carrier.

The carrier shall be liable for the loss or damage resulting from the transit period being exceeded. The carrier shall be relieved of this liability to the extent that the exceeding of the transit period was caused “by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent” (art. 23). The burden of proving that the loss, damage or exceeding of the transit period was due to one of these circumstance lies on the carrier. It would follow that the carrier would escape liability for delay caused by restrictions related to the Covid-19 epidemic, as long as the event was unavoidable and could not be prevented.

The OTIF's explanatory report of the Convention indicates that the "exceptional circumstances" (art. 16) must not be confused with the "circumstances which the carrier could not avoid and the consequences of which he was unable to prevent". The latter, in fact, relates to events not provided for in the general conditions and refers to principles other than the "difficulty" and "exceptionality" of the event.

Finally, the restrictions due to the Covid-19 may impact the rail transport in different ways by (i) preventing the beginning of the carriage or (ii) disrupting the carriage.

In the first case, art. 20 of the CIM states that "When circumstances prevent the carriage of

goods, the carrier shall decide whether it is preferable to carry the goods as a matter of course by modifying the route or whether it is advisable, in the interest of the person entitled, to ask him for instructions while giving him any relevant information available to the carrier" (art. 20 CIM).

In the second case, "the carrier must without delay inform the consignor and ask him for instructions, save where the consignor has requested, by an entry in the consignment note, that the goods be returned to him as a matter of course in the event of circumstances preventing delivery" (Art. 21 CIM).



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