

**“THE MULTIMODAL TRANSPORT ACT”**

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## BACKGROUND

Carriage of goods by sea is the most important means of transport for international trade. However, the transportation of goods does not terminate when the goods reach the port of discharge but sometimes also covers the period during which those goods are brought to their destination within the territory of another State by means of another transport such as by road or rail. While goods are stationary, costs are still being incurred. Therefore, it is essential that goods should be kept moving at all times so that added value is diminished.

Under the Association of South East Asian Nations<sup>1</sup> regime, there is freedom of transit of goods among member States governed by the ASEAN Framework Agreement on the Facilitation of Goods in Transit, which was signed in Hanoi, Vietnam on 16 December 1999. Furthermore, the member States of ASEAN agreed to conclude a Framework Agreement on Multimodal Transport to fulfill the need to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade. This agreement is based largely on the United Nations Convention on Multimodal Transport of Goods 1980<sup>2</sup>, which has not yet come into force. The Agreement is also guided by the United Nations Committee on Trade and Development<sup>3</sup> and the International Chambers of Commerce<sup>4</sup>.

Nowadays, many modern ports in Thailand no longer have storage facilities but are mere transit points, where cargoes are moved from one mode of transport to another. The transfer should be as fast as possible to meet the needs of modern trade, where “Just-In-Time” delivery is becoming a standard requirement.

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<sup>1</sup>Hereafter referred to as ASEAN

<sup>2</sup>Hereafter referred to the Multimodal Transport Convention

<sup>3</sup>Hereafter referred to as UNCTAD

<sup>4</sup>Hereafter referred to as ICC

At this point it is important to note that Thailand as a dualist country has no law which applies to multimodal transport in her territorial jurisdiction. Thai shippers are exposed to substantial uncertainty regarding limitation of liability because liability for loss and damage tends to change each time cargo is transferred to a different mode of transportation and Thai shippers wishing to enter into multimodal contracts are overwhelmed by the complexity of the necessary documents required.

Due to the complexity and unpredictability of the law, there has been a significant barrier to the growth of multimodal transport and trade. So it is an urgent necessity to create a new legislation modeled on the Multimodal Transport Convention to redress the inadequacy in the law, and thereby facilitate and promote efficiency and economy in multimodal transport, establish a fair balance of rights and obligations among shippers, carriers and underwriters, and above all, ensure meaningful participation in the world maritime trade.

#### **EXPLANATORY NOTE**

Having recognized the desirability of adopting certain rules relating to the carriage of goods by international multimodal transport contract, including provisions concerning the multimodal transport operator<sup>5</sup> and his liability, the multimodal transport documents, the liability of the consignor, dangerous goods, notices, claims, actions and jurisdiction, parliament has enacted the Multimodal Transport Act. This Act shall apply to the carriage of goods on the basis of a multimodal transport contract which means a contract between a MTO and a consignor whereby the MTO promises to perform or to procure the performance of a carriage of goods by at least two different modes of transport and assumes responsibility for the whole transport.

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<sup>5</sup>Hereafter referred to as MTO

The following comments provide a general overview of the Act:

1. This Act has been drafted to regulate all contracts of multimodal transport if the place of taking in charge or the place of delivery of the goods by the MTO as provided for in the multimodal transport contract is located in Thailand, as well as, all contracts where the MTO is duly registered in the registry of the Ministry of Transport of Thailand.

2. The Act provides and prescribes for the functions and liabilities of the MTO. It makes the MTO responsible for the goods from the time he takes charge of them from the consignor up to the time of delivery.

3. It provides that The MTO shall be vicariously liable for the acts or omissions of his servants or agents in the performance of the multimodal transport contract and such servants or agents shall be entitled to the benefits of limitation of liability to the same extent as the MTO himself.

4. It further provides that the MTO's liability is based on negligence and he has burden of proving that all measures that could be reasonable required to prevent the loss or damage were taken.

5. The Act provides that the limitation of liability of the MTO extends up to an amount not exceeding the equivalent of 666.67 SDR per package or unit or 2.00 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher. It also provides as an exception, a limit of an amount not exceeding 8.33 SDR per kilogram of gross weight of goods lost or damaged where carriage of the goods is by sea or inland waterway.

