



**Guidelines for harmonization of national laws on multimodal transport in Asia and the Pacific**

## I. Background

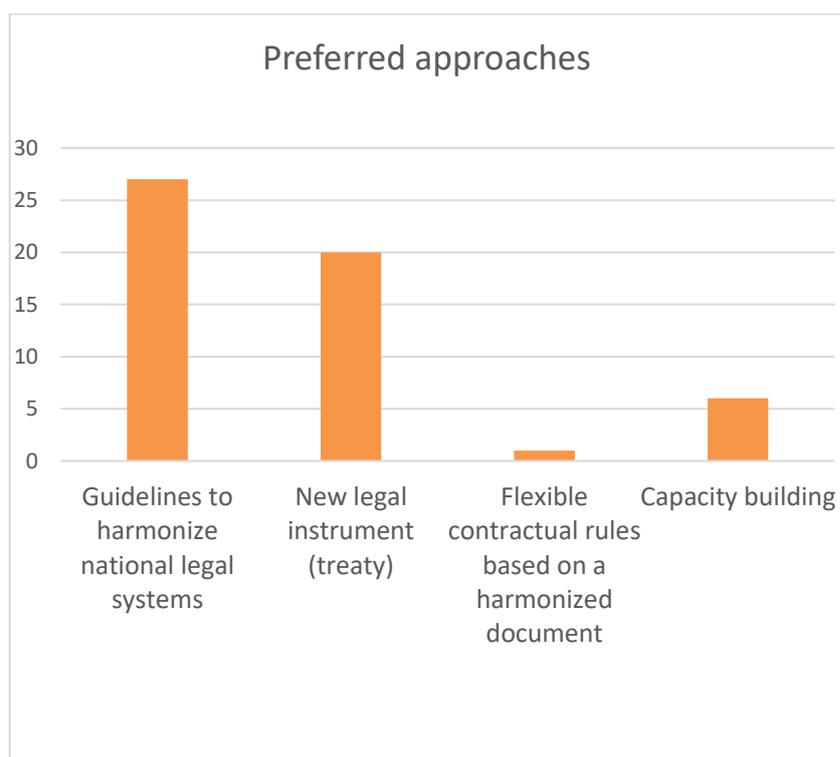
These Guidelines were developed by the secretariat under the capacity development project under the project on "Enhancing integration and sustainability of transport networks in Asia and the Pacific through development of legal frameworks for multimodal transport operations" implemented by the ESCAP secretariat with a view to assist ESCAP member States in formulating a concept for harmonization of rules for multimodal transportation.

The project earlier identified several options for harmonization of legal frameworks for multimodal transport in the ESCAP region, including development of regional guideline for harmonization of national laws on multimodal transport. These options have been discussed at two expert meetings held on 26-27 August 2020 and on 30-31 March 2021.

Following these discussions, the experts from ESCAP member States came to a conclusion that there exists a significant demand to also develop guidelines and capacity building to help harmonize national laws across the region. Taking into consideration the potential variety of preferences, with harmonizing national legislation on multimodal transport being one of the options, the secretariat has been requested to take into account the results of the regional survey conducted from February through May 2021 while planning its further activities under the project.

The majority of the survey respondents supported the development of Guidelines to harmonize national legal systems as the first immediate output in the course of harmonization of legal frameworks for multimodal transport in the region.

**Figure 1. Results of the regional survey on the preferred options for harmonization of legal frameworks for multimodal transport in the ESCAP region.**



Based on these recommendations and the results of the survey, the secretariat prioritized the development of the Guidelines for harmonization of national laws on multimodal transport and proposed its structure for the consideration of experts from ESCAP member States on 2-3 March 2022 at a dedicated meeting.

The finalized version below was prepared, taking into the account the comments received at the expert meeting. It also provides additional details on the proposed content of the Guidelines.

## **II. Brief description of the state of the matter regarding the legal framework for multimodal transport operations in Asia and the Pacific**

The current legal regime covering international multimodal transport is fragmented, lacks uniformity, and is difficult to apply. There are multiple disparate international legal instruments in force that govern unimodal carriage. Different terminology and definitions used in unimodal conventions create confusion about their application. Various liability limits create a recourse gap between damages from subcontractors and liability to the consignor. There is no international treaty that applies to multimodal transportation that has been adopted and ratified. The absence of a uniform international legal regime led to the adoption of international conventions, subregional agreements, and standardized recommendations to overcome legal uncertainty. However, very few of them entered into force.

Applying multiple liability regimes brings uncertainty about the ultimate liability of the Multimodal Transport operator. The existing contractual framework for multimodal transportation often produces an unpredictable result and raises the cost of doing business (in legal fees, litigation, insurance premiums, etc.).

Below please find the description of legal documents that are cornerstones of multimodal transport regulation.

### **1) International conventions**

#### **a) United Nations Convention on International Multimodal Transport of Goods**

The United Nations Convention on International Multimodal Transport of Goods was adopted in Geneva in 1980 (hereinafter – the MT Convention). It was the first comprehensive legal instrument to regulate multimodal transport and provide generally accepted terminology and definitions related to the multimodal transport of goods (multimodal transport, multimodal transport contract, multimodal transport document, and multimodal transport operator).

The MT Convention defines international multimodal transport as "the carriage of goods by at least two different modes of transport based on 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 Convention

defines a Multimodal Transport operator (hereinafter - the MTO) as a person who, on his behalf, concludes a multimodal transport contract, acts as a principal, and who assumes responsibility for the performance of the contract. The MT convention provides for issuing one document, the multimodal transport document (hereinafter - the MT document), to cover the entire transportation period.

The MT Convention adopts a modified network liability regime. Liability for localized loss or damage to the goods that occurred during one particular stage of the multimodal transport, in respect to which an applicable international convention or mandatory law provides a higher limit of liability than the limit of MTOs liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory national law.

The MT Convention limits liability for loss of or damage to the goods at 2.75 SDR per kilogram of damaged or lost cargo, or 920 units of account per package. For contracts that do not include the carriage of goods by sea or inland waterway, the limit of liability is 8.33 per kilogram.

Under the MT Convention, if the goods have not been delivered within 90 consecutive days following the date of delivery in the absence of evidence to the contrary, the claimant may treat the goods as lost.

MT Convention never entered into force, as it failed to achieve the required number of ratifications (it was to come into force after the governments of 30 states would have become Parties to it.) It is doubtful that the MT Convention will ever enter into force<sup>1</sup>.

