

**A BRIEF STUDY ON CARRIAGE LAWS AND MULTI-MODAL  
TRANSPORTATION OF GOODS**



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## **INTRODUCTION**

With the changing economic scenario, factors such as globalization of markets, international economic integration, and removal of barriers to business and trade and increased competition have enhanced the need of transportation. It is one of the most important infrastructure requirements, which is essential for the expansion of opportunities and plays an important role in making or breaking the competitive positioning.

In the commercial life of any country, the need for carrying goods from one place to another cannot be overemphasized. Also, goods are to be moved from one country to another. For these purposes, a contract of carriage is to be entered into. The persons, organizations or associations which carry goods are known as carriers. Goods may be carried by land (including inland waterways), sea or air.

Multimodal transportation is the movement of cargo from the point of origin to the final destination, outside India, by using two or more modes of transport.

Therefore the combination of all four modes of transportation i.e. (a) Air (b) Road (c) Rail (d) Sea is defined as 'multimodal transport system'.

### **LAWS GOVERNING CARRIAGE OF GOODS AND MULTI MODAL TRANSPORTATION**

Accordingly, the law relating to carrying of goods in India is contained in the following enactments:

1. In case of carriage of goods by land:

- (i) Carriage by Road Act, 2007 (Earlier enactment - The Carriers Act, 1865).
- (ii) The Railways Act, 1989.

2. In the case of carriage of goods by air:

The Carriage by Air Act, 1972

3. In case of carriage of goods by sea:

- (i) The (Indian) Bills of Lading Act, 1856.
- (ii) The Carriage of Goods by Sea Act, 1925.
- (iii) The Merchant Shipping Act, 1958.
- (iv) The Marine Insurance Act, 1963.

4. Law governing multimodal transportation of goods

The Multimodal Transportation of Goods Act, 1993 governs multi modal transportation of goods.

Wherever there is no specific provision for a particular matter in these statutes, then the Indian Courts resort to English Common Law.

### **CARRIAGE LAWS**

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carriers. Goods may be carried by land (including inland waterways), sea or air. Accordingly, the law relating to carrying of goods is contained in the following enactments:

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The Carriage by Air Act, 1972.

3. In case of carriage of goods by sea:

- (i) The (Indian) Bills of Lading Act, 1856.
- (ii) The Carriage of Goods by Sea Act, 1925.
- (iii) The Merchant Shipping Act, 1958.
- (iv) The Marine Insurance Act, 1963.

Wherever there is no specific provision for a particular matter in these statutes, then the Indian Courts resort to English Common Law.

### **CARRIAGE OF GOODS BY LAND**

The Carriage by Road Act 2007 and the Railways Act, 1890 apply to carriage of goods by land. The Carriage by Road Act applies only to common carriers as distinguished from private carriers.

As per Notification No. S.O 2001(E) Dated 13<sup>th</sup> August 2010, the Central government appoints the 1<sup>st</sup> of March 2011 as the date when the Carriage by Road Act 2007 shall come into force.

The Carriage by Road Act, 2007 defines the term “common carrier” and provides for his rights, duties and liabilities. As regards matters not covered by this Act, the rules of English Common Law will apply.

A common carrier may be any individual, firm or company, which transports goods as regular business for money, over land or inland waterways. A private carrier, carries his own goods and may occasionally carry goods for selected persons. He is not covered by the Carriage by Road Act but by the Indian Contract Act.

## **The Carriage by Road Act 2007**

The Carriage by Road Act, 2007 was passed to repeal the original Carriers Act, 1865 as it had become obsolete.

The Carriage by Road Act, 2007 received the President's assent on 29<sup>th</sup> September 2007 and was notified on 1.10.2007. The Act will come into force on 1<sup>st</sup> March 2011. The Ministry of Road Transport and Highways, has framed draft Rules under this Act namely "Carriage by Road Rules 2010" and they are put on the Ministry's website for comments.

It is an Act to provide for the regulation of common carriers, limiting their liability and declaration of value of goods delivered to them to determine their liability for loss, or damage to, such goods occasioned by the negligence or criminal acts of themselves, their servants or agents and for matters connected therewith or incidental thereto.