6. In drafting the provisions dealing with loss following from delay in delivery or consequential loss or damage other than loss or damage to the goods, the United Nations Convention on Multimodal Transport of Goods 1980 has been taken into consideration as well as the ASEAN Framework Agreement on Multimodal Transport (expected to come into force in the near future). Since the ASEAN Framework Agreement is a regional agreement, then the amount of limitation of liability of the MTO provided in the said agreement has been adopted in this Act. The MTO is liable to an amount not exceeding the total freight payable under the MTO contract.

7. The Act provides that if damage or loss has occurred, where higher limits of liability are applicable, it should permit a consignor to claim under the higher limit.

8. The Act makes provision for the liability of the consignor and at the same time provides specific requirements to be satisfied by the consignor so far as carriage of dangerous goods is concerned.

9. The Act provides for and sets out the new, expedient and convenient system of documentation to be used in the multimodal transport contract between the consignor and the MTO known as the multimodal transport document. It also provides the possibility of replacing the multimodal transport document by electronic data interchange messages insofar as permitted by the applicable law.

10. The Act prescribes a limitation period for bringing judicial proceedings and also prescribes the procedure for bringing such proceedings. Further, it expressly provides which courts have jurisdiction over disputes concerning the multimodal transport contracts.

11. For a better administration, the Act gives the Ministry of Transport the power to maintain a register of duly registered MTOs. In fact, the Act provides that no MTO shall carry out his functions unless registered with the Ministry of Transport.

## ARRANGEMENT OF SECTION

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# THE MULTIMODAL TRANSPORT ACT

An act to provide for the multimodal transport of goods in Thailand and for matters incidental thereto, and connected therewith.

## CHAPTER 1

### DEFINITIONS

#### Section 1

For the purposes of this Act:

“Carrier” means the person who actually performs or undertakes to perform the carriage, or part thereof, whether he is identical with the multimodal transport operator or not.

“Consignee” means the person entitled to receive the goods from the multimodal transport operator.

“Consignor” means the person who concludes the multimodal transport contract with the multimodal transport operator.

“Goods” means any property, as well as containers, pallets or similar articles of transport or packaging not supplied by the multimodal transport operator, irrespective of whether such property is to be or is carried on or under deck.

“Multimodal transport contract” means a contract between a multimodal transport operator and a consignor whereby the multimodal transport operator promises to perform or to procure the performance of a carriage of goods by at least two different modes of transport and assumes responsibility for the whole transport.

“Multimodal transport document” means a document, which evidences a multimodal transport contract and which can be replaced by electronic data interchange messages insofar as permitted by applicable law, the taking in charge of the goods by the multimodal transport operator, and an undertaking by him to deliver the goods in accordance with the terms of that contract.

“Multimodal transport operator” means any person who, on his own behalf or through another person acting on his behalf, concludes a multimodal transport contract and who acts as a principal, not as an agent of or on behalf of the consignor participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

“Registration certificate” means the certificate issued by the Ministry of Transport establishing that the multimodal transport operator is included in the register of multimodal transport operators and authorizing him to act as such.

“SDR” means the special drawing right as defined by the International Monetary Fund.

“Delivery” means

- (a) the handing over of the goods to the consignee, or
- (b) the placing of the goods at the disposal of the consignee in accordance with the multimodal transport contract or with the law or usage of the particular trade applicable at the place of delivery, or
- (c) the handing over of the goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the place of delivery, the goods must be handed over.

“ Taken in charge” means that the goods have been handed over to and accepted for carriage by the multimodal transport operator.

## **CHAPTER II**

### **SCOPE OF APPLICATION**

#### **Section 2**

This Act shall apply to:

- (a) All multimodal transport operators under the register of the Ministry of Transport, and
- (b) All contracts of multimodal transport if the place for taking in charge or the place for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in Thailand.

## **CHAPTER III**

### **MULTIMODAL TRANSPORT DOCUMENT**

#### **Section 3**

- (1) When the goods are taken in charge by the multimodal transport operator, he shall issue a multimodal transport document, which, at the option of the consignor, shall be in either negotiable or non-negotiable form.



- (2) The multimodal transport document shall be signed by the multimodal transport operator or by a person having authority to act on his behalf.
- (3) The signature on the multimodal transport document may be in the form of handwriting, print, perforated, stamped, symbols, or in any other mechanical, or electronic forms.

