

MULTIMODAL TRANSPORT BILL

By: [Pimvimol \(June\) Vipamaneerut](#)

Tilleke & Gibbins International Ltd.

January 2001

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. In other jurisdictions, multimodal transport is commonly referred to as “inter-modal transport”.

Currently, Thailand has no specific law focusing on multimodal transport. Disputes arising out of a Multimodal Transport Contract are governed by existing Thai law pertaining to the carriage of goods, found in the Thai Civil and Commercial Code (“CCC”) and/or the Carriage of Goods by Sea Act (“COGSA”). Depending upon the circumstances of the case, either one of these Acts may govern. For example, if goods were damaged during their voyage by sea, the Thai Court would likely apply COGSA to the circumstances. On the other hand, if goods were damaged during inland transportation, or whilst in the air or within the grounds of an airport, the Court would likely apply the general provisions of the Thai CCC relating to carriage of goods. With regard to the latter, the CCC would likely govern, as there is no separate legal regime devoted to the carriage of goods by land or air. Note also that Thailand is not a party to the Warsaw Convention; and therefore, is not bound by its conventions concerning carriage of goods.

In the near future, however, Thailand is set to enact legislation addressing multimodal transport, which will be applicable to both domestic and international multimodal transports. Thailand and the rest of ASEAN countries have formulated the ASEAN Framework Agreement on Multimodal Transport as the model law for application among ASEAN countries. The forthcoming legislation will thus be in line with the ASEAN Framework Agreement.

Thailand's draft legislation, as well as the ASEAN Framework Agreement, will introduce principles which will make it separate and unique from currently applicable laws as outlined in the CCC and COGSA. One of the main principles of the draft agreement is that the multimodal transport operator is the only person who should

be liable for loss, damage or delay, no matter how many carriers take part in the transportation.

The draft legislation will be divided into 6 Chapters as follows:

1. Definitions;
2. Scope of Application;
3. National Multimodal Transport Committee;
4. Multimodal Transport Operator;
5. Civil Liability; and
6. Penalty

In this article, I will discuss the most fundamental parts of the draft legislation i.e. definitions; scope of application; multimodal transport operator; and civil liability.

I. Definitions

It is important to note that the draft legislation defines the following terms:

1. "International multimodal transport" means the carriage of goods by at least two different modes of transport on the basis of a multimodal transport contract from a place in one country at which the goods are taken in charge by the multimodal transport operator, to a place designated for delivery situated in a different country. The operations of pick-up and delivery of goods carried out in the performance of a unimodal transport contract, as defined in such contract, shall not be considered as international multimodal transport;
2. "Multimodal transport contract" means a contract whereby a multimodal transport operator undertakes, against payment of freight, to perform or to procure the performance of international multimodal transport;
3. "Multimodal transport document" means a document which evidences a multimodal transport contract, 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;

4. “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 or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract;
5. “Carrier” means the person who performs or undertakes to perform the carriage, or part thereof, whether he is identical with the multimodal transport operator or not;
6. “Taken in charge”, “Taken the goods in his charge” or “Taking in charge” means that the goods have been handed over to and accepted for carriage by the multimodal transport operator.

II. Scope of Application

The draft legislation applies to all “multimodal transport operators” in the registry of the competent national body of Thailand. The legislation will also apply to all international multimodal transport contracts in which 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 Thailand.

III. Multimodal Transport Operator

The Multimodal Transport Operator shall be registered with the registrar or with the competent national body of the countries which Thailand recognizes by treaty or international agreement.

To register as a Multimodal Transport Operator, an applicant shall fulfill all of the followings requirements:

1. being a limited company or public company established under the law of Thailand;
2. the principal office of business is located in Thailand;
3. having an insurance policy, or others financial character, or coverage from a protection and indemnity club, to cover payment of obligations for liability under the multimodal transport contract or contractual risks; and

4. having registered and paid up capital of not less than 80,000 SDR.

Civil Liability

This Chapter consists of 6 parts, namely Multimodal Transport Document; Liability of the Multimodal Transport Operator; Exclusion of Liability of the Multimodal Transport Operator; Limitation of Liability of the Multimodal Transport Operator; Liability of the Consignor; and Claim for Compensation.

1. Multimodal Transport Document

The provisions in this section relate to the document(s) that evidence the multimodal transport contract. The legislation requires that the multimodal transport operator issue a multimodal transport document, signed by him/her, which contains a list of enumerated particulars, and sign it. For example, the document(s) must specify, among other things, the general nature of the goods in transport, the apparent condition of the goods, the name of the operator and consignor, the place of delivery of goods and the date they are expected to be received, and the intended route, etc. Although the legislation requires that these particulars are included in the multimodal transport document(s), it should be pointed out that the document(s)' legal character will not be affected by absence of such detail. Moreover, the legislation provides that the multimodal transport document(s) shall be *prima facie* evidence of the taking in charge by the operator of the goods described in those document(s), unless a contrary intention (i.e. label on package states "shipper-packed container") can be inferred.

