

How to Overcome Covid-19 in Shipping Business

Kim, In Hyeon
Korea University : Professor

<https://doi.org/10.15017/6757912>

出版情報 : 法政研究. 89 (3), pp.253-263, 2022-12-21. 九州大学法政学会
バージョン :
権利関係 :

How to Overcome Covid-19 in Shipping Business

In Hyeon Kim*

- I. INTRODUCTION
- II. RE-SHORING AND NEAR-SHORING
- III. TO DISSEMINATE THE MARITIME KNOWLEDGE THROUGH ZOOM
- IV. TO DEVELOP SHIPPING BUSINESS UNDER THE 4th INDUSTRIAL REVOLUTION
- V. COME ALONG WITH LOGISTICS DEMAND
- VI. TO STRENGTH CORE SHIPPING BUSINESS FURTHERMORE
- VII. TO PREPARE FOR NORMAL PERIOD AFTER COVID-19
- VIII. CONCLUSION

I. INTRODUCTION

Under the COVID-19 period during 2020 and 2021, minimized meeting in person has been recommended and thus activities of peoples become lessened. Accordingly, the commodity production by workers was likely to be decreased. Volumes of international trade for commodities would be affected negatively. However, the demand for special items such as notebooks for on-line meeting or

* Professor/captain Korea University, School of Law

living appliances relating to staying at home is increasing.⁽¹⁾

How do these changes affect the shipping business and what will be the answer for shipping business from the legal perspective? We are needed to accommodate these changes of circumstances. I, as a maritime law professor, would like to suggest several ideas how to overcome COVID-19.

II. RE-SHORING AND NEAR-SHORING

Business activities in many countries had been hampered due to COVID-19. In order to prohibit COVID-19's transmission to their countries, each government ordered to block border line against other neighboring countries. Peoples realized that if we rely too much on foreign countries, we may suffer from difficulties. Idea that product factories should not be positioned abroad, known as the re-shoring, appeared.

Re-shoring means that products produced in foreign countries might be produced within its own territories of certain country. Therefore, product factory will be built within its own territory of the country. In the meantime, near-shoring means that the product which is made in a country far away might be produced in a neighboring country.

These two changes of circumstances in doing business will reduce the necessity of transshipment for commodities, which will make the demand for shipping decreased from long-term perspective.

Reduction of demand in shipping will affect shipping business in various ways. Demand for medium or small size vessel will increase in order to transport added commodities by near-shoring effect. On the other hand, demand for large container vessel such as 24,000TEU vessel will decrease.

Demand for inland transportation affected by re-shoring will increase.

(1) This article was written during the early stage of the COVID-19 in March 2021. Therefore, it did not reflect the sharp increase of the demand from US. Due to increased demand of the US citizen the volumes of export from Korea, China increased from August, 2021.

In addition, maritime transportation has some kind of advantage over land transportation in respect of environmental protection and cost saving, is known as modal shift, which will make inland transportation increasing.

Accordingly, merchants will draw attention to the land transportation law. The land transportation law is relatively out-of-date in Korea. The land carrier does not have the right to invoke package limitation.

The combined transportation carrier is to undertake the carriage connecting land and sea or air. The cargo damages may occur during the carriage of sea or land carriage by the same carrier with a single freight. Accordingly, the same liability regime is desirable. However, these two laws are different. For example, the land carrier does not have the right to invoke the package limitation. The revision of relevant articles in the Korean Commercial Code is required.

Due to near-shoring, demand for small sized vessel will increase. Cargo which is discharged at hub-port (big major port) is required to be shifted to spoke port (small port). Therefore, feeder vessel's engagement will increase. Legal matter relating to a feeder vessel is needed to be addressed in detail.⁽²⁾

The carrier A may undertake to transport a cargo from a port in US to a port in China. The carriage may use Pusan port as a hub port. The cargo will be discharged at Pusan port and it will be delivered to a Chinese port by a feeder vessel by the carrier B. The Bill of Lading issued by the carrier A will cover whole voyage from a US port to a Chinese port. The carrier B is the simple servant of the carrier A. Therefore, the carrier A, not B is liable for cargo damages based on the breach of contract caused by the negligence of the carrier B. The holder of the B/L may bring about claim against the carrier B based on the cause of action in tort.