The Act extends to the whole of India except the State of Jammu and Kashmir.

The Act contains only 22 sections and envisages a central registration unit for all common carriers and imposes deterring penalty on common carrier for violation of provisions of the Act.

## **Ministry of Road Transport and Highways**

An apex organisation under the Central Government, the Ministry of Road Transport and Highways (MORTH) is entrusted with the task of formulating and administering, in consultation with other Central Ministries/Departments, State Governments/UT Administrations, organisations and individuals, policies for Road Transport, National Highways and Transport Research with a view to increasing the mobility and efficiency of the road transport system in the country. The Ministry has two wings - Roads Wing and Transport Wing.

The Road Transport Division of the Ministry is entrusted with the job of administration of the Carriage by Road Act 2007.

## **Meaning of Common Carrier**

Under the Carriage by Road Act 2007, common carrier means " a person engaged in the business of collecting, storing, forwarding or distributing goods to be

carried by goods carriages under a goods receipt or transporting for hire of goods from place to place by motorized transport on road, for all persons indiscriminately and includes a goods booking company, contractor, agent, broker and courier agency engaged in the door-to-door transportation of documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles but does not include the Government”

A common carrier in common-law countries (corresponding to a public carrier in civil-law systems, usually called simply a carrier) is a person or company that transports goods or people for any person or company and that is responsible for any possible loss of the goods during transport. A common carrier offers its services to the general public under license or authority provided by a regulatory body. The regulatory body has usually been granted authority by the legislation which created it. The regulatory body may create, interpret, and enforce its regulations upon the common carrier (subject to judicial review) with independence and finality, as long as it acts within the bounds of the enabling legislation.

### Classification of Carriers

Carriers can be classified as: i. Common carriers; ii. Private carriers; iii. Independent carriers; or iv. gratuitous carriers.

i. Common carrier - The Carriage by Road Act 2007 defines “common carrier”. A common carrier holds itself out to provide service to the general public without discrimination (to meet the needs of the regulator's quasi judicial role of impartiality toward the public's interest) for the "public convenience and necessity". A common carrier must further demonstrate to the regulator that it is "fit, willing, and able" to provide those services for which it is granted authority. Common carriers typically transport persons or goods according to defined and published routes, time schedules, and rate tables upon the approval of regulators.

ii. Private Carrier - A private carrier is distinguished from a common carrier whose primary business is the transport of goods, and which is in business to serve any customers that hire them, such as buses, railroads, trucking companies, airlines and taxis. Private carriers may refuse to sell their services at their own discretion, whereas common carriers must treat all customers equally. A private carrier is a company that transports only their own goods. Usually the carrier's primary business is not transportation but rather something else.

A private carrier does not make a general offer to carry goods for any one from one place to another for hire. However, he may enter into a contract with someone to carry goods on the terms agreed upon between them. In such a situation, it is a contract of bailment. Therefore, such transactions are not covered by the Carriage by Road Act 2007.

iii. Independent Carrier - is an individual owner-operator or trucker who may make deals with private carriers, common carriers, contract carriers, or others as he or she wishes.

iv. Gratuitous Carrier - When a person carries goods of another free of charge, he is a gratuitous carrier. Similarly a person may give lift in his transport to another person voluntarily without any compensation. Thus a gratuitous carrier may carry not only goods but persons also free of charge.

It is to be noted that the Carriage by Road Act 2007 does not apply to the Government. Also though the liabilities of a common carrier are determined by the Carriage by Road Act 2007, a private carrier's liability is not determined by this Act. He is liable as a bailee as given in the Indian Contract Act, 1872.

### **Important Terms**

Consignee - means the person named as consignee in the Goods Forwarding Note.

Consignor - means a person, named as consignor in the goods forwarding note, by whom or on whose behalf the documents, goods or articles covered by such forwarding note are entrusted to the common carrier for carriage thereof.

