

AIJA Prague Annual Congress 2014, TLC

Answers to Questionnaire (by Sarah Wolf)

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1) Inland road transport

1.1. Which rules govern domestic, i.e. non international, road transport in your jurisdiction? Are the rules mandatory or can be deviated from by contracts?

Domestic road transport in Germany is governed by Sect. 407 – 452d German Commercial Code (“**HGB**”). This part is divided into three subsections. First, Sect. 407- 540 HBG contain the general rules, followed by the special rules for the transportation of the removal of household regulated in Sect. 451- 451h HGB. The multimodal transport is regulated in Sect. 452- 452d HGB.

The derogation from these provisions on road transport is regulated in Sect. 449 HGB. There is entire contractual freedom as regards the carriage of letters and similar items. Apart from that and if the sender is not a consumer, none of the rules are entirely mandatory. It can either be deviated from these by individual negotiated terms or for some even by the use of general terms and conditions. However, if the sender is a consumer it cannot be deviated from certain provisions mentioned in Sect. 449 HGB to its detriment.

Sect. 449 Subsect. 1 HGB lists some provisions it can only be deviated from by individual negotiated terms, e.g. concerning the carrier’s liability for loss of accompanying commercial documents, loss or damage of the good, delay in delivery, exclusion of liability, liability for the carrier’s personnel, limits of liability. However, Subsect. 2 of Sect. 449 HGB specifies that in certain cases it can be deviated from the limits of liability laid down in Sect. 431 HGB.

1.2. When is the road carrier liable for loss, damage and delay? Please describe the basis of liability and any liability exceptions available to the carrier.

The liability of the carrier is regulated in Sect. 425 et seqq. HGB.

Sect. 425 HGB states that the carrier shall be liable for damages due to damage to or loss of the goods occurring between the time when he takes over the goods and the time of delivery, as well as for any delay in delivery. In cases where certain behaviour of the sender or consignee or a special defect of the goods also contributed to the occurrence of the

damage the obligation to compensate as well as the extent depend on to what extent these circumstances contributed to the damage. Further, the carrier is responsible for acts and omissions of his servants to the same extent as for his own acts and omissions provided the servants act within the scope of their employment. The same applies to the acts and omissions of other persons whose services he uses for the carriage of the goods.

As regards the exemptions, the carrier shall, however, be relieved of liability if the loss, damage or delay was caused through circumstances which the carrier could not avoid with the utmost care and the consequences of which he was unable to prevent (Sect. 426 HGB). There are further special exemptions established in Sect. 427 HGB, containing a catalogue of reasons for exemption such as when the damage was caused by: the loading on deck or in uncovered vehicles which has either been agreed on or which is common practise (1.); insufficient packaging by the sender (2.); handling, loading or unloading of the goods by the sender or consignee (3.); the natural characteristics of the goods which particularly exposes them to damage, especially through breakage, rust, spoilage, dry out, leakage, normal wastage; (4.); insufficient labelling of the goods by the sender (5.); or the transport of living animals (6.).

1.3 Is the carrier entitled to limit liability for loss, damage and delay and, in the affirmative, can the limits be broken?

The total amount of loss that can be claimed from the carrier is limited as provided for in Sect. 431 HGB. Subsection 1 sets a limit of 8.33 units of account of the Special Drawing Rights in cases of claim for loss or damage of the good. If several packages were transported and only some packages are damaged or lost, the basis for the calculation of the limit of liability is the whole transported packages if all are devalued or only the devalued packages if only parts are devalued (see Subsect. 2). Subsect. 3 concerns the delay in delivery for which it limits the carrier's liability to three times the amount of the freight.

For damages or loss (other than damage to property or persons) caused due to other reasons than damage or loss of the good or delay in delivery, the liability is limited to three times the amount which would have had to be paid for the case of the loss of the good pursuant to Sect. 433 HGB.

The cases in which the carrier may not limit its liability are laid down in Sect. 435 HGB: The carrier is not entitled to the exemptions and limits of liability provided for in the respective part of the HGB or in the contract of carriage if it is proved that he himself – or one of the persons referred to in Sect. 428 HGB – caused the damage by an act or omission, either with the intent to cause such damage, or recklessly and with the knowledge that such damage would probably result.

1.4. Are there any deadlines within which the cargo interests shall give notice for claim? In the affirmative, please set out the deadlines and the consequences of non compliance.

The date of the deadline depends on the visibility of the loss or damage. The consignee or sender has to give notice to the carrier of a clearly visible loss or damage at the latest when receiving the goods according to Sect. 438 Subsect. 1 HGB. When the loss or damage is not clearly visible notice has to be given within the following seven days. In the absence of a notice, it will be presumed that the goods arrived complete and undamaged. The notice has to be in written form. The deadline for claims arising out of the delay of delivery is of 21 days (see sect. 438 subsect. 3 HGB).

1.5. Please describe time bars applicable to claims for loss, damage, delay as well as other claims for breach of contract by the carrier.

The time bar for claims for loss, damage and delay is one year, see Sect. 439 Subsect. 1 HGB. In cases of intent or the similar cases enumerated in Sect. 435 HGB, the time bar is three years.

The time bar begins at the end of the day on which the good was delivered according to Subsect. 2 of this provision. If the good hasn't been delivered, the time bar begins at the end of the day on which the good should have been delivered.

The time bar for other claims for breach of contract is the regular period of limitation of three years according to Sect. 195,199 German Civil Code ("**BGB**"), generally starting at the end of the year in which the claim arose.