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## **Chapter 5: Implementing Multimodal Transport Operation and ASEAN Framework Agreement related to Transport Facilitation**

### **Objectives**

- To understand how to implement Multimodal Transport Operation as Operator
- To understand ASEAN Framework Agreements related to Transportation Facilitation
- To understand the ASEAN Framework Agreement on Multimodal Transport

### **Implementing Multimodal Transport Operation**

Multimodal Transport Operation may start from the inquiry to offer of the Consignor or Consignee the rate of transportation from one place to the destination without knowing that he/she is asking for the operation of Multimodal Transport.

In many cases, the consignor is not able to finish order in time due to the weakness of supply chain, because no material coming in time. That makes shorten of transport lead time and the shipment cannot be shipped as planned, for example by sea transport. The consignor may think to ship it by air, but it is too costly. In no choices consignor may consult with freight forwarder asking for advice and the solution becomes multimodal transport.

Multimodal Transport Operator or freight forwarder has to start its planning how to ship it. For example; in SEA/AIR mode and LCL Case

Operation stages may start with:

#### **1. Knowing what is the commodity, dimension and weight**

Multimodal Transport Operator when being requested for inquiry to carry the goods, he has to ask Consignor what is the commodity, dimension, weight and number of packages in order to further plan how to move this commodity.

In case of Dangerous Goods, Multimodal Transport Operator shall consider if the goods are able to be carried by determining Safety Data Sheet (SDS) and may consult with the first common carrier.

#### **2. Define the route of transport**

There will be more than one option for the route of transport from origin to destination via transshipment place. Multimodal Transport Operator may select the route of transport based on his knowledge and experience, selecting the hub of transshipment and consult

with his partner or agent at transshipment hub whether second and third leg of transportation can be performed.

### **3. Making an inquiry to partner or agents**

Multimodal Transport Operator shall make inquiry to his every Partners or Agents along the selected transport corridors for

- a) The freight charge of second legs for land transport in transshipment country and third legs from transshipment country to final destination airport,
- b) The customs formality charge, Agent's handling charge and local charges,
- c) The trucking charge at destination from airport to the final destination, and all local charges concerned.

### **4. Calculating all costs concerned**

After getting these costs, Multimodal Transport Operator will calculate his local cost concerned, such as pick up cost, customs formality, THC, CFS charge, B/L fee, [international transport first leg](#) and handling charge.

### **5. Making the quotation to Consignor/Consignee**

After calculating all costs concerned, Multimodal Transport Operator will add on top "contribution" or "margin" and offer to Consignor/Consignee which Multimodal Transport Operator has already considered the best route and best cost including best transit time.

### **6. Operation commences**

Once the quotation is accepted, Multimodal Transport Operator will commence his operation by contacting Common Consolidator who performs consolidation to the transshipment port, getting space confirmation, place of stuffing and cutoff date/time. Multimodal Transport Operator will inform Consignor when he will pick up the goods, calculating time consume of doing customs formality and matching with the pickup date. Consignor has a duty to prepare Shipping Order and send to Multimodal Transport Operator and Multimodal Transport Operator has to prepare another Shipping Order to Common Consolidator and send it.

**Note: Shipping Order in other names may be known as Shipping Instruction or Shipping Particulars.**

Consignor prepares Invoice and Packing List while Multimodal Transport Operator will prepare the Customs export declaration either manually or electronically.

After furnishing Customs formality documents, Multimodal Transport Operator will send a truck to pick up the goods from Consignor premise. In most cases, the Consignor will assist to help loading the goods onto the truck even though the term is EXW where consignor has no duty to load. The goods have been taken in charge of Multimodal Transport Operator at this point.

Truck runs to CFS where consolidator workers will unload the goods, tally number of packages of the goods according to Shipping Instruction and inspect the condition of the goods at the dock of CFS. When found no damage and the right number of packages of the goods, the goods will be placed into CFS, waiting for further stuffing.

