THE TAIKOO BRILLIANCE

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THE RECENT DECISION OF THE ENGLISH HIGH COURT IN THE *TAIKOO BRILLIANCE* [2025] EWHC 878 (COMM) PROVIDES GUIDANCE ON THE INTERPRETATION AND APPLICATION OF ARTICLES III.6 AND I(C) OF THE HAGUE VISBY RULES (HVR). IN THIS CASE, THE COURT CONSIDERED (A) THE TIME LIMIT FOR COMMENCING "SUIT" FOR CLAIMS SUBJECT TO THE HVR AND (B) THE DEFINITION OF DECK CARGO WHICH FALLS OUTSIDE THE SCOPE OF THE HVR.

The case concerned a shipment of pine logs carried on the *TAIKOO BRILLIANCE* from New Zealand to Kandla, India. Four bills of lading were issued, two of which stated that some of the cargo was carried on deck, with quantities of 22,994 and 11,092 pieces respectively. At Kandla, the cargo was discharged in exchange for letters of indemnity for delivery without production of the original bills of lading. The holders of the bills (the "Holders") alleged mis-delivery and some months later arrested a sister ship of the *TAIKOO BRILLIANCE* in Singapore to obtain security for their claim.

More than a year after discharge of the cargo, the Holders commenced arbitration proceedings against the owners of the *TAIKOO BRILLIANCE* in respect of their alleged mis-delivery claim in accordance with the terms of the bills of lading. In response, owners argued that the claim was time barred under Article III.6 of the HVR which requires "suit" to be brought within one year of delivery of the cargo or the date on which the cargo should have been delivered.

On appeal from the arbitration award, the Court was asked to consider two questions:

1. **Did the arrest of the sister ship in Singapore to obtain security amount to a "suit" for the purposes of Article III. 6? The Court decided this question in owners' favour. The Court said that the Singapore proceedings were solely brought to obtain security and that a "suit" for the purposes of Article III.6 requires proceedings that can establish liability for the claim. Accordingly, the Holders' claim in respect of the under-deck cargo, which was commenced in arbitration over one year after the goods were delivered or should have been delivered, was time barred.**

2. **Did the cargo carried on deck fall outside the scope of the HVR? Article I(c) of the HVR excepts from its definition of "goods" any "cargo which by the contract of carriage is stated as being carried on deck", with the result that the Rules do not apply to such cargo. Owners argued that in order for "goods" to fall within the exception under Article I(c), the bills of lading must clearly identify the quantity of cargo being carried on deck, as well as the precise parcels carried. The Court disagreed and found that no single approach to drafting bills of lading is required and that what is necessary may vary depending on (a) the nature of the cargo and (b) the circumstances of each case. The Court, therefore, held that the arbitrator had not been wrong in deciding that the reference in two of the bills of lading to 22,994 and 11,092 pieces being carried on deck was sufficiently clear to fall within the exception under Article I(c) and that the carriage of this cargo was not subject to the HVR. Accordingly, the Holders' claim in respect of the cargo carried on deck was not subject to the HVR time bar for commencing suit.**

The *TAIKOO BRILLIANCE* confirms that proceedings to establish liability for the claim must be commenced in order to interrupt the HVR time limit of one year from delivery or the date when the cargo should have been delivered. Commencing proceedings solely to obtain security for the claim will not be sufficient. Further, where cargoes are to be carried under or on deck (for the same or different receivers), those who issue the bills of lading should ensure that such cargo is properly identified and described in the bills of lading, to minimise potential disputes given that each case will be decided on its own facts.