Legal disputes may increase among neighboring countries such as China,

(2) There is no mentioning on the feeder vessel at all. The legal nature of the feeder vessel is left to the general rule in the Korean Civil Act. The feeder operator is a kind of the servant or agent the contractual carrier.

Japan, Taiwan and Russia. Each country maintains its own domestic maritime law, which does not give foreseeability to merchants. We may need to unify transport law among these 4 countries in order to give merchants more predictability.⁽³⁾

III. TO DISSEMINATE THE MARITIME KNOWLEDGE THROUGH ZOOM

For the writer to discover the magic of Zoom or other means of on-line lecture was the biggest advantage of COVID-19. It became routine in the class room for a professor to teach students through Zoom method.

Students are not required to attend the class at classroom in person. Instead, they listen to lectures of professors at their home. It makes professors and students to save time by eliminating the necessity of attending the class room. Even professor teaches the class at home, neither at their offices nor class room, and thus makes them to save times than otherwise case.

The Zoom method makes people who are staying at Pusan, Jeju Island, even in Hong Kong able to participate in a seminar which is hosted by an entity located in Seoul.

Inviting several maritime law professors from foreign countries was needed in order to organize an international maritime law seminar. I needed to arrange air tickets and accommodations at Seoul for them. It is no longer needed. Instead, they are invited on line. They speak at their office in their home countries. They are no longer needed to travel to Korea. They can enjoy the saved time as opposed to the previous case in which he actually visited Korea for delivering speech.

These changes can be applicable for various occupations such as teachers in high school and the CEOs in maritime business. It becomes usual manner for the workers to stay at home, which save time and money.

(3) Only Japan is the member state of the Hague-Visby Rule. Therefore, it does not play a role as a solution.

We may make use of these changed circumstances. Peoples who work in maritime, ocean and fishery are required to expand the scope of knowledge broad. Maritime business became complicated. Many shipping companies applied for rehabilitation proceeding. Liner shipping company is subject to the competition law. Without ship finance which provides money for building ship, the shipping company cannot be maintained. Accordingly, we can safely say that the experts in maritime or logistics field need to know the bankruptcy law, ship finance law and competition law in addition to the maritime law.

How to obtain these broad scopes of knowledge? We did not have enough time to attend special class at night after working hour at the office. We could not save time for study such subjects. But, now we have enough time to study and good means for study without attending the school.

More peoples obtain knowledge in maritime and other related field, more strong maritime industry will be.

In retrospect, the Hanjin Shipping in 2016 should not have been applied for rehabilitation proceeding without proper preparation. It seems that both the CEO of the Hanjin Shipping and the decision makers in Korean government did not know about the difference between liner shipping and tramper business.

In the liner shipping, the customer's credit on a liner shipping company is essential. In the Hanjin Shipping case, as soon as its rehabilitation procedure started, the commodities movement stopped due to stevedores' rejection of discharging cargo, stevedore's demanding paying stevedoring charge in due. Once the credit of the Hanjin Shipping disappeared, the possibility of the Hanjin's rehabilitation became sharply decreased.

If they had a lesson from the previous case of the Choyang Shipping's bankruptcy in 2001, they must have prepared for successful rehabilitation. It seems that they did not foresee such bad result, leading to the Hanjin's bankruptcy.

The lesson from the Hanjin Shipping case should be commonly shared

by lots of experts including politicians, high-ranked governmental officers and opinion leaders including maritime law professors.

The lessons can be shared by the on line study group through zoom method which is an easy access for peoples to get knowledge under COVID-19 period or post COVID-19.