**Note: in some countries, Customs inspector will inspect the goods during stuffing is done, but in some countries, there is no customs inspection during stuffing.**

After the goods have been stuffed, Common Consolidator will provide Multimodal Transport Operator details of what his tallymen have counted on the goods such as total number of packages, total measurement and gross weight. In most practice, Common Consolidator will send “Tally Sheet” to Multimodal Transport Operator for their reference.

Multimodal Transport Operator then issues MT documents (Bill of lading) to Consignor based on Shipping Instruction details and the details of the number of packages, measurement and gross weight in Tally Sheet.

In some countries, Multimodal Transport Operator will provide Bill of Lading delivery service for free, unlike common carrier where the Consignor has to go and pick up himself. In this case, Multimodal Transport Operator delivers its Bill of Lading to Consignor and he has to go pick up the Carrier’s Bill of Lading himself.

Since Carrier’s Bill of Lading can be surrendered at origin to prevent the loss during sending such Bill of lading to the MTO’s Agent, Origin MTO mostly makes Surrendered to the Bill of Lading and asks Common Carrier/Shipping line to make Telex Release (This is the old wording since now mostly they are using email than telex)

## **7. Liaison with Partners/Agents**

The Principal Multimodal Transport Operator will liaison with Partners/Agents both stations, namely at Transshipment port and Destination port.

The copy of Carrier Bill of lading and copy of own Bill of lading with “surrendered” marks, including invoice and packing will be sent to both Partners/Agents.

Each Partner/Agent will perform its function according to its quotation.

At Transshipment port, the Agent will get D/O from Carrier and commence the process of transshipment with Customs, then make a booking with the Airlines by estimate the time to complete customs formality matching with Airline flight schedule where space is also available in said flight.

After complete customs formality, the Agent will deliver the goods from port by means of transport he offered to the airport terminal. (In some country, the customs formality has to be done again at the airport.) When terminal operator loads the goods to the airplane, and the Air forwarder issues House Air Waybill to MTO 's Agent, the MTO's Agent will inform Principal Multimodal Transport Operator and Final Destination Agent of MTO the flight and details of shipment.

Before arrival, Final Destination Agent of Multimodal Transport Operator will liaison with the Airline and check date/time of incoming flight. He also has to contact Consignee for customs clearance purpose. In some countries, Multimodal Transport Operator may ask Invoice and Packing and Import Entry duly signed by Consignee, some countries may use electronic signature and import entry.

MTO will prepare Import entry and declare H.S. Code. At this point the risk is that if MTO does not ask waiver of miss declaration of the tariff from the Consignee, he has to take responsibility when customs come for post audit later on. The fact is that Consignee should know better than MTO for what his commodity is and what should be the tariff number, but most of Consignee may claim that MTO or Customs Broker should know better than them.

Final Destination Agent of MTO will ask Consignee for Original Bill of Lading and he starts to make customs procedure, taking D/O from the airline and exchange D/O for cargoes with terminal operator after customs release the shipment.

Then he will carry to cargoes Consignee premise by truck.

## **Conclusion**

The clear communication between MTO and its subcontractor (partners/agents) is required and it should be on time, otherwise, the subcontractor may not know about incoming shipment and delay in their process.

The high risk in the last stage is H.S. Code which if MTO's agents determined the H.S. Code by himself differently from customs officer.

## **BACKGROUND OF ASEAN**

The starting point of the Association of Southeast Asian Nations was in July 1961. Thailand, the Philippines and Malaysia mutually set up the Association of South East Asia to collaborate in three sections, namely, the economy, social and cultural. However, after two years, this collaboration was stopped due to the international politics between Indonesia and Malaysia.

After restoring the relationship, the idea of setting up a regional economic corporation has been created and the Association of Southeast Asian Nations has been formed up on 8<sup>th</sup>

August, 1967 by “ASEAN Declaration” signed by 5 Ministers of Foreign Affairs from Indonesia, the Philippines, Malaysia, Singapore and Thailand. In 1984, Brunei became a member and in 1995 Vietnam entered ASEAN as a member. In 1997 Lao PDR, Myanmar and in 1999, and Cambodia joined ASEAN respectively.

