

# Callidus News

ADVOCATES, CONSULTANTS & NOTARY

DUBAI | SINGAPORE | DELHI | MUMBAI | KOLKATA | CHENNAI | COCHIN [info@calliduscmc.com](mailto:info@calliduscmc.com)

## Branches

### Dubai

Business Avenue Building  
Office # 713  
Port Saeed Road, P.O. Box # 90992  
Dubai, UAE, Tel: +97142956664  
Fax: +97142956099

### Singapore

20 Maxwell Road  
#04-02 D, Maxwell House  
Singapore - 069113  
Tel: +65 6221 4090

### Delhi

383, 3rd Floor  
Lawyers Chambers  
Saket Court  
New Delhi -110017  
Tel: +91 9892 982 325

### Mumbai

8-B, Dariya Building  
2nd Floor, In between  
American Dry Fruits & Zara  
Dr. D.N.Road, Fort, Mumbai 400 001  
Tel: 022-22853371

### Chennai

Old No. 123, New No.255,  
3rd Floor, Hussiana Manzil,  
Ankapanaiken Street,  
Parrys, Chennai - 600 001  
Tel: +91 98 40 844463

### Cochin

Near St. Joseph's High School  
Chittoor Road, Cochin - 12,  
India  
Tel: +91 484 2391895  
[office@callidusindia.com](mailto:office@callidusindia.com)

## FREIGHT FORWARDER NOT LIABLE FOR THE LOSS DUE TO THE THEFT OF CARGO BY EMPLOYEE: SUPREME COURT OF APPEAL OF SOUTH AFRICA

A recent judgment by the Hon'ble Supreme Court of Appeal of South Africa, in an Appeal named Schenker South Africa (Pty) Limited vs. Fujitsu Services Core (Pty) Limited (508 of 2020) [2022] ZASCA 7 (18 January 2022), overturned the Judgment of the High Court of South Africa and pronounced that the Freight Forwarder is not liable for the loss due to the theft of cargo by Employee for various reasons.

In the said case filed by Fujitsu Services Core (Pty) Limited against Schenker South Africa (Pty) Limited before the Hon'ble High Court of South Africa, the claimant Fujitsu imported a consignment of laptops and

accessories from its affiliate company in Germany to the value of \$516,887/- and engaged the services of Schenker South Africa (Pty) Limited to assist with the logistics, freight forwarding, warehousing and clearing of the consignment. Thus the scope of services by Schenker included receiving the consignment from the Carrier; delivering them by road to Fujitsu, after performing the necessary customs clearance and other logistical services. Once the consignment arrived in the storage at the South African Airways Cargo Warehouse and ready to be delivered to Fujitsu, Schenker issued necessary documentation

to its drawing clerk, one Mr Wilfred Lerama, authorising him to collect and deliver the cargo to Fujitsu. On 23rd June 2012, Mr. Lerama arrived at the warehouse to collect the laptops on behalf of Schenker and Fujitsu. The consignment was then loaded onto his truck, which was "not marked with the Schenker Branding" and drove off, never to be seen again. Consequently, Fujitsu filed a claim for damages against Schenker in relation to the theft of its consignment.

In the said case, even though the High Court pronounced its Judgment holding the Freight Forwarder, Schenker, liable on the grounds of Vicarious Liability (Holding liable for the



**THOUGHT  
for the MONTH**

LIVE AS IF YOU WERE TO DIE  
TOMORROW, LEARN AS IF YOU  
WERE TO LIVE FOREVER

**MAHATMA GANDHI**



fraudulent act by its Employee) and on the terms and conditions of the National Distribution Agreement entered into between both the Parties, the Hon'ble Supreme Court of Appeal, dismissed the Judgment of High Court. The Supreme Court of Appeal, while interpreting the Clause 17 titled "Exemption Clause" of the said Agreement, determined that the Schenker had been "handling or dealing" with the Cargo at the time of theft, as contemplated by the Exemption Clause and was therefore executing the contract. The exemption clauses 17 of the National Distribution Agreement reads as "Except under special arrangements previously made in writing, the Company (Schenker) will not accept or deal with bullion, coins, precious stones, jewellerries, valuables, antiques, pictures, human remains, livestock or plants. Should Customer

(Fujitsu) nevertheless deliver such goods to Company or case Company to handle or deal with any such goods, otherwise than under special arrangements previously made in writing, Company shall incur no Liability whatsoever in respect of such goods, and in particular, shall incur no liability in respect of its negligent acts or omissions in respect of such goods....". It was further observed by the Supreme Court of Appeal that if it had been informed by Fujitsu that the cargo was valuable, it could have reduced the risk by taking appropriate steps including but not limited to employing security guards or taking out fidelity insurance.

The difference of opinion, observation and comments by both the High Court and the Supreme Court of Appeal, though has raised a concern among the Parties from various industries, who are now

being advised about the importance of careful drafting of the contractual terms and the difficulty in recovering the stolen goods however, has allowed the Freight Forwarders to breathe a sigh of relief.

Even if there are few circumstances where the Court declare the Freight Forwarder not liable for the loss or damage to the consignment or any other claims against them, different Courts of different jurisdictions considers various factors depending on which role they assume when agreeing to make the shipping arrangements. In any case, experts advise the Parties who engage as the Freight Forwarders, to take a Freight Forwarder's Liability Insurance Policy with any reputed insurance company so that they would get required assistance to deal with the claims as appropriate.