Nevertheless, the terminology and provisions of the MT Convention were used as a basis for multiple legal documents that regulate multimodal transport- the UNCTAD/ICC Rules for Multimodal Transport Documents, regional/subregional agreements, and national legislation on multimodal transportation. (The limits of liability for the MTO stipulated under the MT Convention are considered too high- they are much higher than the limitation under the UNCTAD/ICC Rules and the AFAMT.)

### **b) Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea**

The Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea was signed in Rotterdam on 23 September 2009 (hereinafter the Rotterdam Rules). The Rotterdam Rules aimed to modernize sea carriage rules and replace the earlier conventions regulating sea carriage (Hague Rules, Hague-Visby Rules, and Hamburg Rules).

The Rotterdam Rules originally have intended to unify the legal aspects of sea carriage. The Rules also apply to contracts for multimodal carriage, provided there is a sea leg; therefore, the regime was referred to as a "maritime plus" regime. Multimodal carriage contracts with no sea leg are outside the Rotterdam Rules' scope.

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<sup>1</sup> For reference: among ESCAP member States, Georgia became a Party to the MT Convention

The Rotterdam Rules employ a network liability system. Where loss or damage occurs solely during multimodal carriage other than during a sea leg, the Convention will apply unless some other existing international unimodal instrument is compulsorily applicable to the extent that the unimodal instrument contains provisions providing for a carrier's liability, limitation of liability and time for a suit. In such a case, the conditions of that instrument will apply.

The Rules provide for weight-based and package-based limitation systems. The limits of the MTO liability under the Rotterdam Rules are 875 SDR per shipping unit or three SDR per kilogram of the gross weight of the goods. The time bar for claims is set at two years.

The Rotterdam Rules recognize an "electronic record" of a contract of carriage or other information in an electronic form, giving it the same effect as a "transport document" or its paper equivalent, such as a bill of lading. The Rotterdam Rules will come into effect one year after the twentieth ratification is deposited with the United Nations. As of May 2022, the Rotterdam Rules failed to attract the required number of ratifications and thus did not enter into force. One of the cited reasons is alleged overregulation and the fact that the Rules are overly complicated<sup>2</sup>.

## **2) Subregional agreements**

Below please find our research focused on subregional agreements between Asia and the Pacific region:

### **a) ASEAN Framework Agreement on Multimodal Transport (hereinafter- AFAMT)**

The Association of Southeast Asian Nations (hereinafter- ASEAN) is one of the major groupings of countries in South-East Asia. ASEAN promotes cooperation and facilitates economic integration among its ten member states: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam, and other countries in Asia.

The ASEAN Framework Agreement on Multimodal Transport (hereinafter- AFAMT), adopted in 2005, aimed to facilitate the movement of goods transported within ASEAN and with third-party countries by different modes of transport under a multimodal transport contract.

The AFAMT applies to

- all multimodal transport operators under the register of each competent national body; and
- all contracts of multimodal transport to settle civil claims, if the place for the taking in charge of goods by the multimodal transport operator as provided in the multimodal transport contract is located in a member country, or the place

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<sup>2</sup> For reference: among ESCAP member States, Armenia was among the signatories of the Rotterdam Rules (but has not become a Party to it)

for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in the member country.

The AFAMT establishes an institutional framework for multimodal transport by stipulating that a competent national body in each member country is an authority that issues the MTO registration certificate. Under the AFAMT, the registration by a competent national body of any of the Member countries authorizes an MTO to operate in any of the Member countries, provided that the requirements under the AFAMT have been fulfilled.

However, not all ASEAN member countries have ratified the AFAMT. After all countries have ratified it, it will provide a single framework for multimodal transport of goods within ASEAN.

As of December 2021, five ASEAN countries have passed and promulgated national laws on multimodal transport to give effect to the AFAMT Convention. National laws on multimodal transport contain additional rules and align framework provisions with the rest of national legislation.

<b>Box 1. Main thematic areas covered by AFAMT and national laws of Indonesia, Lao People's Democratic Republic, Singapore, Thailand, and Viet Nam</b>	
<ul style="list-style-type: none"> <li>• MT document</li> <li>• liability of the MTO, limitation of liability of the MTO</li> <li>• liability of the consignor</li> <li>• notices, claims, actions and time bar, jurisdiction, and competence.</li> </ul>	
<b>Main thematic areas covered by the AFAMT</b>	<b>Main thematic areas covered by national laws of Indonesia, Lao PDR, Singapore, Thailand, and Viet Nam</b>
<ul style="list-style-type: none"> <li>• qualifications for inclusion in the register of MTOs of the respective competent national body (legal capacity, legal domicile, insurance or an alternative of financial character, minimum size of registered capital)</li> <li>• deadline for issuance of MTO registration certificate</li> </ul>	<ul style="list-style-type: none"> <li>• MTO national registration requirements (administrative, technical, personnel) and procedure</li> <li>• procedural and administrative matters related to the registration, renewal, or cancellation of the certificate, appeal</li> <li>• term of the registration</li> <li>• penalties for infractions related to the multimodal operation</li> </ul>

**b) Agreement among Governments of member-states of ODED- GUAM on international multimodal transportation of goods**

ODED-Guam is an international organization consisting of four post-Soviet countries: Georgia, Ukraine, Azerbaijan, and Moldova. (Azerbaijan and Georgia are ESCAP member States and members of ODED-Guam). In 2007, member states signed an Agreement on international multimodal transportation of goods. The scope of the Agreement is limited to the multimodal transport of goods between the member states. Although the Agreement reconfirms support for the development of multimodal transport and expedited customs clearance of goods, it leaves the major substantive issues (i.e., regulation of MT document, rights, and liabilities of MTOs, consignee/ consignor, and limits for MTO liability) to be resolved by national laws and international agreements to which member states are parties.

The Agreement does not affect rights and obligations arising from other international instruments to which ODED-GUAM members are parties.

### **c) TRACECA Agreement on Multimodal Transport**

The Transport Corridor Europe Caucasus Asia (hereinafter- TRACECA) was launched in 1993. The Agreement on the Development of Multimodal transport on the Europe-Caucasus-Asia Corridor (hereinafter-TRACECA Agreement) was concluded in 2009 and governed the conditions for multimodal transport along the corridor.

It was concluded by Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan. The following countries are ESCAP member States: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan.

Similar to the Agreement among Governments of member-states of ODED- GUAM on international multimodal transportation of goods, this Agreement applies to the multimodal transport of goods between the member states and transit through the territories of these countries, conducted by the forwarders registered on the territory of one of the member states with the points of departure or destination on the territories of the states of the parties, with the use of all modes of transport.

The TRACECA Agreement borrows some of its provisions from the MT Convention and the UNCTAD/ ICC Rules for Multimodal Document. It establishes the particulars of a multimodal transport document, liabilities of MTO, and the time bar for instituting court proceedings (1 year).

