

Liability Issues on Multimodal Transport in Thailand

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In Thailand, the term "multimodal transport" is used to describe the carriage of goods by at least two different modes of transport with only one underlying contract. Multimodal transport is commonly known as "inter-modal transport" in other jurisdictions.

Currently, Thailand has no law that specifically addresses multimodal transport. Disputes arising out of a multimodal transport operation are governed by existing Thai law on the carriage of goods in the Thai Civil and Commercial Code (CCC) and/or the Thai Carriage of Goods by Sea Act (COGSA).

The following is an example to illustrate how the liability and limitation of liability of the carrier are decided under existing Thai law in the multimodal transport context.

A wheel of Dutch cheese is shipped in a refrigerated container from Rotterdam to Bangkok by sea and in Thailand, from Bangkok to Chiang Mai by truck. All transportation is based upon a single contract. If the cheese were damaged during the ocean voyage, the Thai court would apply the COGSA to the liability and limitation of liability issues, whereas, if the cheese were damaged during transportation by truck from the port of Bangkok to Chiang Mai, then the Court would treat the shipment as goods carried by inland transport, and accordingly the provisions on liability and limitation of liability in the CCC would govern the case.

If the cheese were flown from Amsterdam to Chiang Mai or from Bangkok to Chiang Mai and it suffered damage in the air or within the grounds of an airport, the Thai court would apply the general provisions regarding liability and limitation of liability on the carriage of goods in the CCC, as there is no specific Thai law on carriage of goods by air.

Liability Under Current Thai Law

A. The Thai Civil and Commercial Code (CCC)

Liability of the Carrier

Under the CCC, the carrier is strictly liable to the consignor or consignee for loss of, damage to or delay in delivery of the goods entrusted to him. However, the carrier can be discharged from liability if he can prove that the loss, damage or delay in delivery is caused by:

- force majeure;
- the nature of the goods;
- or the fault of the consignor or consignee.

Limitation of Liability of the Carrier

There is no limitation of a carrier's liability under the CCC. The carrier is therefore liable for the full amount of loss, damage, or delay suffered by the consignee.

B. The Carriage of Goods by Sea Act (COGSA)

The Act applies in the following circumstances:

1. where it is an international carriage from or to Thailand; or
2. where one of the parties to the contract of carriage is a Thai national or a juristic person established under Thai law; or
3. where there is a coastal trade and the parties expressly agree in writing to incorporate the Act into the contract of carriage; or
4. where there is a bill of lading issued under a charterparty and the dispute is between the carrier and the consignee who is not the charterer.

Liability of the Carrier

Under the Thai COGSA, the carrier is liable for damages resulting from loss of or damage to the goods which have been handed over to him, as well as 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.

The goods are deemed to be in the charge of the carrier from the time he has received the goods at the port of loading from the shipper or the shipper's agent or from an authority or any other person to whom, under the law or regulations applicable at the port of loading, the goods for shipment must be handed over, until the time he has delivered the goods at the port or place of destination.

The carrier is deemed to have delivered the goods that were in his charge :

1. by handing over the goods to the consignee, or

2. when the carrier has dealt with the goods in such a way that is stipulated in the contract of carriage of goods by sea or in accordance with the law or commercial practice applicable at the port of destination, or
3. by handing over the goods to an officer or to any other person to whom, pursuant to law or regulations applicable at the port of destination, the carrier must hand over the discharged goods.

Exclusion of Liability of the Carrier

The carrier is entitled to exclude his liability if he can prove that the loss, damage or delay in delivery is in the scope of "the exclusions of the carrier's liability". The exclusions of liability of the carrier are similar to the exclusions of the carrier's liability provided for in the Hague Visby Rules.

The carrier is not liable for loss, damage or delay in delivery if the carrier can prove that the loss, damage or delay in delivery arose or resulted from:

1. force majeure;
2. perils, dangers and accidents of the sea or navigable water;
3. an act of war or fighting between armed forces,
4. civil war, riots, subversion and civil commotions;
5. detention, arrest, restraint or any interference made against the ship by the ruler of any State or territory, or under provisions of law, provided that it is not caused by fault or neglect of the carrier;
6. quarantine restrictions;
7. strikes, lockouts, stoppage or intentional slowdown at any port which obstruct the loading and discharge of goods, or berthing or unberthing;
8. act of piracy;
9. fault of the shipper or consignee, particularly on insufficiency of packing or packing unsuitable for the condition of the goods and insufficiency or inadequacy of marks;
10. inherent vice;
11. latent defects of the ship not visible or discoverable by inspection with care and skill which can normally and properly be expected of a person engaged in an occupation of inspector of ships;
12. error in navigation arising from the fault of the pilot in the discharging of his duties or from the pilot's instruction;

13. any other cause arising without fault or neglect of the carrier or without fault or neglect of the agents or servants of the carrier.

The carrier is not liable for loss, damage or delay in delivery caused by fire unless the claimant can prove that the fire arose from fault or neglect on the part of the carrier or his servants or agents. Nor is the carrier liable for loss, damage or delay in delivery arising from reasonable measures taken to prevent the spread of a fire and to avoid or mitigate its consequences, unless the claimant can prove that the damage was a result of the fault or neglect of the carrier, his agents or servants.

The carrier is also exempted from liability for loss, damage or delay in delivery resulting from taking measures to save human life or taking reasonable measures to save property at sea .