#### **Section 4**

The multimodal transport document shall contain the following particulars:

- (a) The general nature of the goods; the marks necessary for the identification of the goods; and express statement, if applicable, as to the dangerous or perishable character of the goods; the number of packages or pieces; and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;
- (b) The apparent condition of the goods;
- (c) The name and principal place of business of the multimodal transport operator;
- (d) The name of the consignor;
- (e) The consignee, if named by the consignor;
- (f) The place and date where the goods are taken in charge by the multimodal transport operator;
- (g) The place of delivery of the goods;
- (h) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;
- (i) A statement indicating whether the multimodal transport document is negotiable or non-negotiable;
- (j) The place and date of issue of the multimodal transport document;
- (k) The signature of the multimodal transport operator or of a person having authority to act on his behalf.
- (l) The freight for each mode of transport, if expressly agreed between the parties, or the freight, including its currency, to the extent payable by the consignee, or other indication that freight is payable by him;
- (m) The intended journey route, modes of transport and places of transshipment if known at the time the multimodal transport document is issued;

- (n) Any other particulars that the parties may agree to insert in the multimodal transport document, if not inconsistent with the laws of Thailand or, where the document is issued elsewhere, with the laws of the State where the document is issued.

### **Section 5**

The absence from the multimodal transport document of one or more of the particulars referred to in Section 4 shall not affect the legal character of the document as a multimodal transport document.

### **Section 6**

- (1) The multimodal transport document shall be *prima facie* evidence that the multimodal transport operator has taken in charge the goods as described in that document unless express contrary indication has been made in the printed text or superimposed on the document.
- (2) Proof to the contrary shall not be admissible when the multimodal transport document has been transferred, or the equivalent electronic data interchange message has been transmitted to, and acknowledged by, the consignee, who in good faith has relied and acted thereon.

## **CHAPTER IV**

### **LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR**

#### **Section 7**

The responsibility of the multimodal transport operator for the goods under the provisions of this Act covers the period from the time the multimodal transport operator has taken the goods in his charge to the time of their delivery.

#### **Section 8**

The multimodal transport operator shall be vicariously liable for the acts and omissions of his servants or agents, when any such servant or agent is acting within the scope of his employment, or of any other person of whose services he makes use for the performance of the contract.

#### **Section 9**

The multimodal transport operator shall undertake to perform or to procure the performance of all acts necessary to ensure delivery of the goods in any of the following circumstances:

- (a) when the multimodal transport document has been issued in a negotiable form "to bearer", to the person surrendering one original of the document;

- (a) when the multimodal transport document has been issued in a negotiable form “to order” to the person surrendering one original of the document duly endorsed;
- (b) when the multimodal transport document has been issued in a negotiable form to a named person, to that person upon proof of his identity and surrender of one original document; if such document has been transferred “to order” or in blank, the provisions of paragraph (b) above apply;
- (c) when the multimodal transport document has been issued in a non-negotiable form, to the person named as consignee in the document upon proof of his identity; or
- (d) when no document has been issued, to a person as instructed by the consignor or by a person who has acquired the consignor’s or the consignee’s rights under the multimodal transport contract to give such instructions.

### **Section 10**

Subject to Sections 13 and 15, the multimodal transport operator shall be liable for loss resulting from loss of or damage to the goods, as well as loss resulting from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in Section 7, unless the multimodal transport operator proves that he, his servants or agents or any other person referred to in Section 8 took all measures that could reasonably be required to avoid the occurrence and its consequences.

### **Section 11**

Where the consignor has made a declaration of interest in timely delivery, which has been accepted by the multimodal transport operator, the multimodal transport operator shall be liable for loss following from delay in delivery. In the absence of such declaration the multimodal transport operator shall not be liable for such loss.

### **Section 12**

- (1) Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent multimodal transport operator, having regard to the circumstances of the case.
- (2) If the goods have not been delivered within 90 consecutive days following the date of delivery determined in accordance with the preceding paragraph, any person entitled to claim the goods may, in the absence of evidence to the contrary, treat the goods as lost.

### **Section 13**

Notwithstanding the provisions of Section 10, the multimodal transport operator shall not be liable for loss, damage or delay in delivery with respect to goods carried if he proves

that such loss, damage or delay occurred during that carriage was caused by any of the following circumstances:

- (a) force majeure
- (b) act or neglect of the consignor, the consignee or his representative or agent;
- (c) insufficient or defective packaging, marking, or numbering of the goods;
- (d) handling, loading, unloading, stowage of the goods effected by the consignor, the consignee or his representative or agent;
- (e) inherent or latent defect in the goods;
- (f) strike, lockout, work stoppage, total or partial restraints on labour;
- (g) with respect to goods carried by sea or inland waterways, when such loss, damage, or delay during such carriage has been caused by:
  - (i) act, neglect, or default of the master, mariner, pilot or the servant of the carrier in the navigation or in the management of ship, or
  - (ii) fire unless caused by the actual or privity of the carrier.

