

How to overcome COVID-19 in shipping business

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1. Introduction

Under the COVID-19 period, minimized meeting in person is recommended and thus activities of peoples becomes lessened. Accordingly, commodity production by workers is likely to be decreased. Volumes of international trade for commodities will be affected negativley.

However, the demand for special items such as notebooks for on-line meeting or living appliances relating to staying at home is increasing.

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

Many countries business activities had been hampered due to COVID-19. In order to prohibit COVID-19's transmission to their countries, countries government ordered to block border line against other neighboring countries. Peoples realized the fact that if we rely on too much on foreign countries, they may suffer from difficulties. Idea that the product factory should not be positioned abroad appeared.

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

These two changes circumstances of doing business will reduce the

necessity of transshipment for commodities, which will make the demand for shipping decreased.

Reduction of demand in shipping will affect shipping business in a 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. In addition, maritime transportation has some kind of advantage over land transportation in respect of environmental protection and cost saving, which is known as modal shift, which will make increase of inland transportation.

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 The land transportation law is relatively out-of-date in Korea.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 right to invoke package limitation.

It is common for the combined transportation carrier 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 one freight.

Accordingly the same liability regime is desirable. 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, feed vessel's engagement will increase. Legal matter relating to feed vessel is needed to be addressed in detail.

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 feed 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, Japan, Taiwan and Russia. Each country maintain 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 predictability.

III. To disseminate the maritime knowledge through Zoom

The biggest advantage of COVID-19 for me is to discover the magic of Zoom or other means of on-line lecture. It became routine in the class room to teach students through Zoom method.

Students are not required to attend the class at classroom in person. Instead, they listen lectures of professors at their home. It makes professors and students as well to save time by eliminating to go to the class room. Even professors teach the class at home, not his office or class room, and thus makes him to save time to go to the class.

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

Inviting several maritime law professor from foreign countries was needed in order to organize an international maritime law seminar. I needed to arrange air tickets and accomodations at Seoul for them. I no longer need to arrange them. Instead, they are invited on line. They speaks 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 to Korea for delivering speech.

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

We may make use of these changed circumstances. Peoples who works in maritime, ocean and fishery are required to expand the scope of knowledge broad. Maritime business became complicated. Many shipping company applied for rehabilitation. Liner shipping is subject to 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 bankruptcy law, ship finance law and competition law in addition to maritime law.

How to obtain these broad scopes of knowledge? We did not have enough time to attend special class at night after working 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, Hanjin Shipping should not have been applied for rehabilitation proceeding without proper preparation. It seems that both the CEO of 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 credit by the customer for a liner shipping company is essential. In 2016 Hanjin Shipping case, as soon as the 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 Hanjin Shipping disappeared, the possibility of Hanjin's rehabilitation became sharply decreased.

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

The lesson from 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 on line study through zoom 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 10years at sea. Big data, block-chain and AI(Artificial Intelligence) will be applied to various kind of shipping business.

Electronic Bill of Lading secured by block-chain technic will be circulated which gives convenience to the customer and save time and money for staker holders.

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

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 has a rule to accommodate the electronic B/L domestically. But B/L is engaged in international trade. Therefore,

international convention to regulate electronic B/L domestically and abroad as well is needed.

V. Come along with logistics demand

Less cargo movement is expected and income of the shipping company through cargo transportation will decreased. In order to overcome these reduced income, the shipping company is recommended to expand its business to logistics business. Shipping company should maintain good relationship with its partner such as cargo owner, stevedoring company and warehousing company.

Shipping company should advance to logistics business. There is 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 simple. 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, warehousing, stevedoring and custom clearing and increase gains from business.

International convention is still under the regime of the carriage of goods by sea such as Hague-Visby Rules and 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. Korean Commercial Code does not have a rule for regulating logistics contract. In 2020, 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, because it did not have a rule for logistics contract.

VI. To strength core shipping business furthermore

Even though the activity of peoples are hampered, necessity of eating, wearing, living as a human being will stay as usual. Therefore, import of crude oil, iron ore, coal, corn, rice, orange, clothing from foreign

countries will still be required as usual. These cargoes are transported through tramp business.

Commodities such as semi-conductor, steel products, electronic home appliances such as refrigerator, 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 affected badly for stabling shipments of export commodity to US west coast from Korea 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 decreased from 10 % in 2016 to 5 % in 2020, which weakens the national security for shipping.

While the Korean government tries to increase the number of fleets in Korean liner shipping company, it should watch the activity of members company under alliance carefully. 80% of export commodities from Korea to US West coast carried out by foreign liner shipping companies. There is high possibility that the carrier moves very slowly and negatively to alleviate shortage of supply 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.

The above suggestions will enhance the national security for stable shipping of Korean export or import commodities.

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 made by too much loan in the scheme of the BBCHP(Bare Boat Charter Party). The idea that shipping companies in Korea is needed to separate the operation of vessel from the owning of vessel. The operating company borrows vessel through time charter party from the owing company which does not make business for carriage of goods by sea. Korean shipping company shows tendency to borrow about 90 % from bank to possess the vessel, which makes it to pay installment too much for loan every month. The separation between operation and owning vessel will increase financial security for Korean shipping company by changing financial scheme from high payment obligation under BBCHP contract to low payment obligation under time charter party with the owner.

Inland or coastal transportation at sea is relatively out-of-date, compared to international shipping business. Salary of crew on board coastal vessel should increase. Safety standard for coastal vessel should be increased to accommodate the increased frequency of shipping.

VII. To prepare for normal period after COVID-19

The most affected are 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 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.

VIII. 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 built.

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 rules 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.

My suggestion for Korean shipping company and Korean government may be applied to other shipping countries in the similar manner.