During the Second informal Summit of ASEAN on December 5, 1997 in Hanoi, ASEAN adopted the ASEAN Vision 2020 described as a concert of Southeast Asian Nations, living in peace, stability, prosperity, dynamic development which the Hanoi Plan of Action came out as a first step in a series of action to help ASEAN reach these goals.

## **HISTORY OF TRANSPORT COOPERATION AND FACILITATION IN ASEAN**

During the Second informal Summit of ASEAN on December 5, 1997 in Hanoi, ASEAN adopted the ASEAN Vision 2020 described as a concert of Southeast Asian Nations, living in peace, stability, prosperity, dynamic development which the Hanoi Plan of Action (HAP) came out as a first step in a series of action to help ASEAN reach these goals.

The timeline of HPA covered from 1999-2004 with the every three year review and asses for progress.

In Transport Sector, following plans of actions was made:

a. Develop the Trans-ASEAN transportation network by the year 2000 as the trunkline or main corridor for the movement of goods and people in ASEAN, consisting of major road (interstate highway) and railway networks, principal ports and sea lanes for maritime traffic, inland waterway transport and major civil aviation links;

b. Operationalise the ASEAN Framework Agreement on the Facilitation of Goods in Transit by year 2000. For this purpose, its implementing Protocols will be finalized and concluded by December 1999;

c. Target the conclusion and operationalisation of the ASEAN Framework Agreement on the Facilitation of Interstate Transport by the year 2000;

d. Implement the ASEAN Framework Agreement on Multimodal Transport;

e. Develop a Maritime/Shipping Policy for ASEAN to cover, among others, transshipment, enhancing the competitiveness of ASEAN ports, further liberalization of maritime transport services, and the integration of maritime transport in the intermodal and logistics chain;

f. Adopt harmonised standards and regulations with regard to vehicle specifications (e.g. width, length, height and weight), axle load limits, maximum weights and pollution or emission standards;

g. Institute the policy framework and modalities by the year 2000 for

the development of a Competitive Air Services Policy which may be a gradual step towards an Open Sky Policy in ASEAN; and

h. Develop and implement the Singapore-Kunming Rail Link and the ASEAN Highway Network Projects.

In fact, in the early day, ASEAN conducted transport corporation in five-year plan from 1982-1986, 1987-1991 and 1992-1996. In 1996 ASEAN established the ASEAN Transport Ministers Meeting (ATM) and the 1<sup>st</sup> ATM was in Bali, Indonesia and adopted a Ministerial Understanding on ASEAN Cooperation in Transportation and revised the implementation timeframe of the Plan of Action in Transportation and Communications from 1994-1996 to 1996-1998. The subsequent plan, the ASEAN Transport Cooperation Framework Plan came out under HPA with the same time frame. During 2005-2010 ASEAN implemented the ASEAN Transport Action Plan (ATAP) which covers maritime, land, air and transport facilitation. At present ASEAN is implementing the ASEAN Strategic Transport Plan (ASTP) for 2011-2015 year.

In order to create an integrated and efficient logistics and multimodal transportation system for cargo movement between logistics bases and trade centers within and beyond ASEAN, the Three Framework Agreements were established for such purposes, namely;

a) ASEAN Framework Agreement on Multimodal Transport – AFAM

The final official draft of AFAM was adopted at the 6<sup>th</sup> AMT in October 2000 and officially signed on November 2005 at the 10<sup>th</sup> ATM.

b) ASEAN Framework Agreement on the facilitation of Good in Transit - AFAPGIT came out from the decisions of the First ASEAN Informal Summit held on 30 November 1996 in Jakarta and the Second ASEAN Informal Summit held on 15 December 1997 in Kuala Lumpur, to cooperate in the area of facilitation of goods in transit and to expeditiously study the necessary measures to facilitate the transportation of goods both in transit and interstate, covering land, maritime and air links. This Agreement was officially signed on December 1998 in Hanoi.

c) The ASEAN Framework Agreement on the facilitation of interstate transport - AFAPIST was officially signed on December 10, 2009.