The TRACECA Agreement establishes a brief period after which the goods not delivered shall be considered lost at 30 days. (Under the AFAMT, MT Convention, UNCTAD/ICC Rules establish the term of 90 days.)

The TRACECA Agreement established a uniform liability system of the MTO at a flat 8.33 SDR per kilo of the gross weight of goods irrespective of the mode of transport during which the loss, damage, or delay occurs. (In contrast with the MT Convention, Rotterdam Rules, and other subregional Agreements).

None of the ESCAP member States that are members to TRACECA and ODED-GUAM have yet adopted national multimodal transport laws.

### **3) Standardized recommendations**

#### **a) UNCTAD/ICC Rules for Multimodal Transport Document**

The UNCTAD/ICC Rules for Multimodal Transport Documents do not have the effect of the law, and they are standard contract terms for incorporation into multimodal transport documents. The Rules came into force in January 1992.

Under the Rules, unless the consignor has declared the nature and value of goods before the goods have been taken in by the MTO and inserted in the MTO document, the MTO shall be liable for loss of or damage to the goods in an amount exceeding the equivalent of 666.67 SDR per package or unit or 2 SDR per kilo of the gross weight of the goods lost or damaged, whichever is the higher. If there is no sea leg, then the liability of the MTO shall be limited to an amount not exceeding 8.33 SDR per kilo of gross weight.

The Rules have been incorporated in numerous multimodal transport documents (i.e., FIATA Multimodal Bill of Lading, the FIATA Multimodal Transport Waybill, etc.). Since UNCTAD/ICC Rules for Multimodal Transport Documents are recommendations for the transport and freight forwarding industry, they will have no effect in case of a conflict with mandatory laws.

#### **b) FIATA Multimodal Bill of Lading (FBL) and FIATA Multimodal Transport Waybill (FWB)**

FIATA's multimodal transport documents, most notably the FIATA Multimodal Bill of Lading (FBL) and the FIATA Multimodal Transport Waybill (FWB), as well as UNCTAD/ICC Rules for Multimodal Transport Documents play their important role in filling the legislative gap through recommendations for the unification of contractual relationship; at the same time, these are not legal instruments but recommendations for the transport and freight forwarding industry.

In particular, the FIATA FBL was developed to be used as a multimodal transport document, i.e., to cover transports involving more than one mode of transport (road, rail, sea, or inland waterway). It can be used by freight forwarders who are either individual FIATA members or members of national FIATA members associations.

The FIATA BL is based on and complies with the UNCTAD/ICC Rules for Multimodal Transport Documents. The terms of FIATA FBL will not prevail in case of conflict with the international carriage convention or other compulsory law.

#### **4) National laws on multimodal transport**

According to the publicly available information, which can be found through desk research in the English language, as of May 2022, most countries in the Asia-Pacific region lack national laws specifically on multimodal transport.

Some national legislations define the term "multimodal transport" and regulate it in other legislative acts not devoted solely to multimodal transportation, for example, in the Civil Codes. In the absence of single law on multimodal transport, several national legislative acts in the same jurisdiction may apply to the carriage. The laws are often applicable depending on the mode of transport and the stage where loss/damage has occurred. This may lead to practical complications related to conflict of laws (e.g., limits of liability, the time bar, etc.).

Based on the conducted desk research, as of May 2022, seven countries of the Asia-Pacific region have passed and officially promulgated national laws specifically dedicated to multimodal transport (acts, decrees, regulations, laws, hereinafter- MT law).

Some countries of the Asia and the Pacific region have national multimodal transport laws at the stage of the draft law. According to public information, in 2014, Myanmar enacted the Multimodal Transport Law; however, as of December 2021, the law rules have not yet been released. This report will not analyze draft laws and laws whose rules have not been released yet.

The first country in the Asia Pacific region that adopted MT law was India in 1993. The other country in the Asia Pacific outside ASEAN, which passed MT law, was Nepal in 2006. Five other countries that have effective national laws on multimodal transport are members of ASEAN (Indonesia, the Lao People's Democratic Republic, Singapore, Thailand, and Viet Nam). The multimodal transport laws of five ASEAN countries are aligned with provisions of AFAMT and built on MT Convention and UNCATD/ICC Rules.

**Table 1: ESCAP member States which adopted national laws on multimodal transport**

<b>Country</b>	<b>Official name and date</b>	<b>Party to AFAMT</b>
<b>India</b>	The Multimodal Transportation of Goods Act, Act No. 28 of 1993	
<b>Indonesia</b>	Government Regulation of the Republic of Indonesia Number 8 of 2011 on Multimodal Transport	<b>V</b>
<b>Lao People's Democratic Republic</b>	Law on Multiple Transport, No. 28/NA 2012	<b>V</b>
<b>Nepal</b>	Multimodal Transportation of Goods Act 2063 (2006)	
<b>Singapore</b>	Multimodal Transport Act, No 2 of 2021	<b>V</b>
<b>Thailand</b>	The Multimodal Transport Act, B.E. 2548 (2005)	<b>V</b>
<b>Viet Nam</b>	Decree on Multimodal Transport No. 87/2009/ND-CP	<b>V</b>

### **III. Guidelines for harmonization of national laws on multimodal transport**

The Guidelines is a result of desk research and comparative studies of publicly available data on the existing national laws on multimodal transport in Asia and the Pacific region, subregional agreements, the United Nations Convention on International Multimodal Transport of Goods, Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea and the UNCTAD/ ICC Rules for Multimodal Transport Documents

The following key considerations were taken into account by the secretariat in the process of development of the proposed Guidelines:

1. Legal instruments or laws that would serve as the benchmark for harmonization (i.e., UN Convention on International Multimodal Transport, UNCTAD/ ICC Rules for Multimodal Transport Document, relevant subregional agreements, as well national laws of a particular country) should be clearly identified.
2. The proposed Guidelines are intended as a common framework. It can be used as a basis or a starting point for drafting or amending national legislation.
3. The proposed Guidelines can serve as a reference for countries to have a unified approach to the main thematic topics covered by national legislation. It can serve as a checklist of main thematic matters that can be covered in national laws.

4. The Guidelines describe commonalities and discrepancies in regulation or various approaches and solutions offered by different national laws, international conventions, subregional agreements, and industry rules of multimodal transport.
5. Besides developing national laws, some issues are recommended to be settled through regional or subregional agreements or other means (i.e., contractual arrangements).
6. The Guidelines may be used as a checklist of the main thematic matters and issues which should be considered for inclusion in national laws on multimodal transport.
7. This document should not be interpreted as a model law as it does not contain the exact wording of each article.
8. The wording and the definitions used should be adjusted in line with the national legislation of the specific country.
9. Differences and discrepancies in the regulation of the same issues by national laws that are in force have been briefly pinpointed.