Goods Forwarding Note - Every consignor shall execute a goods forwarding note in the prescribed form and manner which shall include a declaration about the value of the consignment and of goods of dangerous or hazardous nature. The consignor shall be responsible for the correctness of the particulars furnished by him in the Goods Forwarding Note. He also has to indemnify the common carrier against any loss suffered by him due to incorrectness or incompleteness of the note.

Goods Receipt - A Goods Receipt is a receipt issued by the common carrier. A common carrier shall issue a Goods Receipt in the prescribed Form and Manner in the following cases:

- a. In case where the goods are to be loaded by the consignor, on the completion of such loading; or
- b. In any other case, on the acceptance of the goods by him.

The Goods Receipt shall be issued in triplicate and the original shall be given to the consignor.

### **General Responsibility of Common Carrier**

A common carrier shall be responsible for the loss, destruction, damage or deterioration in transit or non-delivery of any consignment entrusted to him for carriage, arising from any cause except the following namely:

- a. act of God;
- b. act of war or public enemy;
- c. riots and civil commotion;
- d. arrest, restraint or seizure under legal process;
- e. order or restriction or prohibition imposed by the Central Government or a State Government or by any officer or authority subordinate to the Central Government or a State Government authorized by it in this behalf.

However, the common carrier shall not be relieved of its responsibility for the loss, destruction, damage, deterioration or non-delivery of the consignment if the common carrier could have avoided such loss, destruction, damage, deterioration or non-delivery had the common carrier exercised due diligence and care in the carriage of the consignment.

### **Rights, Duties and Liabilities of the Common Carrier**

- Any person who is engaged or intends to engage in the business of common carrier has to apply for Registration
- The common carrier has to maintain a register in such form and manner as may be prescribed.
- For shifting the registered office mentioned in the certificate of registration, submit an application to the registering authority which granted the registration
- A common carrier shall not load the motor vehicle beyond the gross vehicle weight mentioned in the registration certificate whose registration number is mentioned in the Goods forwarding note or goods receipt and the common carrier shall not allow such vehicle to be loaded beyond the gross vehicle weight

- In case of loss, damage or delays to the consignment, the liability of the carrier is limited to such amount as may be prescribed having regard to the value, freight or nature of the goods, documents, or articles of the consignment. A higher contingent liability could be mutually agreed to, on payment of a higher rate (called risk rate) for carrying any consignment considered risky.
- For any delay in delivery up to the mutually agreed period, the liability is limited to the freight charged.
- Every common carrier shall be liable to the consignor for the loss or damage to any consignment in accordance with the goods forwarding note, where such loss or damage has arisen on account of any criminal act of the common carrier, or any of his servants or agents
- The common carrier will have to ensure that hazardous goods are insured before the consignment is accepted. The Central Government may prohibit carriage of certain goods.
- A consignment is deemed as unclaimed if the receiver of goods (consignee) fails to take delivery within 30 days of notice. For perishables, the notice period is 24 hours. Unclaimed goods may be sold by the common carrier without further notice if they are perishable or after a further 15 day notice period if they are not perishable. The common carrier may retain a portion of the proceeds for the expenses incurred and return the rest to the consignor or consignee.

### **Registration of Common Carrier**

Certificate of registration is necessary for a person to engage in the business of common carrier. Registration authority shall take decisions on the applications for registration.

An application for registration has to be made to the Registering Authority having jurisdiction in the area in which the applicant resides or has his principal place of business stating that the application is for the main office, in such form and manner and accompanied by such fees payable to the registering authority as may be prescribed.

The application for registration for main office shall contain the details of branch office, if any, to be operated outside the jurisdiction of the State or Union Territory in which the main office is to be registered.

Every common carrier is required to:

- a) maintain a register,
- b) obtain prior approval if the main office needs to be shifted,
- c) submit specified information and returns, and



d) display the certificate of registration or an attested copy of the certificate at the office.

In case of failure to comply with the provisions or in case of complaint being made against common carriers, the registering authority may give a notice to the holder to rectify the same. On failure to do this, the registering authority can suspend or revoke the registration.

Any person aggrieved by an order of the registering authority can appeal to the State Transport Appellate Tribunal.