## **APPENDIX Chapter 6**

**ASEAN FRAMEWORK AGREEMENT ON MULTIMODAL TRANSPORT**

Signed by the Transport Ministers at the 11<sup>th</sup> ASEAN Transport Ministers Meeting in Vientiane, Lao People's Democratic Republic on 17 November 2005

The Members of the Association of Southeast Asian Nations (ASEAN),

Having recognized:

- a. that international multimodal transport is one means of facilitating the expansion of international trade among the members of ASEAN as well as between a Member Country and third countries;
- b. the need to stimulate the development of smooth, economic and efficient multimodal transport services adequate to the requirements of international trade;
- c. the desirability of adopting certain rules relating to the carriage of goods by international multimodal transport contracts, including provisions concerning the liability of multimodal transport operators;
- d. the need to create a balance of interests between users and suppliers of international transport services; and
- e. the need that this Agreement should not affect the national law relating to regulations and control of unimodal transport operations

Having also recognized paragraph 3 of Article I of the Framework Agreement on Enhancing ASEAN Economic Cooperation signed on 28 January 1992 in Singapore, that, in the implementation of economic arrangements, two or more Member States may proceed first if other Member States are not ready to implement these arrangements;

Having further recognized the expeditious development of integrated transport logistics services within ASEAN, as called for under the ASEAN Framework Agreement for the Integration of Priority Sectors signed in Vientiane Lao PDR on 29th November 2004;

Have agreed to conclude an Agreement as follows;

**CHAPTER I****DEFINITIONS****Article 1**

For the purposes of this Agreement:

"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.

"Competent national body" means the body designated by each Member Country.

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

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



"Deliver", "Delivered" or "Delivery" means

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

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

"In writing" includes telegram, telex, fax or any other means which prints, records, repeats or transmits messages by mechanical, electronic or any other kind of instrument or apparatus intended for such purposes.

"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.

"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.

"Member Country" means one of the ASEAN countries.

"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.

"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.

"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.

"Registration certificate" means the document issued by the competent national body establishing that the multimodal transport operator is included in the register of multimodal transport operators and authorizing him to act as such.

"Special drawing right (SDR)" means the unit of account as defined by the International Monetary Fund.

"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.

## CHAPTER II

### SCOPE OF APPLICATION

#### Article 2

This Agreement shall apply to:

- a. All multimodal transport operators under the register of each competent national body; and
- b. All contracts of multimodal transport for the purpose of settling civil claims, if:
  - (i) The place for the taking in charge of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Member Country, or
  - (ii) The place for delivery of the goods by the multimodal transport operator as provided for in the multimodal transport contract is located in a Member Country.

#### Article 3

Whenever in this Agreement and in the rules adopted for the purpose of its implementation, any of the following terms is utilized for its application: "Multimodal Transport", "Multimodal Transport Operator", "Multimodal Transport Contract" or "Multimodal Transport Document", it shall be understood as being "International" in nature.

## CHAPTER III

### MULTIMODAL TRANSPORT DOCUMENT

#### Article 4

1. When the goods are taken in charge by the multimodal transport operator, he shall issue a multimodal transport document which, at the option of the consignor, shall be in either negotiable or non-negotiable form.
2. The multimodal transport document shall be signed by the multimodal transport operator or by a person having authority from him.
3. The signature on the multimodal transport document may be in the form of handwriting, print, perforated, stamped, symbols, or in any other mechanical, or electronic forms, not inconsistent with the laws of the country where the multimodal transport document is issued.