## **Structural elements and contents of national law on multimodal transport**

### **Chapter 1.**

#### **I. Preamble**

This article may express the political will and the goals the law strives to achieve and refer to the authority that enacted the law. It may contain a reference to other legislation that has been observed in adopting the law. It also may give the short title of the law and the timeframe or preconditions when the law comes into operation.

#### **II. Definitions / Interpretation of terms**

This article aims to achieve clarity and harmonize the law with other national legislative documents. The list of terms is not uniform since national legislations employ different terminology, and the scope of multimodal transport laws may be different (international carriage, international and domestic carriage, please see the Section on Scope below).

This article should use, as a basis, the terminology of the MT Convention and UNCTAD/ICC Rules for Multimodal Transport Documents and the AFAMT: "mandatory law", "multimodal transport contract", "multimodal transport operator", "carrier", "consignor", "consignee", "multimodal transport document", "taking in charge", "delivery"/ "deliver"/ "delivered", "SDR" and "goods".

However, not all national laws contain this set of terms, i.e., the law of Thailand operates the term "multimodal bill of lading" instead of "multimodal transport document."

It may be prudent to define the term "mandatory law" as it is pertinent in regulating the limitation of liability for localized loss. The AFAMT employs the following definition "Mandatory law" means any law or international convention forming part of the national law relating to the carriage of goods, the provisions of which cannot be departed from by contractual stipulations detrimental to the consignor or consignee. Also, it may be helpful to clarify whether the term "multimodal transport document" covers electronic documents. (There is no express recognition of an electronic record in the definition of the term "multimodal transport document" in the AFAMT, although the relevant article that regulates signature allows for electronic signature of the multimodal transport document.)

It is advisable to define the term "delivery"/" deliver"/" delivered" as this term is relevant to the period of responsibility of the MTO.

Particular attention should be given to the definition of the term goods. There is a discrepancy in national regulations of different countries on whether live animals are included in the definition of goods and whether the goods may be carried on or under deck.

It is advisable to include a definition of the terms "unit" and "package" as these terms are used to determine the limits of MTO liability.

Also, it may be prudent to define the term "general average". The term is often interpreted as "loss, damage or expense incurred to avert danger to property"). The AFAMT does not define the term "general average" but stipulates any attempt to prevent the application of the rules on general average adjustment contained in the multimodal transport contract or the relevant national law, if applicable. Thus, the AFAMT refers regulation of the general average rules to national laws. The law of India contains a definition of the term.

An often-disputed situation is a difference between a carriage as a separate mode of transport and a carriage, which is incidental to other modes of transportation, which can be clarified by adding to the definition of the term "international multimodal transport," an explanation that an operation of "pick-up and delivery of goods carried out in the performance of a unimodal transport contract shall not be considered as international multimodal transport." (The MT Convention and the law of Singapore contain this wording".)

It is outside the scope of this research to list every term defined by MT national laws in Asia and the Pacific as they may be relevant exclusively within the framework of that particular national legislation.

Each national law should define and operate the terms required by the national legislation. The exact terminology and definitions will also depend on which legislation has been used as a framework for national law (AFAMT is a standardized framework agreement for ASEAN countries). Therefore, definitions and terminology of the national laws adopted in ASEAN countries are very close to the provisions of the AFAMT.

We suggest that for harmonization purposes, it is desirable to keep definitions in MT national laws as close as possible to the definitions used in the MT Convention, the UNCTAD/ICC Rules, and regional/ subregional agreements (for countries that are part of relevant subregional agreements).

### III. Scope of application

#### Mandatory application

This article may provide that the law is mandatory and any contractual stipulations to the contrary are null and void. Thus, standard terms and conditions may not be used to derogate from the law.

The law of India provides for the mandatory application of the law in the following form "no person registered as a multimodal transport operator shall enter into any contract for multimodal transportation except following the provisions of this Act and any contract, to the extent it is inconsistent with the said provisions, shall be void and unenforceable."

This article may state that the law applies to all the multimodal transport operators duly registered/ accredited under the national registry.

#### Types of carriage

This article should define the types of carriage to which the law applies.

The national laws analyzed by the secretariat apply to the following types of carriage:

- 1) international multimodal carriage of goods
- 2) international carriage of goods outside the country
- 3) international and national carriage of goods

**Table 2: Regulatory scope of national laws on multimodal transport in ESCAP member States**

Country	International carriage	International carriage limited to export	International and national carriage
India		+	
Nepal		+	
Singapore	+		
Lao PDR	+		
Thailand	+		
Indonesia			+
Vietnam			+

The Law of Lao PDR expressly excludes passenger transport from the scope of the law.

## **Chapter 2.**

### **Multimodal Transport Document**

This chapter may stipulate that when goods are taken in charge by an MTO under an MT contract, the MTO must issue a Multimodal Transport Document (hereinafter- MT document) to the consignor of the goods. The chapter regulates the issuance of MT document, its form, particulars, and evidentiary effect. This Chapter is modeled on the MT Convention and the UNCTAD/ ICC rules.

#### **- Signature**

This article may require that the MTO signs the MT document. Most, but not all researched laws, also allow an authorized person to sign the MT document.

The law may regulate the signing methods on a multimodal transport document and recognize the electronic signature.

#### **- Particulars**

This article may contain the particulars of the MT document. The list of details usually includes:

- a. 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. Apparent condition of the goods
- c. Name and principal place of business of the MTO
- d. Name of the consignor
- e. Consignee, if named by the consignor
- f. Place and date of taking in charge of the goods by the MTO
- g. Place of delivery of the goods
- h. Date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties
- i. Statement indicating whether the MT document is negotiable or non-negotiable
- j. Place and date of issue of the MT document
- k. Signature of the MTO or a person having authority from him
- l. 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. Intended journey route, modes of transport, and places of transshipment if known at the time the MT document is issued
- n. Any other particulars that the parties may agree to insert in the MT document, if not inconsistent with the country's law where the document is issued.

There is a varying approach to whether the absence of one or two particulars shall affect the legal character of the document. Under the AFAMT and the Rotterdam Rules, a lack of one or more particulars does not affect the legal nature of the document as a multimodal transport document. This provision is interpreted as the MTO remains liable regardless of whether an MT document lists all the particulars or not.

This article may provide that the consignor must indemnify the MTO against loss resulting from any inaccuracy regarding the particulars of goods described in the transport document.

#### - **Form of the MT document**

The form of the MT document may be either negotiable or non-negotiable at the consignor's option.