### **Carriage of Goods by Rail**

Summary of More Important Provisions The carriage of goods by rail is regulated by the Railways Act, 1989. Some of the more important provisions contained in the Act are summarised below:

1. Maintenance of rate books, etc., for carriage of goods (Section 61). Every railway administration shall maintain, at each station and to such other places where goods are received for carriage, the rate books or other documents which shall contain the rate authorised for the carriage of goods from one station to another and make them available for the reference of any person during all reasonable hours without payment of any fee.

2. Provision of rate risks (Section 63). Where any goods are entrusted to a railway administration for carriage, such carriage shall, except where owner's risk rate is applicable in respect of such goods, be at railway risk rate.

Any goods, for which owner's risk rate and railway risk rate are in force, may be entrusted for carriage at either of the rates and if no rate is opted, the goods shall be deemed to have been entrusted at owner's risk rate.

3. Forwarding note (Section 64). Every person entrusting any goods to a railway administration for carriage shall execute a forwarding note in such form as may be specified by the Central Government.

The consignor shall be responsible for the correctness of the particulars furnished by him in the forwarding note. He shall indemnify the railway administration against any damage suffered by it by reason of the incorrectness or incompleteness of the particulars in the forwarding note.

4. Railway receipt (Section 65). A railway administration shall issue a railway receipt in such form as may be specified by the Central Government:
- (a) in a case where the goods are to be loaded by a person entrusting such goods, on the completion of such loading; or
  - (b) in any other case, on the acceptance of the goods by it.

A railway receipt shall be prima facie evidence of the weight and the number of packages stated therein.

5. Carriage of dangerous or offensive goods (Section 67). No person shall take with him on a railway or require a railway administration to carry such dangerous or offensive goods, unless (i) he gives a notice in writing of their dangerous or offensive nature to the railway servant authorised in this behalf; and (ii) he distinctly marks on the outside of the package containing such goods their dangerous or offensive nature.

6. Liability of railway administration for wrong delivery (Section 80). Where a railway administration delivers the consignment to the person who produces the railway receipt, it shall not be responsible for any wrong delivery on the ground that such person is not entitled thereto or that endorsement on the railway receipt is forged or otherwise defective.

Responsibility of a Railway Administration as a Carrier of Goods: Sections 93 to 112 of the Railways Act, 1989 contain provisions on this subject. These provisions are summarised below.

1. General responsibility of a railway administration as carrier of goods (Section 93). A railway administration shall be responsible for the loss, destruction, damage or deterioration in transit, or non-delivery of any consignment (goods entrusted to a railway administration for carriage), arising from any cause except the following, namely:
- (i) an act of God;
  - (ii) an act of war;
  - (iii) an act of public enemies;
  - (iv) arrest, restraint or seizure under legal process;
  - (v) orders of restrictions imposed by the Central Government or a State Government or by an officer or authority subordinate to the Central Government or a State Government authorised by it in this behalf;
  - (vi) act of omission or negligence of the consignor or consignee endorsee or the agent or servant of the consignor or the consignee or the endorsee;
  - (vii) natural deterioration or wastage in bulk or weight due to inherent defect, quality or vice of the goods;

- (viii) latent defects;
- (ix) fire, explosion or any unforeseen risks.

Liability of a common carrier vis-a-vis the liability of a railway administration. The liability of a railway administration is the same as that of a common carrier. In other words, even where any loss, destruction, damage, deterioration or non-delivery is proved to have arisen from any one or more of the aforesaid nine cases, a railway administration shall not be relieved of its responsibility unless it further proves that it has used reasonable foresight and care in the carriage of the goods [Union of India v Orissa Textile Mills, AIR (1979) Ori. 165].

A railway administration, like a common carrier, is bound to carry the goods of every person who is willing to pay the freight and comply with other requirements.

2. Delay or retention in transit (Section 95). A railway administration shall be responsible for the loss, destruction, damage or deterioration of any consignment proved by the owner to have been caused by the delay or detention in their carriage. The railway administration can, however, avoid liability if it proves that the delay or detention arose for reasons beyond its control or without negligence or misconduct on its part or on the part of any of its servants.