#### Article 5

1. The multimodal transport document shall contain the following particulars:
  - a. The general nature of the goods; the marks necessary for the identification of the goods; and express statement, if applicable, as to the dangerous or perishable character of the goods; the number of packages or pieces; and the gross weight of the goods or their quantity otherwise expressed, all such particulars as furnished by the consignor;
  - b. The apparent condition of the goods;
  - c. The name and principal place of business of the multimodal transport operator;
  - d. The name of the consignor;
  - e. The consignee, if named by the consignor;
  - f. The place and date of taking in charge of the goods by the multimodal transport operator;
  - g. The place of delivery of the goods;
  - h. The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the parties;
  - i. A statement indicating whether the multimodal transport document is negotiable or non-negotiable;
  - j. The place and date of issue of the multimodal transport document;
  - k. The signature of the multimodal transport operator or of a person having authority from him;

1. The freight for each mode of transport, if expressly agreed between the parties, or the freight, including its currency, to the extent payable by the consignee, or other indication that freight is payable by him;
  - m. The intended journey route, modes of transport and places of transshipment if known at the time the multimodal transport document is issued;
  - n. Any other particulars which the parties may agree to insert in the multimodal transport document, if not inconsistent with the law of the country where the document is issued.
2. The absence from the multimodal transport document of one or more of the particulars referred to in paragraph 1 of this Article shall not affect the legal character of the document as a multimodal transport document.

#### Article 6

1. The multimodal transport document shall be *prima facie* evidence of the taking in charge by the multimodal transport operator of the goods as described in that document unless a contrary indication, such as "shipper's weight, load and count", "shipper-packed container" or a similar expression, has been made in the printed text or superimposed on the document.
2. Proof to the contrary shall not be admissible when the multimodal transport document has been transferred, or the equivalent electronic data interchange message has been transmitted to and acknowledged by the consignee, who in good faith has relied and acted thereon.

### CHAPTER IV

#### LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR

##### Article 7

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

##### Article 8

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

##### Article 9

The multimodal transport operator undertakes to perform or to procure the performance of all acts necessary to ensure delivery of the goods:

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

#### Article 10

1. The multimodal transport operator shall be liable for loss resulting from loss of or damage to the goods, as well as loss resulting from delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in Article 7, unless the multimodal transport operator proves that he, his servants or agents or any other person referred to in Article 8 took all measures that could reasonably be required to avoid the occurrence and its consequences.
2. However, the multimodal transport operator shall not be liable for loss following from delay in delivery unless the consignor has made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

#### Article 11

1. Delay in delivery occurs when the goods have not been delivered within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent multimodal transport operator, having regard to the circumstances of the case.

2. If the goods have not been delivered within ninety consecutive days following the date of delivery determined in accordance with the preceding paragraph, any person entitled to claim the goods may, in the absence of evidence to the contrary, treat the goods as lost.

#### Article 12

Notwithstanding the provisions of Article 10, the multimodal transport operator shall not be liable for loss, damage or delay in delivery with respect to goods carried if he proves that the event which caused such loss, damage or delay occurred during that carriage is one or more of the following circumstances:

- a. force majeure;
- b. Act or neglect of the consignor, the consignee or his representative or agent;
- c. Insufficient or defective packaging, marking, or numbering of the goods;
- d. Handling, loading, unloading, stowage of the goods effected by the consignor, the consignee or his representative or agent;
- e. Inherent or latent defect in the goods;
- f. Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;
- g. With respect to goods carried by sea or inland waterways, when such loss, damage, or delay during such carriage has been caused by:
  - (i) act, neglect, or default of the master, mariner, pilot or the servant of the carrier in the navigation or in the management of ship, or
  - (ii) fire unless caused by the actual fault or privity of the carrier.

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

#### Article 13

1. Assessment of compensation for loss of or damage to the goods shall be made by reference to the value of such goods at the place and time they are delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, they should have been so delivered.

2. The value of the goods shall be determined according to the current commodity exchange price or, if there is no such price, according to the current market price, or if there is no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

## CHAPTER V

### LIMITATION OF LIABILITY OF THE MULTIMODAL TRANSPORT OPERATOR

#### Article 14

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

#### Article 15

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

#### Article 16

Notwithstanding the provisions of Articles 14 and 15, if the multimodal transport does not, according to the contract, include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator shall be limited to an amount not exceeding 8.33 SDR per kilogram of gross weight of the goods lost or damaged.

#### Article 17

When the loss of or damage to the goods occurred during one particular stage of the multimodal transport, in respect of 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 limit of the multimodal transport operator's liability for such loss or damage shall be determined by reference to the provisions of such convention or mandatory law.

