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Circular for P & I Clubs

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Delivery of cargo without the original bill of lading

Following changes in the regime of public ports in Venezuela back in 2009, recentralization of port activities took place giving rise to the establishment of a new port agency called Bolivariana de Puertos, S.A. (Bolipuertos, S.A.), in charge of the administration and operation, including the yards and warehouses. Consequently, new practices in the reception and delivery of cargo can be observed, deserving some comments.

As per article 203 of the Law on Maritime Commerce last amended in 2006, the goods are deemed to be under the custody of the carrier, from the moment he receives the goods from the shipper or the person acting on his behalf, or from any other competent authority through a document issued to such effect, until that time when he has delivered the goods: 1. To the consignee. In those cases when the consignee does not receive the goods from the carrier, carrier shall make them available to consignee pursuant to contract, law or common commercial practice at the port of discharge; and, 2. To an authority or a third party to whom goods must be delivered, pursuant to contract, law or common commercial practice at the port of discharge.

In the first scenario (delivery to the consignee) this could take place when there is a “direct discharge” pursuant to article 97 of the Regulations to the customs law, usually in case of ammunitions or urgent shipments. It could be said this is the “exception” to the general rule of delivery to an authority or a third party, mainly associated with tramp traffic.

The second scenario (delivery to an authority or a third party) is the general rule always associated with the liner traffic. The authority referred to is Bolipuertos, conferred these powers by law.

Prior to that container yards were under control of private port operators as a third parties, who generally used to have a terminal contract executed with the liner operators, imposing upon them obligations such as that of delivering cargo against the original bill of lading. Conversely, despite Bolipuertos, S.A. having the administration of all container yards, the former does not enter into terminal agreements with the carriers.

It follows that under Venezuelan law the carrier is currently obliged to deliver the cargo to Bolipuertos, S.A. which has the control of all container yards within the port area, not having the carrier any control upon cargo thereafter as release of it to the consignee is made by Bolipuertos, S.A. Nevertheless, there have been cases where this port agency argues that based on the reading of articles 98, 99 and 103 of the Regulations to the customs law, the bill of lading must be presented to the customs authority (the so-called SENIAT) while it is not a legal requirement its submission to them; in other words, Bolipuertos, S.A. may or may not ask for the BL for the release of the cargo as this allegedly is not required by law; as a matter of fact there have been reported cases of cargo delivered in this way, obviously with adverse consequences for the carrier, who have in the meantime drafted some clauses restricting the responsibility period to be included in the bill of lading.

The matter has not been resolved yet, being a topic for discussion between the Venezuelan Shipping Association and the authorities from time to time, aimed to reach a uniform interpretation, less discretionary, to ensure delivery of cargo against presentation of the document of transport.

Should you need any assistance or further information regarding the topic stated above, please feel free to contact:

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