However, always provided that whenever loss or damage has resulted from unseaworthiness of the ship, the multimodal transport operator can prove that due diligence has been exercised to make the ship seaworthy at the commencement of the voyage.

#### **Section 14**

- (1) Assessment of compensation for loss of or damage to the goods shall be made by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, they should have been so delivered.
- (2) The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price, or if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

**CHAPTER V**  
**LIMITATION OF LIABILITY OF**  
**THE MULTIMODAL TRANSPORT OPERATOR**

**Section 15**

The multimodal transport operator shall in no event be or become liable for any loss or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2.00 SDR per kilogram of gross weight of the goods lost or damaged, whichever is the higher, unless the nature and value of the goods have been declared by the consignor before the goods have been taken in charge by the multimodal transport operator and inserted in the multimodal transport document.

**Section 16**

Any servant, agent or other person whose services the multimodal transport operator has used in order to perform the multimodal transport contract shall be entitled to the benefits of limitation of liability under this Act to the same extent as the multimodal transport operator himself.

**Section 17**

Where a container, pallet or similar article of transport is loaded with more than one package or unit, the packages or other shipping units enumerated in the multimodal transport document as packed in such article of transport shall be deemed packages or shipping units. Except aforesaid, such article of transport shall be considered the package or unit.

**Section 18**

Notwithstanding the provisions of Section 15 and 16, where the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged

**Section 19**

When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of which an international convention to which Thailand is a State Party, the Carriage of Goods by Sea Act 1994 as amended or any other law in force at that time, would have provided another limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such convention or law.

## **Section 20**

If the multimodal transport operator is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, his liability shall be limited to an amount not exceeding the equivalent of the freight under the multimodal transport contract for the multimodal transport.

## **Section 21**

The aggregate liability of the multimodal transport operator shall not exceed the limits of liability for total loss of the goods.

## **Section 22**

The multimodal transport operator is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of the multimodal transport operator done with the intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result

# **CHAPTER VI**

## **LIABILITY OF THE CONSIGNOR**

### **Section 23**

- (1) The consignor shall be deemed to have guaranteed to the multimodal transport operator the accuracy, at the time the goods were taken in charge by the multimodal transport operator, of all particulars relating to the general nature of the goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods as furnished by him or on his behalf for insertion in the multimodal transport document.
- (2) The consignor shall mark or label dangerous goods in accordance with the international conventions to which Thailand is a State Party, the Carriage of Goods by Sea Act 1994 as amended or any other laws in force at that time, which may also apply.

### **Section 24**

- (1) Where the consignor hands over dangerous goods to the multimodal transport operator or any person acting on his behalf, the consignor shall inform him of the dangerous character of the goods, and, if necessary, the precautions to be taken.
- (2) If the consignor fails to inform the multimodal transport operator of the dangerous character of the goods according to paragraph 1 and the multimodal transport operator does not otherwise have knowledge of their dangerous character:

- (a) the consignor shall be liable to the multimodal transport operator for all loss resulting from the shipment of such goods; and
  - (b) the goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
- (3) The provisions of paragraphs 1 and 2 of this Section may not be invoked by any person if during the multimodal transport he has taken the goods in his charge with knowledge of their dangerous character.
- (4) Where dangerous goods become an actual danger to life or property, in cases where the provisions of paragraph 2 (b) of this Section does not apply or may not be invoked, the goods may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average, or where the multimodal transport operator is liable in accordance with the provisions of Sections 10, 11 and 12 of this Act.

### **Section 25**

- (1) The consignor shall indemnify the multimodal transport operator against any loss resulting from any inaccuracies in or inadequacies of the particulars referred to in Sections 23 and 24.
- (2) The right of the multimodal transport operator to such indemnity shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.
- (3) The consignor shall remain liable even if he has transferred the multimodal transport document.