Depending on the level of government regulation of the transportation industry, this article may stipulate the requirements for the form of the MT document, i.e., which party is authorized to formulate an MT document and whether the form of the document must be approved or registered with the state authority.

Under Indonesian law, the form of multimodal transport document must be formulated by the MTO Association based on Standard Trading Conditions and recommendations from the Minister.

Since the law of Viet Nam applies to both domestic and international multimodal carriage, the law envisages a different set of rules for domestic and international MT documents. The law requires the form of international multimodal document to be registered and specifies the contents of a dossier for registration of an MT document with the Ministry. The parties shall agree upon the form of a domestic MT document.

#### - **Evidentiary effect of the MT document**

This article may state that the MT document shall be *prima facie* evidence that the MTO has taken charge of the goods as described in the document unless a contrary reservation saying that the description is inaccurate and grounds for doubts have been made in the printed text (i.e., "shipper's weight, load, and count", "shipper packed container").

This article may list situations when proof of the contrary is not admissible.

Under Singapore law, if the MT document was transmitted electronically to the consignor, proof that the MTO had not taken the goods in charge is not admissible if the consignor had acknowledged receipt of the MT document; and relied and acted on the MT document in good faith.

## Chapter 3.

### Duties and liabilities of the MTO

This chapter is usually modeled on the MT Convention and UNCTAD/ ICC rules.

#### - **Period of MTO's liability**

This article may establish that the period of responsibility of the MTO extends from the time the MTO has taken goods in his charge to the time of their delivery. Therefore, it is advisable to define the term "delivery" in the article Definitions/Interpretations of Terms.

#### - **Liability of MTO for acts of servants, agents, and other persons**

This article may provide for vicarious liability of an MTO for acts or omissions of his servants or agents acting within the scope of the employment or of any person whose services were used for the performance of the contract as if such acts and omissions were his own. Such provision aligns with the AFAMT, the MT Convention, and UNCTAD/ICC Rules. Following the official explanation to Rule 4 of UNCTAD/ICC Rules, "The words within the scope of his employment" and "for the performance of the contract" would limit the vicarious liability of the MTO. These expressions may be given different interpretations in different jurisdictions. In particular, it is uncertain under some laws whether the MTO would be responsible for theft by his employees or other persons acting in the performance of the contract.

An MTO is to prove that the servants or agents acting within the scope of their employment or other persons whose services were used for the performance of the contract took all reasonable steps to avoid the occurrence of loss or damage to the goods.

The law of India does not have this provision.

#### - **Ensuring delivery of goods by MTO**

This article may provide that the MTO is obligated to perform all the acts necessary to ensure the delivery of the goods and stipulate modalities of delivery of the goods with reference to different types of MT documents that have been issued ("to bearer," "to order," negotiable form, non-negotiable form, no document has been issued).

The law of Thailand provides for a scenario when a consignee cannot be found or refuses to accept delivery of goods, in which case the MTO shall notify the consignor and ask for instructions. The MTO may sell, destroy, or otherwise deal with the goods as appropriate and necessary in the absence of instructions.

#### - **MTO's is liability for loss resulting from the loss of or the damage to the goods**

The liability of the MTO for the loss, damage, or delay of goods is based on the principle of presumed fault or neglect.

This article may establish that the MTO, his servants, agents, or any other person of whose services he makes use are are liable for loss if the occurrence caused the loss or damage or delay in delivery that occurred while the goods were in his charge unless he proves that he his servants, agents, or any other person took all measures that could reasonably be

required to avoid the event. The burden of proving the applicability of the exclusions is on the MTO.

The requirement of "reasonableness" is found in the MT Convention and the AFAMT. However, this term is often criticized for lack of clarity.

This article may list the defenses that may absolve the MTO from the liability for loss of or damage to the goods. Under the AFAMT, the list may include:

- act or neglect of consignor/consignee or his representative or agent,
- insufficient or defective packaging or numbering of goods,
- inherent or latent defect in the goods,
- strikes or lockouts or stoppage or restraint of labor,
- unseaworthiness of the ship, etc.
- force majeure (this exclusion provided by AFAMT, which does not define nor list force majeure circumstances).

It is suggested that if force majeure are included in national multimodal law, it should be defined and relevant circumstances listed. A thought needs to be given as to whether a force majeure event should be defined as only an "*unforeseeable* event" or as "any event whether *foreseeable or not*".

For example, in case of the COVID-19 pandemic, related lockdowns and government restrictions were imposed in many countries since early 2020 and, in many cases have not been lifted even by June 2022, and by now they can be considered as *foreseeable* circumstances, although they still prevent MTO from contractual performance. Also, it is advisable to consider the following force majeure situations "disease, epidemic, pandemic, health crises, government restrictions, quarantine, entry and exit restrictions, lockdown."

The list of force majeure circumstances might also include "war, armed conflict, ship arrest, rail lane closure, air space restrictions, air ban rerouting of flights, international sanctions, etc.

Also, in line with the provisions of the Rotterdam Rules, "piracy, terrorism, riots, and civil commotion, reasonable measures to avoid or attempt to avoid damage to the environment" might be considered to be added to the list of exclusions.

#### - **Liability for the goods carried by sea or inland waterways**

This article may provide a separate list of exclusions if the goods are carried by sea or inland waterways.

Under the AFAMT and the UNCTAD/ ICC Rules, the MTO will not be liable for:

- any act, neglect, or default of the carrier of the goods in the navigation or management of the ship (However, the Rotterdam Rules do not include "navigation error" or "negligent navigation" in the list the defenses. The reason is that the advances in navigation technology made this defense obsolete).
- any fire unless caused by the actual fault or privity of the carrier; or

- loss or damage resulting from the unseaworthiness of the ship if the MTO proves that due diligence had been exercised to make the ship seaworthy when the voyage commenced.

The Rotterdam Rules also contain the following exceptions in case the goods were carried by sea or inland waterways:

- saving or attempting to save life at sea;
- reasonable measures to save or try to save property at sea

It is prudent to define which party has a burden of proof of the applicable defense.

According to the UNCTAD/ ICC Rules and the AFAMT, the MTO is the party responsible for proving the defense.

#### - **Delay in delivery**

This article may define the term delay in delivery (unless it has already been described in the Article "Definitions"/"Interpretations of Terms").

The MT Convention, AFAMT, and UNCTAD/ICC Rules stipulate that the 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 MTO, having regard to the circumstances of the case.

The article may stipulate that the MTO shall not be liable for loss from delay in delivery unless the consignor has made a declaration of interest in timely delivery, which the MTO has accepted. (From a practical point of view, the declaration of timely delivery is rarely inserted in the bill of lading not to make the freight exorbitantly expensive.)