The Act also covers the special circumstance of live animals. The carrier is not liable for loss, damage or delay in delivery resulting from any special risks usually inherent in the carriage of live animals, provided that the carrier proves that:

1. he has complied with any special instruction given to him by the shipper relating to those particular animals, and
2. in the circumstances of such case, the loss, damage or delay in delivery could be attributed to risks or nature of such animal.

However, the carrier will be liable for loss, damage or delay in delivery resulting from any special risks usually inherent in the carriage of live animals if it can be proved that all or part of the loss, damage or delay in delivery resulted from fault or neglect on the part of the carrier, his servants or agents.

Limitation of Liability of the Carrier

- for loss or damage to the goods

Under the Thai COGSA, the carrier is entitled to limit his liability for lost or damaged goods. The limitation amount of the liability of the carrier for damages resulting from loss of or damage to all or part of the goods having been entrusted to him is Baht 10,000 per shipping unit or Baht 30 per kilogram of net weight of the goods, whichever is higher.

The Act also provides the definition of the term "shipping unit" which means a unit of the goods carried by sea which is counted as one, and can be transported on its own, for example, a sack, a piece, a barrel, a container, a bale, a crate, a parcel and a package of any item.

- for delay in delivery

The liability of the carrier for damages resulting from delay in delivery is limited to an amount equivalent to two and a half times the freight payable for the goods delayed but not exceeding the total freight payable under the contract of carriage of goods by sea.

Future Multimodal Transport Legislation in Thailand

In the very near future, Thailand will enact legislation specifically addressing multimodal transport which will be applicable to both domestic and international multimodal transports. The forthcoming legislation will be based on the ASEAN Framework Agreement on Multimodal Transport. Thailand and the rest of the ASEAN countries have formulated the ASEAN Framework Agreement on Multimodal Transport as a model law for application among ASEAN countries.

The ASEAN Working Group on Development of Multimodal Transport and Trade Facilitation is the agency preparing the Framework Agreement, with Thailand being the main country responsible for the project. So far, five meetings have been held in Thailand, and progress is being made towards the final draft of the ASEAN Framework Agreement on Multimodal Transport.

The ASEAN Framework Agreement on Multimodal Transport is a combination of the UN Convention on International Multimodal Transport 1980, the UNCTAD/ICC Rules for multimodal transport documents, the terms and conditions in the FIATA Multimodal Transport bill of lading, and The Multimodal Transport Agreement among the Andean group of countries in South America, namely, Bolivia, Colombia, Ecuador, Peru and Venezuela.

This draft agreement will introduce principles which will govern multimodal transport and remove it from the provisions of the Thai CCC and Thai COGSA. One of the main principles of the draft agreement is that the multimodal transport operator is the only party liable for loss, damage or delay, no matter how many carriers take part in the transportation.

This principle will change the existing scheme in the Thai CCC and the Thai COGSA where a consignee is entitled to bring an action against any and all carriers to whom the contracting carrier entrusts a part of its performance under the contract. Now, the consignee's only choice of defendant will be the multimodal transport operator.

The draft agreement defines a multimodal transport operator (MTO) as 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 or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract.

The draft agreement applies to all MTOs in the registry of the competent national body of each ASEAN member country.

It also applies to all international multimodal transport contracts if the place for taking charge of the goods or the place for delivery of the goods as provided for in the multimodal transport contract is located in a member country.

Liability of the MTO

The basis of liability of the MTO is based on "presumed fault", in line with the UN Convention on International Multimodal Transport 1980 and the carrier's liability under the Hamburg Rules. To be discharged from the presumed fault liability, the MTO must prove that he, his servants or agents or any other person whose services he made use of for the performance of the contract took all measures that could reasonably be required to avoid the occurrence and its consequences.

In addition to the general principle of the exclusion of the MTO's liability, the draft agreement also provides a list of exemptions from liability of the MTO. The MTO can be discharged from liability by proving that the event which caused the loss, damage or delay in delivery to occur was:

1. an act of neglect of the consignor, the consignee or his representatives or agents;
2. resulted from insufficient or defective packaging, marking or numbering of the goods;
3. arose from handling, loading, unloading or storage of goods effected by the consignor, the consignee or his representatives or agents;
4. was caused by an inherent or latent defect in the goods; or
5. resulted from a strike, lock-out, work stoppage, total or partial restraint of labor.

The responsibility of the MTO for the goods covers the period of time from when the multimodal transport operator has taken the goods in his charge to the time of his delivery.

Limitation of Liability of the MTO

The amount for loss of or damage to goods is limited to 666.67 SDR per package or unit, or 2 SDR per kilogram of gross weight of the goods lost or damaged, whichever is higher.

The limit for loss from delay in delivery is an amount not exceeding the equivalent of the freight under the contract.

The draft Agreement is scheduled to be signed at the Fifth ASEAN Summit Meeting in Hanoi in December of this year. However, the draft Agreement is subject to ratification or acceptance. It will enter into force on the thirtieth day after all members of the ASEAN have deposited their

instruments of ratification or acceptance. Some member countries may need to prepare implementing legislation before the deposit of such instruments; therefore, it will take some years before the draft agreement is fully in force.

As far as Thailand is concerned, legislation to give effect to the draft agreement and enable the country to deposit the instrument of ratification needs to be prepared. After the legislation comes into force, the draft Agreement will have full force in Thailand as a domestic law.

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