#### Article 18

If the multimodal transport operator is liable in respect of loss following from delay in delivery, or consequential loss or damage other than loss of or damage to the goods, his

liability shall be limited to an amount not exceeding the equivalent of the freight under the multimodal transport contract for the multimodal transport.

#### Article 19

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

#### Article 20

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

### CHAPTER VI

#### LIABILITY OF THE CONSIGNOR

#### Article 21

1. The consignor shall be deemed to have guaranteed to the multimodal transport operator the accuracy, at the time the goods were taken in charge by the multimodal transport operator, of all particulars relating to the general nature of the goods, their marks, number, weight, volume and quantity and, if applicable, to the dangerous character of the goods as furnished by him or on his behalf for insertion in the multimodal transport document.
2. The consignor shall mark or label dangerous goods in accordance with international conventions or any national legislation which may also apply.
3. Where the consignor hands over dangerous goods to the multimodal transport operator or any person acting on his behalf, the consignor shall inform him of the dangerous character of the goods, and, if necessary, the precautions to be taken. If the consignor fails to do so and the multimodal transport operator does not otherwise have knowledge of their dangerous character:
  - a. The consignor shall be liable to the multimodal transport operator for all loss resulting from the shipment of such goods; and
  - b. The goods may at any time be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation.
4. The provisions of paragraph 3 of this Article may not be invoked by any person if during the multimodal transport he has taken the goods in his charge with knowledge of their dangerous character.



5. If, in cases where the provisions of paragraph 3 (b) of this Article do not apply or may not be invoked, dangerous goods become an actual danger to life or property, they may be unloaded, destroyed or rendered innocuous, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average, or where the multimodal transport operator is liable in accordance with the provisions of Articles 10 and 11.
6. The consignor shall indemnify the multimodal transport operator against any loss resulting from any inaccuracies in or inadequacies of the particulars referred to in the preceding paragraphs.
7. The consignor shall remain liable even if the multimodal transport document has been transferred by him.
8. The right of the multimodal transport operator to such indemnity shall in no way limit his liability under the multimodal transport contract to any person other than the consignor.

## CHAPTER VII

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

#### Article 22

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

#### Article 23

Unless otherwise expressly agreed, any action relating to multimodal transport under this Agreement shall be time-barred unless court or arbitration proceedings are instituted within a period of nine months after the delivery of the goods or, if they have not been delivered, after the date on which the goods should have been delivered or after the date on which, in accordance with the provisions of Article 11, paragraph 2, failure to deliver the goods would give the consignee the right to treat the goods as lost.

## Article 24

1. The provisions in this Agreement shall apply to all claims against the multimodal transport operator relating to the performance of the multimodal transport contract, whether the claim be founded in contract or in tort.
2. Similarly, they shall apply whenever claims relating to the performance of the multimodal transport contract are made against any servant, agent or other person whose services the multimodal transport operator has used in order to perform the multimodal transport contract, whether such claims are founded in contract or in tort, and the aggregate liability of the multimodal transport operator and such servants, agents or other persons shall not exceed the limits in Articles 14 to 19.
3. Notwithstanding paragraph 2, a servant or agent of the multimodal transport operator or other person of whose services he makes use for the performance of the multimodal transport contract is not entitled to the benefit of the limitation of liability if it is proved that the loss, damage or delay in delivery resulted from a personal act or omission of such servant, agent or other person done with the intent to cause such loss, damage, or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

## CHAPTER VII

## JURISDICTION AND COMPETENCE

## Article 25

1. In judicial proceedings relating to international multimodal transport under this Agreement, the plaintiff, at his option, may institute an action in a court which, according to the law of the country where the court is situated, is competent and within the jurisdiction of which is situated one of the following places:
  - a. The principal place of business or, in the absence thereof, the habitual residence of the defendant; or
  - b. The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
  - c. The place of taking the goods in charge for the multimodal transport or the place of delivery; or
  - d. Any other place designated for that purpose in the multimodal transport contract and evidenced in the multimodal transport document.

