

Reform of Commercial Code (Transport Law) in Japan

Masahiro Amemiya*

Abstract: In Japan the Commercial Code (Transport law and Maritime commerce law) has been revised. This article intends to introduce the reform of the transport law. This article introduces the background of the reform of the Commercial Code firstly and the noteworthy issues regarding amended provisions of the transport law, i.e. shippers' obligation to inform of nature of dangerous cargo, consignees' rights, carriers' liability for high value goods and the multimodal transport, which apply to the international carriage by sea.

Keywords: The reform of Japanese Commercial Code (Transport law and Maritime commerce law), shippers' obligation to inform of nature of dangerous cargo, consignees' rights, carriers' liability for high value goods, multimodal transport.

I . Introduction

The legislative Bill of the reform of Japanese Commercial Code (Transport law and Maritime commerce law) was submitted to the Diet by the Cabinet and passed in May 2018. The amended Commercial Code is expected to come into force next Spring (April or May, 2019). The transport law (Book II, Chapter 8) and maritime commerce law (Book III) are original and substantial component of the Commercial Code. The contents of the transport law are as follows:-

Book II, Chapter 8

* LLB (Waseda University), LLM (Waseda University), Attorney-at-law, Partner of Amemiya Law Office, Visiting professor of Law, Waseda University and Dalian Maritime University, Chief fellow of the Institute of Maritime Law (Waseda University Comprehensive Research Organization), Councilor of Japanese Maritime Law Association, Arbitrator of maritime arbitration commission at Japan Shipping Exchange, Inc. He participated in the deliberation on the reform of the Commercial Code (Maritime law and Transportation law) as a secretary of the Legislative Council of the Ministry of Justice.

- Section 1 General rule for transport law (Article 569)
- Section 2 Carriage of goods (Article 570-589)
freight, carriers' liability, consignee's right, deposition and auction of goods,
prescription time for claim pertaining to carrier' liability, etc.
- Section 3 Carriage of passengers (Article 590-592)

The contents of the maritime commerce law are as follows -

- Chapter 1 Vessels and Owners (Article 684-704)
- Chapter 2 Captains (Article 705-721)
- Chapter 3 Carriage by sea (Article 737-787)
seaworthiness, voyage charterparty, bills of lading etc.
- Chapter 4 Casualties (Article 788-799)
general average, collision
- Chapter 5 Salvage (Article 800-814)
- Chapter 6 Marine insurance (Article 815-841)
- Chapter 7 Maritime Claimants (Article 842-851)
maritime Lien, mortgage

II. Background of Reform

The Commercial Code was enacted in 1899 under the great influence of German law. The transport law and the maritime commerce law has not been subject to any major amendment in 119 years. This means that the Commercial Code had become outdated in some respects. For example, there is no provisions on a contract for domestic carriage by air. Also, the wordings written in old-fashioned style makes it difficult to be understood.

In Japan the basic legislation is currently being modernized, i.e. the Book I and a part of Book II have been already modernized at the same time the Companies Act was enacted.

Under the circumstances the transport law and the maritime commerce law were amended in order to be harmonized with the current international maritime legal standard and reflect the change of practices in the transport business¹.

¹ The transport industries seem to cope with the development of the transport transactions under the outdated Code by way of using contracts concluded by parties. Most of provisions of the Code is non-mandatory. The parties are able to update contractual terms

In the first place, a study group was organized by the Japan Institute of Business Law. The fellows of the group investigated foreign laws such as German law, French law, US law and English law, and drafted up the report. After that “Study Group of Transport Legal System” was established by the above Institute. The Study Group examined the reform of the transport law and the maritime commerce law, and published the report on such examination.

In the second place, in February 2014, the Legislative Council of the Ministry of justice set up the Working Group for the reform of the Commercial Code (transport law and maritime commerce law) composing of scholars, lawyers, businessmen of the transport industries including representatives of vessel’s owners, carriers, freight forwarders, cargo interests, seafarers, marine insurance and bank, and officials in charge of the Ministry of Justice. Two years’ deliberation of the Working Group resulted in a gist of the reform. It was approved in the general meeting of the Council and submitted to the Minister of Justice in February 2016. The legislative Bill of the reform of the Commercial Code was drafted up with reflection on the above gist.

III. Noteworthy Issues of Amended Provisions of Transport law

A. Shipper’s obligation

Japan is a contracting party to the International Convention for the Safety of Life at Sea and IMDG Code is implemented as the Regulations for the Carriage and Storage of Dangerous Goods by Ships. In accordance with article 17 of the above regulation, a shipper of dangerous goods is obliged to submit the Declaration of Dangerous Goods to the shipowner or the master of the vessel which is scheduled to load them.

Japan has ratified the Protocol of 1979 to the international Convention for Unification of Certain Rules of Law relating to Bills of Lading 1924 (Hague Visby Rules) and a contract for international carriage by sea is governed by Carriage of Goods by Sea Act corresponding to the Hague Visby Rules (Japan COGSA)². Japan COGSA allows for

and conditions unless mandatory provisions prevail or those are offending against public order and decency.

² The Japan COGSA does not exactly correspond to the Rules. For instance, whether bills of lading are issued or not, the Japan COGSA applies to the contract of carriage of goods by sea including voyage charter parties.

the possibility of taking reasonable measures such as the destruction of dangerous cargo (Article 11). However, in either Japan COGSA or the Commercial Code, there is no provision as to the shippers' obligation to notice dangerous nature of the goods. In practice, such obligation has been sought under the so-called fair and equitable principle.