The article may establish the timeframe when the goods that have not been delivered shall be treated as lost.

Under the AFAMT, MT Convention, UNCTAD/ICC Rules, and the laws of the researched countries, if the goods have not been delivered within 90 consecutive days following the date of delivery determined according to the preceding paragraph, and in the absence of evidence to the contrary, the claimant may treat the goods as lost.

#### - **Right of MTO to have a lien on goods and documents**

This article may provide that the MTO has the right of lien, for payment of freight under the MT contract, on the goods and documents in his possession. The law can provide that non-delivery of the goods in the exercise of the MTO's right of lien is not considered a delay in delivery.

The law of India contains the relevant provision.

## - **Assessment of compensation**

This article may determine how assessment of compensation for the loss of or damage to the goods shall be made. The law shall establish how the value of goods shall be determined.

Assessment of compensation for loss of or damage to the goods can be made by reference to the value of goods are, the value of such goods at the place, and the time they were delivered or should have been delivered according to the current commodity exchange price, and if no such price according to the current market price, or by reference to the normal value of goods of the same kind and quality.

## - **Limitation of liability of the MTO**

The AFAMT and the analyzed national laws of the Asia and the Pacific region did not adopt the high thresholds of limitation of liability established by the MT Convention but contain the limitation of liability levels for localized loss borrowed from UNCTAD/ICC Rules for Multimodal Transport documents:

- Without the declaration of the nature and value of the goods by the consignor, 666.67 SDR per package or unit or 2.00 SDR per kilo of the goods lost or damaged, whichever is higher
- 8.33 SDR per kilo of the gross weight of the goods lost or damaged (if a multimodal transport operation does not include carriage of goods by sea or inland waterways).

The Law of Nepal contains the flat limit of 666.67 SDR per package or unit or 2.00 SDR per kilo for any type of carriage.

The limitation of the MTO liability is one of the most challenging issues in multimodal transport regulation. The problem with establishing MTO liability for carriage is that multimodal transport is not a type of transport but an attempt to combine various kinds of transport, each with a unimodal convention. When drafting a multimodal transport law, a liability regime needs to be stipulated in the law.

There are several solutions on how to regulate the liability of the MTO for loss or damage to the goods that occurred during one particular stage in multimodal transportation of goods (localized damage): "uniform," "network," "modified network" system of liability or the procedure provided by the AFAMT and UNCTAD /ICC Rules.

Under the **uniform liability regime**, the same liability regime would be applicable throughout the entire voyage, irrespective of the leg of the journey when damage or loss to goods occurred or in which country actions are brought. TRACECA Agreement on Multimodal Transport adopts a uniform liability regime. The advantage of a uniform regime is its simplicity, predictability, and ease of application. The application of this regime will save insurance and litigation. Its' main disadvantage is the recourse gap, which appears with certain unimodal conventions (a gap between MTO liability under multimodal contracts and MTO liability under the second layer of contracts with subcontractors).

The **network liability regime** is a system that applies the different unimodal conventions based on where the damage or loss occurs. The network liability regime does not have the

issue of a recourse gap. However, it fails to regulate the several problems, i.e., unlocalized damage/loss, gradual damage/loss that occurs during different legs of transportation and delay in delivery. The Rotterdam Rules employ a network liability regime.

The **modified network** regime adopts a uniform system of liability of the MTO for both localized and non-localized damage, except that in cases of localized damage, the limits of liability are to be determined by reference to the applicable international convention or mandatory national law, which provide a **higher** limit of liability than that of the convention, which is called "modified network" approach. (MT Convention is an example of the modified network approach.)

The AFAMT follows the regime offered by UNCTAD/ICC Rules: "when the loss of or damage to the goods occurred during a particular stage of the multimodal transport, in respect to which an applicable international convention or mandatory law would have provided **another** limit of liability if a separate contract of carriage had been made for that particular stage of transport, then the limitation of the MTO's liability for such loss or damage shall be determined by reference to the provisions such Convention or mandatory law."

Should the liability regime by the AFAMT be followed by national law, we suggest including a definition of the term "mandatory law" in the article "Definitions/Interpretations of terms." However, in our opinion, the word "another" is vague. Such wording might present certain complications in case of a conflict between two national laws as it is not clear which mandatory law should be applied.

- **Increasing the limit of liability**

This article may provide that the MTO may increase the limit of liability at the consent of the consignor. This provision is in line with the MT Convention.

The AFAMT and the law of Thailand contain this provision.

- **Liability of the MTO other than for loss or damage to the goods**

This article may state that the liability of the MTO for loss resulting from delay in delivery of goods or any consequential loss or damage is limited to a certain amount.

Under the AFAMT, this amount is equivalent to the freight under the contract. Under the MT Convention and the Rotterdam Rules, the liability of the MTO for loss resulting from delay in delivery shall be 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 multimodal transport contract.

- **Aggregate liability**

This article may establish that the aggregate liability of the MTO shall be capped at the limits of liability for the total loss of goods.

- **Loss of the right of the MTO to limit liability for loss, damage, or delay in delivery of goods**

This article may establish the rules for breaking the limit of liability of the MTO.

Under the AFAMT, UNCTAD/ICC Rules the MTO (and servant, agent) is not entitled to limitation of liability if the loss resulted from a personal act or omission that is done with intent to cause or recklessness and the knowledge that such consequences will probably result.

- **Non-contractual liability. Tort**

This article may establish that all claims against the MTO relating to the performance of the multimodal transport shall be applied according to these rules, whether the claim could be found in contract or in tort.

This provision protects MTO from claims related to the contract's performance, but the claimant avoids the rules by filing them in tort. The rules will still apply if the claim has been made for negligence.

This article may also provide servants, agents, and subcontractors of an MTO with the same protection afforded to the carrier by the contract of carriage.

If claims relating to the performance of the MT contract are made against any servant, agent, or other person whose services the MTO has used to perform the multimodal transport contract. In that case, whether such claims are founded in contract or in tort, the servant the agent, or other people, can avail himself of the same defenses as the MTO.

The article may set the limits of aggregate liability of the multimodal transport operator and such servants, agents, or other persons, which shall not exceed the limits of liability provided by law.

#### **Chapter 4. Duties of Consignor**

This chapter may establish the duty of the consignor to guarantee to the MTO particulars of goods and to indemnify the MTO against loss resulting from any inaccuracy regarding the particulars of goods described in the transport document.

When drafting a new law, it may be advisable to consider whether to include in the law the duty of the consignor to guarantee the legality of the goods.

This chapter may provide that the consignor is responsible for the packaging of goods in the agreed manner, and if no method has been agreed, then in the manner that protects the cargo.