2. Liability of the Multimodal Transport Operator

Primary liability for performance of the contract lies with the multimodal transport operator, commencing from the time he has taken the goods in his charge to the time of their delivery. Liability is based on the notion of "**presumed fault**" of the multimodal transport operator, which is in line with the MT Convention and the rule of carrier's liability under the Hamburg Rules. The multimodal transport operator is *prima facie* liable for all loss resulting from loss or damage to the goods in delivery, as well as loss resulting from delay in delivery, if the occurrence which caused the loss, damage or delay took place while the goods were in his charge. To be discharged from liability, the multimodal transport operator must prove that he or his agent or delegate has taken all measures that could reasonably be required to avoid the occurrence and its consequences.

3. Exclusion of Liability of the Multimodal Transport Operator

Notwithstanding that primary liability lies with the multimodal transport operator, the draft legislation also provides a list of situations where said operator will be exempted from liability. The multimodal transport operator will be discharged from liability in cases where the loss, damage or delay was caused by:

- a) force majeure;
- b) an act of neglect of the consignor, the consignee or his representatives or agents;
- c) insufficient or defective packaging, marking or numbering of the goods;
- d) handling, loading, unloading or storage of goods effected by the consignor, the consignee or his representatives or agents;
- e) an inherent or latent defect in the goods; or
- f) a strike, lock-out, work stoppage, or total or partial restraint of labor.

4. Limitation of Liability of the Multimodal Transport Operator

The following basic rules may be gleaned from the provisions in the draft legislation pertaining to limitation of liability:

Unless the nature and value of goods are declared in the contract, the multimodal transport operator will not be liable for any loss or damage to the goods exceeding 666.67 SDR per unit or 2.00 SDR per kilogram of gross weight of the goods lost/damaged, whichever is higher. In cases where the transport does not include carriage by sea or inland waterway, liability shall be limited to 8.33 SDR per kilogram of gross weight of the goods lost/damaged.

Where the loss/damage occurred during one particular stage of the transport, in respect of which an international convention or mandatory law would have provided another limit of liability **if a separate contract had been made for that particular stage of transport**, the multimodal transport operator's liability for such loss/damage shall be determined in reference to the provisions of said convention or law.

If the multimodal transport operator is liable for loss caused by delay or consequential loss other than loss of or damage to goods, liability is limited to the equivalent of the freight under the contract.

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

5. Liability of the Consignor

The draft legislation states that the consignor is deemed to have guaranteed the accuracy of all particulars relating to the general nature of the goods furnished to the multimodal transport operator. As stated above, such particulars would be listed in the multimodal transport document. Moreover, the consignor is bound to indemnify the multimodal transport operator for any inaccuracies or inadequacies of the particulars.

Note also that the legislation makes particular reference to the consignor's obligations with regard to dangerous goods. The consignor has a duty to mark or label such goods in accordance with international standards, and furthermore, must inform the transport operator (or its agent or delegate) of the dangerous nature of the goods, and if necessary, the precautions that need be undertaken in handling, storage shipping and use. If the consignor fails to do so, and the transport operator does not otherwise have knowledge of the goods dangerous character, the consignor shall be liable for all loss resulting from the shipment of the goods and the goods may at any time be unloaded, destroyed or rendered innocuous by the multimodal transport operator without payment of compensation.

6. Claim for compensation

Under the proposed law, the consignee is required to give a written notice of loss or damage to the goods to the multimodal transport operator when the goods are delivered to him. Without such notice, the goods so delivered will be deemed to be the proper and exact goods as described in the multimodal transport document. However, where the loss/damage is not apparent, the consignee has six (consecutive) days to make notice in writing, or else the same presumption of properly delivered goods will apply.

Unless otherwise agreed, actions relating to multimodal transport shall be time-barred, unless they are instituted within a period of nine months after the delivery of the goods, or if the goods have not been delivered, nine months after the date they were scheduled to be delivered.

The provisions of this part are equally applicable to actions in contract and tort and to claims made against the multimodal transport operator, or his/her

servant, agent or other person whose services were used by the multimodal transport operator to perform the contract.

This section also deals with disputes arising out of the multimodal transport contract and specifies those jurisdictions which may have competence to settle, either through judicial proceedings or arbitration, such disputes. As a general rule, the plaintiff may institute an action in a court in any one of the following jurisdictions:

- a) the jurisdiction in which the principal place of business or residence of the defendant is situated;
- b) the place where the multimodal transport contract was made (so long as defendant has a business office in this jurisdiction);
- c) the place of taking the goods in charge or the place of delivery; or
- d) a place designated in the contract or agreed to by the parties after the claim has arisen.

Note also that if the jurisdiction is Thailand, claim will be decided according to the draft legislation.

The legislation also makes provision for arbitration. Where the parties have included in the contract that matters in dispute shall be referred by way of arbitration, the arbitration proceedings shall be held in any of the jurisdictions referred to in points (a) through (d) above, at the option of the claimant.

Current status of the draft legislation

At the present time, the cabinet has approved the Multimodal Transport Bill which was prepared by the office of the Maritime Promotion Commission. It has forwarded the Bill to the office of the Council of State for its review and revise sometime thereafter. There will be a meeting of the Council of State's Committee to approve the Bill and then it will be sent to the Cabinet again for approval. As soon as the Cabinet approves the Bill, it will then be sent to the House of Representative for approval.

It is expected that the Multimodal Transport Bill is likely enacted and in force sometime by the end of next year.