## CHINA'S DISPUTED CONTROL OVER SOUTH CHINA SEA

**Anagha Sonu Augustine**

Callidus Intern  
Bharata Mata School of Legal Studies, Choondy- Aluva



The South China Sea is a marginal sea with vast economic and geopolitical importance. Statistically, it paves way for one-third of the world's maritime shipping. It is also known for its reserve of oil and natural gases and also ensures food security of the Southeast Asia because of its fisheries reserves. Therefore, no further explanation is required to highlight the importance of this sea body; especially on the economical and commercial aspect.

To understand the unwarranted control of China over the South China Sea, it is important to have a fundamental knowledge of the nine-dash line. The nine-dash line is the area to which the historical claims of the Chinese government extend to. Though China does not exercise autonomy over the whole territory within the nine-dash line, it does claim rights over the minuscule islands in the region such as Paracel, Spratly, Zhonghsha and Pratas. But if

China is given the entitlements over these islands, it would extend the control of China over the entire territory of the nine-dash line. This is because UNCLOS permits sovereignty of a country to extend up to 12 nautical miles from the baseline. The concern over the infamous nine-dash line has been raised by many parties but unfortunately China has always claimed control over the region.

The main cause of the Chinese exertion of rights in the said water body is the ambiguity in the domestic maritime laws of China combined with the use of unfamiliar terminology in the legislations as against the international norms. Domestic legislation makes use of various definitions which are not explained in UNCLOS. This gives the Chinese an unfacilitated advantage to turn tables.

China has been persistently codifying laws related this disputed zone for the past 3 decades. Article 6 of the 1992 Law on the Territorial Sea and Contiguous Zone, demanded the foreign ships



entering the territorial sea of People's Republic of China to seek permission from the Government of People's Republic of China. Further requirements included transit of submarines on the surface and documentation procedures required for those ships carrying toxic substances. What has caused a stir to the already existing congestion is the introduction of Maritime Traffic Safety Law (MTSL) of China in September 2021. As per the new legislation, foreign vessels entering the territorial sea are required to notify maritime authorities, bring required permits and submit to Chinese command and supervision. A few months earlier, the Chinese

government had authorized the Chinese coast guard to use force against foreign vessels that violated Chinese sovereignty.

China has also applied the straight baseline rule under UNCLOS, connecting base points of several islands which are far beyond the Chinese coast. As a result, China has inflated its territorial sea and exclusive economic zone; this has caused the infringement of the rights of other nations under international law to use those waters. If China is given exclusive right over the area, then China would benefit tremendously from the economic activities in the region, which was approximately 3.4 trillion Dollars as per 2016 records. Countries

such as Philippines and Vietnam are taking steps to prevent these unwarranted gains by the Chinese.

China is powerful economically as well as in terms of military. Therefore, China has an advantage in exercising its power and laws over areas under its control, whether or not they are legally under Chinese jurisdiction. With a military expenditure of \$252 billion in 2020, forcing vessels from smaller nations is not a complicated task for China. China's legal warfare is built on its military and economic power. This, in the near future, will detrimentally affect the regional states and rules based international community.



**HOT NEWS**

**SINGAPORE INAUGURATES FIRST PHASE OF MASSIVE TUAS CONTAINER PORT**

After 10 years of planning, 3 years of construction, and an investment estimated at \$14 billion, Singapore officially inaugurated the first phase of its massive new Tuas Port operated by PSA Singapore. Located on the western seaboard, the plan is to consolidate container operations at

one of the world's most technologically advanced and sustainable ports which Singapore expects to become the leading transshipment hub in Asia.

The first phase of the port was officially declared open on September 1, although two of the berths had been in use for

the last year to help Singapore deal with the surge in global container traffic. A third berth was officially opened 2nd of September while PSA expects to have five berths able to handle the largest containerships in the world in service by year's end. The port is built entirely on reclaimed land and the reclamation effort is already underway for phase two of the port.



In 2021, Singapore handled 37.2 million TEU being connected to more than 600 ports worldwide, making it the busiest port outside China. Tuas has a massive 75-foot draft and when fully operational in 2040 more than 16 miles of berths. The port has been designed with the capacity to handle 65 million TEUs annually. By comparison, current plans for Shanghai call for a capacity of 50 million TEU annually.

Courtesy: [www.maritime-executive.com](http://www.maritime-executive.com)

Address: Near St. Joseph's High School, Chittoor Road, Cochin- 12, India, T: +91 484 2391895, [office@callidusindia.com](mailto:office@callidusindia.com)

**Disclaimer** The materials contained in our News Letter and our accompanying e-mail have been prepared solely for information purpose. Neither Callidus nor any of its affiliates make any warranties in relation to the use or reproduction of its contents. The information contained in the news letter is solely for academic and discourse purposes, meant for private circulation; this e-mail message and its attachments may be confidential, subject to legal privilege, or otherwise protected from disclosure, and is intended solely for the use of the intended recipient(s). If you have received this communication in error, please notify the sender immediately and delete all copies in your possession.

twininfosolutions.com