IV. TO DEVELOP SHIPPING BUSINESS UNDER THE 4th INDUSTRIAL REVOLUTION

The 4th industrial revolution will affect shipping business a lot. MASS (Maritime Autonomous Surface Ship) vessel will appear within 10 years at sea. Big data, block-chain and AI (Artificial Intelligence) will be applied to various kinds of shipping business.

Electronic Bill of Lading (B/L) secured by block-chain technic will be circulated which gives much more convenience to the customer and make it to save time and expenses.

The MASS will reduce the necessity of crews on board. However, large scale of unemployment is expected. How to raise the controller at shore for MASS and how to reduce crews on board without confliction is hurdles to be solved before MASS appears.

These changes under the 4th industrial revolution will be accelerated after COVID-19. Rules applicable to vessel or shipping business should be changed to embrace these new changes under the 4th industrial revolution.

Under the current rules, the MASS vessel is not allowed to sail. Maritime safety rules are based on a human being's presence on board vessel. However, under the MASS vessel, no human being exists on board. Therefore, maritime safety rules including the collision avoidance rules should be changed to accommodate these new circumstances.

Electronic B/L will be circulated soon in international trading. Korean Commercial Code ("KCC") has a provision to accommodate the electronic B/L.

The scope of application is set for domestic use. However, the B/L is engaged in international trade.⁽⁴⁾ Therefore, international convention to regulate electronic B/L domestically and abroad as well is needed.

V. COME ALONG WITH LOGISTICS DEMAND

From long-term perspective, less cargo movement through the maritime leg but more air and rail cargo is expected. Due to port congestions and shortage of stevedores' labor caused by COVID-19 will hamper the liner shipping business. The customer who was needed to deliver the cargo timely without delay tried to find out more reliable means to send its commodities to its partner other than the liner container vessel. Air transportation provided more accurate arrival time which attracted lots of high valued commodity exporter.

There has been a strong trend that cargo owners want to make a single contract with a logistic company to cover the whole sequence from its factory to importer's factory. Responding to these demand, NYK, MOL, K Line in Japan expanded their business area from shipping to logistics.

Through logistic business, the shipping company will expand its business opportunity from transportation at sea to land transportation, air transportation, warehousing, stevedoring and custom clearing. The shipping company is recommended to expand its business to logistics business.

International convention is still under the regime of the carriage of goods by sea such as the Hague-Visby Rules and the Hamburg Rules. Even the Rotterdam Rules which was made in 2008 accommodates combined transportation. The demand for making rules to accommodate logistics contract is increasing. The Korean Commercial Code does not have a rule for regulating logistics contract as well. In the Korean Supreme Court Case 2019. 7. 10 Docket No. 2019 da 213009,

(4) Article 862 of the KCC is the relevant provision. It gives power to the electronic B/L the same as the paper B/L. The carrier is allowed to issue the electronic B/L by registering it in the designated registry by the Korean government.

the Korean Supreme Court regarded a contract as the logistics contract at first time but it applied an article for the combined transportation under the Korean Commercial Code to the case,⁽⁵⁾ because it did not have a rule for logistics contract.

VI. TO STRENGTH CORE SHIPPING BUSINESS FURTHERMORE

Even though the activity of peoples is hampered, necessity of eating, wearing, and living as a human being will stay as usual. Therefore, importing crude oil, iron ore, coal, corn, rice, orange and clothing from foreign countries will still be required as usual. These cargoes are transported through tramper business.

Commodities such as semi-conductor, steel products, electronic home appliances such as refrigerator and a TV set will be exported continuously from Korea to US. The liner shipping business is such means to transport them. The liner shipping company should maintain appropriate fleets, container boxes and container terminals.

Because the importance for national security after COVID-19 will increase, the Korean government should have a plan to maintain the minimum national shipping capacity in order to secure national shipping security, which means that Korean shipping company should export or import from or to Korea without relying on foreign country's shipping business too much.