Some national laws also contain a section on the rights of the consignor. The law of Lao PDR allows the consignor to request and receive information from the MTO or consignee. If the goods are lost or delayed in delivery, the consignor has a right to demand compensation.

## - **Dangerous goods**

This article may require a consignor to mark or label dangerous goods and inform the MTO of the goods' dangerous character and the precautions necessary to be taken. If the consignor fails to notify the MTO about the dangerous nature of the goods and the MTO does not otherwise know their dangerous character, the consignor shall be liable for all damage or loss.

This article may also determine the situations when dangerous goods can be unloaded and destroyed without compensation, except where there is an obligation on the MTO to contribute to the general average. This article may establish that the consignor shall indemnify the MTO against any loss resulting from any inaccuracies in or inadequacies of the particulars related to dangerous goods. The consignor shall remain liable even if he has transferred the MT document.

A law may establish other additional requirements for the packing or escorting dangerous goods in line with other national legislation on hazardous goods. (The law of Nepal requires that clear details of dangerous goods be mentioned on the outer part of the packaging of such goods. The law of Viet Nam requires the consignor to appoint escorts if so required.)

Some national laws regulate the transportation of dangerous goods as a separate section on dangerous goods; other laws regulate it as a section on duties of the consignor.

## **Chapter 5. MTO Registration**

Neither MT Convention, nor the ICC Rules contain provisions regulating MTO registration. The registration requirement for the MTOs is dealt with at the level of national laws.

The analyzed national laws in Asia and the Pacific are not uniform as to the specific requirement. However, all of them require an MTO to be registered with the competent national authority and to meet specific legal requirements.

The registration or accreditation requirement with a national authority plays a significant role in imposing a liability regime on an MTO. In such a case, an MTO's legal liability is stipulated by a contract, which an MTO often drafts. Also, minimum assets or guarantee requirement means that an MTO is in a position to compensate any claims regarding loss, damage, or delay in delivery of goods. The liability regime is either not set or advantageous for an MTO.

This chapter may provide that an MTO may not operate without proper registration, and the competent national body shall maintain a register of duly registered MTOs. The law may contain the list of minimum requirements/ qualifications that an MTO shall possess to enter multimodal transport operations and get registered with a competent national body in his country.

Generally, these requirements relate to:

- legal capacity

- legal domicile (under the AFAMT in a country where the application for the registration has been made)
- an insurance policy or an alternative of financial character (e.g., protection and indemnity insurance) to cover payment of obligations for loss, damage, or delay in delivery of goods (this is vital to ensure that an MTO has a financial capacity to respond to claims that may arise); and
- minimum assets or equivalent guarantee.

National laws contain various additional requirements for the qualification and registration of the MTO.

The MT law of India allows three categories of companies to be registered as MTOs:

(1) shipping companies

(2) freight forwarding companies

(3) companies that do not fall in either of the above two categories.

In the case of shipping companies (which own and operate vessels) and freight forwarding companies, the turnover of the last three years should be Rs. Fifty lakhs or more to make them eligible for registration as MTO. If a company falls under the third category above, the subscribed share capital should be Rs.50 lakhs or more. The company should have offices/agents/representatives in two countries.

The law of Nepal requires an entity applying for a license to have at least two branches, authorized agents, or representatives outside Nepal; the company's paid-up capital must be ten mIn Rupees, human resources, physical assets, and other managerial capacities as prescribed.

The Indonesian law imposes additional "technical requirements" on an entity applying for a license: ownership or control of the working equipment (office, mode of transportation, and loading and unloading equipment), employment of qualified personnel (competence of personnel in multimodal transport must be proven by certificate).

The matters of accreditation of importers and customs brokers with the national authorities are outside the scope of national multimodal transport laws. Other national legislative acts should resolve them.

#### - **Authorization of a foreign MTO to operate in a country**

A foreign MTO may be allowed to perform services of an MTO in a country. Under the AFAMT, foreign MTOs are authorized subject to the limitations provided by national legislation.

The analyzed legislation on this matter varies. Some countries limit country access to a foreign MTO, and others grant it either unconditionally or under certain conditions.

- **Issuance of certificate; Cancellation of the certificate; Appeal.**

This article may establish the application procedure for the MTO registration and the deadline when the corresponding certificate shall be issued and the process for filing the certificate renewal. This article may establish grounds for a cancellation of the issued certificate and an appeal procedure for the refusal to register.

Also, this article may regulate the validity term of the certificate. It is set for one year in Singapore, and it can be renewed. In Nepal, Thailand, and Viet Nam the validity term is set at five years. The laws of the other researched countries do not establish the certificate's validity term.

## **Chapter 6. Miscellaneous**

- **Notices. Claims**

This article may set timeframes for giving notice of loss of or damage to the goods distinguishing between apparent and non-apparent loss before the claim is brought.

Under the MT Convention, AFAMT, and most of the researched laws, if the damage is not apparent, notice is to be given within six consecutive days after the delivery to the consignee. The law of Nepal establishes a shorter (three-day) notice period.

- **Time Bar**

This article set a time bar for instituting court and arbitration proceedings. Some laws allow for the extension of the time bar.

The standard term under most national laws, UNCTAD/ICC Rules, and the AFAMT is nine months from the date of delivery or the day when goods should have been delivered or after the date when failure to deliver the goods would give the consignee the right to treat the goods as lost. (The logic behind a short term of 9 months is to provide an MTO with an adequate time to institute recourse actions against the performing carrier.) The time bar set by the law of Nepal is six months.

The MT convention and the Rotterdam Rules set the much more extended period of limitations at two years. However, under the MT Convention, a notification in writing stating the nature and main particulars of the claim must be given within six months after the day when the goods were delivered. Otherwise, the action shall be time-barred at the expiry of this period. According to the MT Convention, a recourse action by the MTO for indemnity against subcontractors is possible even after the expiry of the limitation period, provided that it is permitted under the law of the state where proceedings are instituted and that it is not contrary to the provisions of another applicable international convention

The MT Convention, FIATA FBL, and the Rotterdam Rules allow extension of the time bar upon the express agreement between MTO and the consignor.

The law of Thailand allows the extension if the respondent has given the consent in writing that no time bar shall be invoked in court or arbitral proceedings. Such consent is enforceable but shall not exceed two years.

#### - **Jurisdiction and competence**

This article may establish rules for forum selection for instituting the court and arbitration proceedings.

There are various options to institute judicial/arbitration proceedings at the discretion of the plaintiff/ claimant:

- the principal place of business or habitual residence of the defendant;
- the place where the MT contract was made, provided that the defendant has a place of business there;
- the courts of the place in which the goods were taken in charge;
- the place designated for goods' delivery;
- any other place designated for that purpose in the MT contract or evidenced in the MT document. This article can stipulate that parties can submit their dispute to arbitration only under a written agreement between the parties.