2. Notwithstanding the provisions of paragraph 1 of this Article, an agreement made by the parties after a claim has arisen, which designates the place where the plaintiff may institute an action, shall be effective.

#### Article 26

1. Subject to the provisions of this Article, parties may provide by agreement evidenced in writing that any dispute that may arise relating to international multimodal transport under this Agreement shall be referred to arbitration.
2. The arbitration proceedings shall, at the option of the claimant, be instituted at one of the following places:
  - a. A place in a State within whose territory is situated;
    - (i) The principal place of business of the defendant or, in the absence thereof, the habitual residence of the defendant; or
    - (ii) The place where the multimodal transport contract was made, provided that the defendant has there a place of business, branch or agency through which the contract was made; or
    - (iii) The place of taking the goods in charge for the multimodal transport or the place of delivery; or
  - b. Any other place designated for that purpose in the arbitration clause or agreement.
3. The arbitrator or arbitration tribunal shall apply the provisions of this Agreement.
4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement and any term of such clause or agreement which is inconsistent therewith shall be null and void.
5. Nothing in this Article shall affect the validity of an agreement on arbitration made by the parties after the claim relating to the international multimodal transport has arisen.

#### Article 27

1. Any stipulation in the multimodal transport document shall be null and void and shall produce no effect if it either directly or indirectly departs from the provisions of this Agreement and, specifically if stipulations are made that are prejudicial to the consignor or the consignee. This shall not affect the other stipulations contained in the document.

2. Notwithstanding the provisions of paragraph 1 of this Article, the multimodal transport operator may, with the consent of the consignor, increase his responsibilities and obligations under the provisions of this Agreement.

#### Article 28

The provisions of this Agreement shall not prevent the application of the rules pertaining to general average adjustment contained in the multimodal transport contract or in the relevant national law, to the extent that they are applicable.

### CHAPTER IX

#### MULTIMODAL TRANSPORT OPERATORS

#### Article 29

A multimodal transport operator of any Member Country shall be registered with the competent national body of his country. The competent national body shall maintain the register of duly registered multimodal transport operators.

#### Article 30

1. For inclusion in the register of multimodal transport operators, the person concerned shall submit an application to the respective competent national body and establish that he fulfils all requirements as prescribed by national law. As a minimum:
  - a. He shall possess the legal capacity as required by the provisions of the Member Country in which he is applying for registration;
  - b. He shall have domicile in the Member Country in which he is applying for registration;
  - c. He shall have an insurance policy, a coverage from a protection and indemnity club, or an alternative of a financial character to cover payment of obligations for loss, damage or delay in delivery of goods under multimodal transport contracts, as well as contractual risks; and
  - d. He shall maintain minimum assets equivalent to 80,000 SDR or provide an equivalent guarantee.
2. Member Countries shall ensure transparency of their respective laws, regulations and administrative procedures concerning the registration.
3. All Member Countries shall deposit with the Secretary-General of ASEAN, not later than six months after this Agreement has entered into force, their register of multimodal transport operators and notify the Secretary-General of ASEAN any changes thereto.

The Secretary-General of ASEAN shall promptly inform each Member Country of such notification.

#### Article 31

The competent national body shall issue the corresponding registration certificate or refuse to do so in a substantiated decision, within a period not exceeding sixty calendar days from the date on which fulfillment of the requirements set out in Article 30 has been demonstrated.