The Hanjin Shipping's bankruptcy in 2016 affected shipments of export commodity to US west costs from Korea badly during September, October and November of 2020. The Korean exporters should pay high freight in double than that in normal case. They even did not find space for shipping. It is partly caused by the decreased supply of the container vessels operated by Korean liner shipping company. The portion of their shipment among world fleet decreased from 10 % in 2016 to 5 % in 2020, which weakens the national security for shipping.

(5) Article 816 of the KCC provides the rule which the combined transportation at issue is subject to.

While the Korean government tries to increase the number of fleets in Korean liner shipping business, it should watch the activity of member companies under alliance carefully. 80% of export commodities from Korea to US West coast are carried out by foreign liner shipping companies. The carrier is likely to respond very slowly to alleviate shortage of supply of the container vessel during the high freight season. The Korean government should make certain that the liner shipping company's activity against competition law is under continuous surveillance by Korean government according to Korean Shipping Act.

Korean shipping companies have shown unstable status over 50 years. Their debt has been too much. Their fleet has been composed of vessels which was composed by vessel with too much loan under the scheme of the Bare Boat Charter Hire Purchase ("BBCHP").

The idea is that shipping companies in Korea are needed to separate the operation of vessel from the owning of vessel. Under the new idea the operating company borrows vessels through time charter party from the owing company. The owning company does not run business for carriage of goods by sea. In other word, it does not play as the carrier. Korean shipping companies show tendency to borrow about 90 % money of the vessel's price from a bank when it obtains a vessel, which forces it to pay installment every month over about 15 years. They operate their vessel in the carriage of goods by sea. They pay installments by its income through the carriage. It is workable as long as the high freight maintains. However, if the freight falls, they face difficulties because they cannot pay the installment, which result in the bankruptcy at the final stage.

The separation between the operation of the vessel and the owning vessel will increase financial security for Korean shipping company. The separation will change financial scheme from the high exposure to payment obligation under BBCHP contract to the low exposure on under the time charter party with the owner.

Inland or coastal transportation at sea is relatively out-of-date in Korea,

compared to international shipping business. Salary of crew on board coastal vessels should increase. Safety standard for coastal vessels should be enhanced to accommodate the increased frequency of shipping.

VI. TO PREPARE FOR NORMAL PERIOD AFTER COVID-19

The most affected sector of shipping business is the cruise business. Due to COVID-19 lots of patients suffered pains on board several cruises. Currently, cruise business is all-stopped.

However, it is recommended that Korean shipping community should prepare for resuming cruise operation. In order to attract customers, it should give passengers good assurance that there is no threat to passenger against the COVID-19 transmission on board the cruise vessel.

Furthermore, Korean government is required to operate a separate facility for treating COVID patient of a cruise at shore. In order to get high reputation as a best cruise line harbor after COVID-19, a reliable system for dealing with the COVID on board and at a home port should be maintained. Cruise facilitating Act may be needed in order to accommodate these requirements including treating facilities and place of refuge.

The cruise liner is needed to provide safe cruise vessel against the COVID-19. Common ventilation system is criticized as a mean which transmitted COVID-19 to a passenger at other room. The cruise liner company should establish a separate ventilation system against contagion in new area.

VII. CONCLUSION

The COVID-19 affects people's activity and production of commodities. It also affects geographical circumstances of shipping. Due to re-shoring and near-shoring, the demand for inland or coastal shipping will increase. The necessity to secure national security for shipping is also increasing. Korean government should maintain minimum fleet for exporting commodities without relying too

much on foreign liner shipping company. Furthermore, Korean shipping company is required to expand its scope of business from sea carriage to logistics business in order to overcome reduced shipping capacity. Cruise business is needed to prepare for resume its business soon. To make Korean Shipping company's financial status stable, ship owning company is better to be established.

To accommodate these changes, Korean maritime law should be changed. There is need to revise land transportation rules to give package limitation for the benefit of land carrier. There is no special rule for regulating contract for logistics. The contract for logistics is needed to be added in the Korean Commercial Code. Special Act for securing and enhancing Korean shipping business is required.

The writer's suggestion for Korean shipping company and government may be applied to those of other shipping countries in the similar manner.