In the revised Commercial Code, the provision regarding the shipper's obligation to inform the carrier of the necessary information of the goods which have dangerous characteristics such as being inflammable or explosive in nature, the dangerousness, the product name of cargo, nature and required handling instruction, has been added.

If the shipper fails to do so, the shipper shall be liable for damage caused by the failure. The nature of shipper's liability was one of the subjects of great debate in this deliberation. There was a strong opposition to the strict liability in view of unreasonableness that if consumers who may not have enough information on nature of the cargo assume the strict liability as shippers. Finally, there is no provision concerning the strict liability and this liability is construed as negligence liability.

The shippers bearing the burden of proof that there was neither fault nor neglect contribute to the absence of the notification. It is thought to be of great difficulty for the shipper to prove that he is not negligent³.

Regardless of the above, this provision is non-mandatory and thus contracting parties may agree to the different provision under contract.

The obligation is imposed on the shipper of dangerous goods regardless of whether the carrier is aware of such dangerousness of the goods. However, the carrier who is aware of it shall be under the obligation to scrutinize the handling instruction of the goods and to prevent an accident from occurring⁴. In such case, the shipper's liability may be reduced by such as fault offsetting.

B. Consignee's right

It is stipulated in Article 583 of the Commercial Code that when the goods arrived at the place of destination, the consignee will obtain the rights of the shipper under the contract of carriage. Also, it is stipulated in Article 582 of the Commercial Code that the shipper

³ NYK ARGUS case, the Tokyo Appeal Court (February 28, 2013)

⁴ Margo Case, the Japanese Supreme Court (25 March 1993)

has control rights which shall cease when the goods arrive at the place of destination and the consignee claims for the delivery. These articles apply when bills of lading are not issued. If they are issued, due holders are entitled to exercise their rights under the bills of lading.

In the case of M.V. “MOL COMFORT”, the Vessel sunk with more than 4000 containers laden on board in the Indian Sea. Some goods were carried under the contract evidenced by sea waybill instead of bill of lading and some consignees faced difficulties to pursue the carriers under the contract because the consignees could not obtain the same rights of the shippers under the Commercial Code. If the conditions of the sale contract are FOB, CFR or CIF, the risk of goods transfer to the consignee at the time of loading of the goods, some of shippers would not be interested in recovery from the carrier or willing to assist in transferring the rights of the shipper to the consignee.

The above provision was amended as follows, considering the mentioned practice in the international carriage by sea though it is realized that the consignee is unlikely to prevail over the shipper during carriage in case of land transport.

Article 581 of the amended Commercial Code

After the goods arrive at the place of destination or the goods are totally lost, the consignee shall have the same right as of the shipper raised by the contract of carriage. The shipper shall not be able to exercise their rights when the goods arrive at the place of destination or goods are totally lost and the consignee claims for the delivery or for damages.

In future, disputes would arise such as the meaning of “totally lost” etc. and they are left to interpretation in practice.

C. Exemption for High Value Goods

It is provided in Article 578 of the Commercial Code that the carrier shall not be liable to compensate for damage with regard to cash, securities or other high value goods unless the shipper declared the nature and value of it upon entrusting such goods for transport.

This provision is essential for carriers, especially inland carriers, because carriers could not decide whether to undertake the carriage with an ad valorem freight or buy a liability insurance taking account of risks of being claimed for damage to such high value goods

unless the shipper declared its nature and value. If the provision would be abolished, the shipper could have been indemnified for damage to the cargo though the shipper had not declared the nature and value of the goods or paid the ad valorem freight. This situation should be unfair for carriers.

This provision has been basically maintained. However, the express provision of exemption has been newly added in the revised Commercial Code that such discharge of the carrier's liability shall not apply in case the carrier is aware at the time of conclusion of a contract that the goods is of high value and in case the loss, damage or delay occurred intentionally or by gross negligence of the carrier.

D. Multimodal Transport

Currently, in Japan the multimodal transport has come into wide use. However, there is no stipulation regarding the multimodal transport in the Commercial Code and in practice the multimodal transport would be subject to contracts between parties. Considering the spread of such type of transport and existing uncertainty in law, rules on the multimodal transport have been added.

In the amended Commercial Code (Article 578), concerning the carrier's liability for loss of, damage to, or delay in delivery of cargoes in case of the multimodal transport, which consists at least two kinds of mode among land transport, sea transport and air transport, in case the stage where loss or damage occurred is determined, any Japanese law or convention ratified by Japan would apply to that stage if the contracting parties had made a separate and direct contract concerning the stage.

For instance, if damage to cargoes occurred during land carriage in foreign country, Japanese transport law would apply. The above provision is non-mandatory and thus contracting parties may agree to the different provision under contract.

It is not provided that which laws applies when it cannot be proved where the damage occurred. The carriers are required to verify that the damage occurred during sea carriage if they want to enjoy the exemption of the carriers' liability such as "error in navigation" under Japan COGSA.

Also, the provisions on ocean bill of lading mutatis mutandis apply to transport documents for the multimodal transport covering sea and land carriage.

IV. Conclusion

The scope of the reform is limited to the provisions of the Commercial Code. The Japan COGSA was not amended substantially this time. The transport law originally regulates the domestic transport, however, most of provisions would apply to a contract for international carriage by sea. The influence of the reform to the international carriage is thought to be not so small.