#### Article 32

1. The registration by the competent national body of any of the Member Countries authorizes multimodal transport operator to operate in any of the Member Countries provided that the requirements under paragraph 4 (b) of this Article have been fulfilled.
2. During the interim period, when the implementation of paragraph 1 of this Article is not practicable, any member country may, on a reciprocal basis, authorize multimodal transport operators which are duly registered by the competent national body of any other member country to operate in its territory.
3. Member Countries shall notify the Secretary-General of ASEAN no later than six months from the time of signing of this Agreement if they are unable to implement paragraph 1 of this Article. Such Member Countries shall also notify the Secretary-General of ASEAN the reasons thereof who shall promptly inform each Member Country of such notification.
4. For the Member Countries whose laws and regulations allow the authorization as set out in paragraph 1 of this Article:
  - a. the authorization shall remain in effect as long as no official communication is sent in writing by the competent national body to the multimodal transport operator concerning suspension or cancellation of the registration.
  - b. in order for the multimodal transport operator registered in one Member Country to operate in other Member Countries, he shall submit a copy of the registration certificate duly issued by his competent national body to the competent national body of the other Member Country in which he has legal representation such as through agency agreement or branch office in the other Member Country in which he wishes to operate.
5. Member Countries who have notified the Secretary-General of ASEAN pursuant to paragraph 3 of this Article shall subsequently notify the Secretary-General of ASEAN when the implementation of paragraph 1 of this Article becomes practicable. The interim reciprocal authorization granted pursuant to paragraphs 2 and 4 of this Article

shall be automatically withdrawn three months after notifying the Secretary-General of ASEAN.

6. The provisions in this Article shall not affect the laws and regulations of the Member Countries which reserve the rights to operate a unimodal transport for their nationals.

## CHAPTER X

### MISCELLANEOUS PROVISIONS

#### Article 33

1. Member Countries shall endeavour to organise and regulate inside their territory all matters necessary to facilitate the efficacious carriage of goods by various modes of transport or by the multimodal transport operators under this Agreement.
2. The provisions of this Agreement do not, in any circumstances, involve any restriction on the facilities that countries have granted or may grant one another under bilateral or multilateral agreements or treaties.
3. Nothing in this Agreement shall be construed as limiting or derogating from the rights and obligations of a multimodal transport operator, carrier, consignee, consignor or any Member Country provided under domestic legislation enacted by any Member Country or international law through existing or future bilateral, regional or multilateral agreements or arrangements entered into by any Member Country in order to protect human health, public safety and the environment, provided that no Member Country shall be bound by any such agreement or arrangement to which it is not a party thereto.

#### Article 34

The competent national bodies designated by the Member Countries shall be responsible for the implementation of this Agreement in their respective territories.

#### Article 35

Without prejudice to the provisions of Article 34 and the other powers conferred on them under this Agreement, the competent national bodies of the Member Countries shall be responsible for coordinating all aspects of multimodal transport with the users, operators, authorities and national and international bodies.

## CHAPTER XI

### FINAL PROVISIONS

#### Article 36

This Agreement or any actions taken thereto shall not affect the rights and obligations of the Member Countries under existing or future international conventions applicable to the multimodal transport contract or any part thereof, as well as to the relevant national laws to implement such conventions.

#### Article 37

The provisions of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism signed in Vientiane, Lao PDR on 29<sup>th</sup> November 2004, shall apply to consultation and the settlement of disputes under this Agreement, except when the dispute relates to the application of Article 36.

#### Article 38

Any amendment to the provisions of this Agreement shall be effected by consent of all Member Countries.

#### Article 39

This Agreement is subject to ratification or acceptance by the Member Countries.

#### Article 40

The Instrument of Ratification or Acceptance shall be deposited with the Secretary-General of ASEAN who shall promptly inform each Member Country of such deposit.

#### Article 41

1. Member Countries shall be provided flexibility in the implementation of this Agreement. Two or more Member Countries may proceed with the implementation first, if other Member Countries are not ready.
2. This Agreement shall enter into force upon the thirtieth day after the deposit of the second Instrument of Ratification or Acceptance, and shall become effective only among the Member Countries that have ratified or accepted it. For each Member Country ratifying or accepting this Agreement after the deposit of the second Instrument of Ratification or Acceptance, this Agreement shall enter into force on the thirtieth day after the deposit of its Instrument of Ratification or Acceptance.

#### Article 42

No reservation may be made to this Agreement either at the time of signature, ratification or acceptance.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this ASEAN Framework Agreement on Multimodal Transport.

DONE at Vientiane, Lao PDR, on the Seventeenth Day of November in the Year Two Thousand and Five, in a single original copy in the English language.