## **CHAPTER VII**

### **NOTICES, CLAIMS, ACTIONS AND TIME-BAR**

#### **Section 26**

- (1) Unless notice of loss of or damage to the goods, specifying the general nature of such loss or damage, is given in writing by the consignee to the multimodal transport operator when the goods were handed over to the consignee, such handing-over is *prima facie* evidence of the delivery by the multimodal transport operator of the goods as described in the multimodal transport document.
- (2) Where the loss or damage is not apparent, the same *prima facie* effect shall apply if notice in writing is not given within 6 consecutive days after the day when the goods were handed over to the consignee.

## **Section 27**

Unless otherwise expressly agreed, any action relating to multimodal transport under this Act shall be time-barred unless court or arbitration proceedings are instituted within a period of 9 months after the delivery of the goods or, if they have not been delivered, after the date on which the goods should have been delivered or after the date on which, in accordance with the provisions of Section 12 (2), failure to deliver the goods would give the consignee the right to treat the goods as lost.

## **Section 28**

Without prejudice to the provisions of Section 2 this Act shall also apply to:

- (a) all claims against the multimodal transport operator relating to the performance of the multimodal transport contract, whether the claim is founded in contract or in tort.
- (b) claims relating to the performance of the multimodal transport contract wherever made against any servant, agent or other person whose services the multimodal transport operator has used in order to perform the multimodal transport contract, whether such claims are founded in contract or in tort, and the aggregate liability of the multimodal transport operator and such servants, agents or other persons shall not exceed the limits in Sections 15 to 20.

## **Section 29**

Notwithstanding the provisions of Section 28 (b), a servant or agent of the multimodal transport operator or other person of whose services he makes use for the performance of the multimodal transport contract is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of such servant, agent or other person done with the intent to cause such loss, damage, or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

# **CHAPTER VIII**

## **JURISDICTION AND COMPETENCE**

### **Section 30**

- (1) In judicial proceedings relating to multimodal transport under this Act, the plaintiff may institute an action in the Intellectual Property and International Trade Court having jurisdiction in any of the following places:
  - (a) The principal place of business or, in the absence thereof, the habitual residence of the defendant; or



- (b) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
  - (c) The place of taking the goods in charge for the multimodal transport or the place of delivery; or
  - (d) Any other place designated for that purpose in the multimodal transport contract and evidenced in the multimodal transport document.
- (2) Any stipulation in the multimodal transport document shall be null and void and shall produce no effect if it either directly or indirectly departs from the provisions of this Act and, specifically if stipulations are made that are prejudicial to the consignor or the consignee. This shall not affect the other stipulations contained in the document.
- (3) Notwithstanding the provisions of paragraph 1 of this Section, the multimodal transport operator may, with the consent of the consignor, increase his responsibilities and obligations under the provisions of this Act.

## **CHAPTER IX**

### **MULTIMODAL TRANSPORT OPERATORS**

#### **Section 31**

- (1) No multimodal transport operator shall operate as such unless registered with the Ministry of Transport.
- (2) The Ministry of Transport shall maintain the register of duly registered multimodal transport operators.

#### **Section 32**

- (1) For inclusion in the register of multimodal transport operators, the person concerned shall submit an application and establish that he fulfils all requirements as prescribed by this Act. As a minimum he shall:
  - (a) have domicile in Thailand
  - (b) have an insurance policy, a coverage from a protection and indemnity club, or an alternative of a financial character to cover payment of obligations for loss, damage or delay in delivery of goods under multimodal transport contracts, as well as contractual risks; and
  - (c) maintain minimum assets equivalent to 80,000 SDR or provide an equivalent guarantee.
- (2) The Ministry of Transport shall issue the corresponding registration certificate if satisfied that the requirements of this Act have been met. If not it may refuse to do so

in a substantiated decision, within a period not exceeding 60 calendar days from the date on which fulfilment of the requirements set out in paragraph 1 of this Section has been demonstrated.

## **CHAPTER X**

### **MISCELLANEOUS PROVISIONS**

#### **Section 33**

- (1) The provisions of this Act do not, in any circumstances, involve any restriction on the facilities that Thailand has granted or may grant other States under bilateral or multilateral treaties.
- (2) Nothing in this Act shall be construed as limiting or derogating from the rights and obligations of a multimodal transport operator, carrier, consignee, and consignor in order to protect human health, public safety and the environment

## **CHAPTER XI**

### **FINAL PROVISIONS**

#### **Section 34**

The Act shall enter into force upon the thirtieth day after published in the government gazette.