#### - **Penalties**

This article may provide for penalties and administrative sanctions for various infractions stipulated by national law on multimodal transport. Not all national laws analyzed contain this provision.

The laws of Nepal, Thailand, Indonesia, and Lao PDR provide for penalties for the following violations: engaging in MTO without registration/ license, failure to maintain security, setting up a branch without a relevant permit, failure to submit the report on the MTO operation, failure to notify regarding the change of material facts to the Registrar, failure to cooperate with the Registrar.

#### - **Schedule of Fees**

This article may be part of the law or supplement the law. It may contain a schedule of fees for various activities related to multimodal transport operator registration and relevant administrative activities.

### **IV. The difference in the regulation of main thematic matters by the national laws of the countries of the Asia and the Pacific region and AFAMT**

The table below shows some of the differences in regulation between the national laws of the region. It is worth keeping in mind that the AFAMT is a framework agreement for multimodal transport regulation in the ASEAN region, establishing the basis of MT regulation for ASEAN countries.

**Table 3: Differences in the existing national laws on multimodal transport in ESCAP member States**

Issue	India	Nepal	SG <sup>3</sup>	TH <sup>4</sup>	LA <sup>5</sup>	IN <sup>6</sup>	VN <sup>7</sup>	AFAMT
<b>Omission of one or more particulars of MTD is allowed</b>	+	-	+	+	+	-	+	+
<b>MTD form must be approved or registered with a state authority</b>	-	-	-	-	-	+	+	-
<b>MTD shall be signed by the MTO or by a person having authority from the MTO</b>	+	Only by MTO	+	+	-	-	+	+
<b>Reservation in the MTD</b>	+	+	+	+	-	-	+	+
<b>Liability of the MTO for any acts or omissions of servants or agents</b>	-	+	+	+	+	-	+	+
<b>The period following the date of delivery within which goods are to be treated as lost (in days)</b>	90	90	90	90	90	-	90	90
<b>Limitation of Liability of MTO</b>	Same as AFAMT	666.67 SDR per pkg or unit or 2.00 SDR per kilo for any type of carriage.	Same as AFAMT	666.67 SDR per pkg or unit or 2.00 SDR per kilo;  8.33 SDR per kilo of gross weight, if no carriage of goods by sea.				
<b>The right to increase the limit of liability by party's agreement</b>	-	-	+	+	-	-	-	-
<b>Notice of not apparent loss or</b>	6	3	6	6	-	-	-	6

<sup>3</sup> SG stands for Singapore

<sup>4</sup> TH stands for Thailand

<sup>5</sup> LA stands for Lao People's Democratic Republic

<sup>6</sup> IN stands for Indonesia

<sup>7</sup> VN stands for Viet Nam

Issue	India	Nepal	SG <sup>3</sup>	TH <sup>4</sup>	LA <sup>5</sup>	IN <sup>6</sup>	VN <sup>7</sup>	AFAMT
<b>damage must be given within (in days)</b>								
<b>The time bar for instituting court or arbitral proceedings (in months)</b>	9	6	9	9	9	-	9	9
<b>Extension of time bar allowed</b>	-	-	-	+	-	-	-	-
<b>Duration of the registration certificate (in years)</b>	-	5	1	5	-	-	5	-
<b>Penalties / administrative sanctions for infractions</b>	-	+	-	+	+	+	-	-
<b>Schedule of Fees</b>	-	-	-	-	+	-	-	-

**V. List of matters for further consideration through international legal instruments (regional, subregional or bilateral agreements) or contractual arrangements.**

- 1) Customs matters.** The issue of exemption of goods transported internationally by multimodal transport from physical inspection by customs authorities and without paying the duties and taxes otherwise due when the goods enter (or leave) the country, thus requiring only one customs formality.

**BOX 2: Example of the ASEAN**

In the ASEAN, this matter has been addressed by the ASEAN Framework Agreement for Facilitation of Goods in Transit. The Agreement assumes obligation, inter alia, not to subject transit transport to any unnecessary delays or restrictions. Transit transport shall be exempt from customs duties, taxes, and other charges except for charges for specific services rendered in connection with such transport. Goods carried in sealed road vehicles, a combination of vehicles, or containers shall not be subjected to examination at Customs offices *en route*. However, to prevent abuses such as smuggling and fraud, Customs authorities of either Contracting Party may, in exceptional cases, mainly when an irregularity is suspected, examine the goods at such offices or other areas designated by Customs authorities.

- 2) **Limits of liability.** When drafting a new law, it would be desirable to align the limits of MTO liability provided by national laws throughout the region or for the purpose of uniformity and regional continuity. Such uniformity can be achieved through a regional, subregional or bilateral legal instrument.
- 3) **Mutual recognition of MT documents.** Since mutual recognition of transport documents requires the involvement of more than one state, this matter also requires the adoption of a regional, subregional or bilateral legal instrument.
- 4) **Legal obligations of MTO towards the carrier.** An MT contract between a Consignor and an MTO involves different legs of carriage. The main purpose of the MT regulation is to assign liability to the MTO for the entire transportation. MTO shall assume the responsibility not only for delivering the goods to their destination but also for all carriers and subcontractors contracted by him. The legal relationship between an MTO and subcontracting unimodal carriers and rules for the transfer of liabilities during the transshipment of goods from one mode of transport to another are the issues that are typically settled not by national multimodal laws but by contracts between MTO and unimodal carriers ("second layer of contracts"), as well as by unimodal laws and regulations.
- 5) **Specific regulations on country seaports.** National regulations on rules of specific seaports and collections of fees for the use of appropriate infrastructure for each type of transport are to be resolved by relevant national law or regulation on seaports.

## **Conclusion**

The absence of national laws on multimodal transport can halt the stable and predictable development of the transportation industry. The MT Convention, the UNCTAD/ICC Rules and the existing subregional agreements can be used as a reference for harmonizing national laws. When drafting a new law, it is and prudent to clearly regulate the following thematic matters: MT document, liabilities of MTOs, limits for MTO liability, and time bar.

The research of national laws of Asia and the Pacific shows that the laws did not accept the high thresholds of liability limits established by the MT Convention but borrowed the limits of the UNCTAD/ICC Rules. When drafting a new law, it is advisable to harmonize this regulation with other countries to provide regional continuity.

Such matters as state registration of the MTO (qualifications, procedural matters related to application, appeal), duration of the registration, time-bar, and jurisdiction can be decided and resolved at national levels without reference to other legislative documents or conventions.