3. Owner's risk rate or railway risk rate (Section 97). A consignment may be carried by a railway administration either at owner's risk rate or railway risk rate. Owner's risk rate is a special reduced rate whereas railway risk rate is an ordinary tariff rate. Owner's risk rate is lower than the railway risk rate for the simple reason that the goods in this case are carried at the owner's risk. In case of owner's risk rate, the railway administration is not responsible unless it is proved that any loss, destruction, damage or deterioration or non-delivery of goods arose from negligence or misconduct on the part of the railway administration or its servants.

4. Liability for damage to goods in defective condition or defectively packed (Section 98). Goods tendered to a railway administration to be carried by railway may be (a) in a defective condition or (b) defectively packed. As a result of these, goods are liable to damage, deterioration, leakage or wastage. If the fact of such condition or defective or improper packing has been recorded by the sender or his agent in the forwarding note, the railway administration is not responsible for any damage, deterioration, leakage or wastage unless negligence or misconduct on the part of the railway administration or of its servants is proved.

5. Liability after termination of transit (Section 99). Whether the goods are carried at owner's risk rate or railway risk rate, the liability of the railway administration for any loss of goods within a period of seven days after the termination of

transit is that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872. But where the goods are carried at owner's risk rate the railway administration is not liable for such loss, destruction, damage, deterioration or non-delivery of goods except on proof of negligence or misconduct on the part of the railway administration or any of its servants.

After seven days from the date of termination of transit the railway administration is not liable in any case for any loss of such goods.

Notwithstanding this provision, the railway administration is not responsible after the termination of transit for the loss, destruction, damage, deterioration or non-delivery of articles of perishable goods, animals, explosives and other dangerous goods.

6. Responsibility as carrier of luggage (Section 100). A railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of any luggage unless a railway servant has booked the luggage and given a receipt therefor. Also it is to be proved that the loss, etc., was due to the negligence or misconduct on the part of the railway administration or on the part of any of its servants.

In the case of luggage which is carried by the passenger in his own charge, the railway administration shall not be responsible for the loss, etc., unless it is proved that the loss, etc., was due to the negligence or misconduct on the part of the railway administration or on the part of any of its servants.

7. Responsibility as a carrier of animals (Section 101). A railway administration shall not be responsible for any loss or destruction of, or injuries to, any animal carried by railway arising from fright or restiveness of the animal or from overloading of wagons by the consignor.

8. Exoneration from liability in certain cases (Section 102). A railway administration shall not be responsible for the loss, destruction, damage or deterioration or nondelivery of any consignment –

(i) when such loss, etc., is due to the fact that a materially false description of the consignment is given; or

(ii) where a fraud has been practised by the consignor or the endorsee, or by an agent of the consignor, consignee or the endorsee; or

(iii) where it is proved by the railway administration to have been caused by, or to have arisen from -

(a) improper loading or unloading by the consignor, or the consignee or the endorsee, or by an agent of the consignor, consignee or the endorsee;

(b) riot, civil commotion, strike, lock-out, stoppage or restraint of labour from whatever cause arising whether partial or general; or

(iv) for any indirect or consequential loss or damage or for loss of particular market.

### **CARRIAGE OF GOODS BY AIR**

There is an international legal regime governing the liability of air carriers for injury or death of passengers, for destruction or loss of or damage to baggage and cargo, and losses caused by delay in international carriage of passengers, baggage and cargo. This regime is set out in a number of international instruments. However, India had so far ratified only two instruments, namely the Warsaw Convention 1929, and the Warsaw Convention as amended by The Hague Protocol 1955 and the same had been given effect to by the Carriage by Air Act 1972.

The various instruments adopted by the International Civil Aviation Organization (ICAO - a specialized agency of the United Nations, which codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth) failed to receive the kind of universal acceptance as parent Warsaw Convention and the Hague Protocol had received. As a result a situation arose where several different combinations of liability regimes came into existence defying the much desired uniformity and unification of international law in this field. The ICAO then embarked upon serious initiative for a socio economic study of the levels of compensation and finally the Montreal Convention 1999 was adopted for the unification of certain rules for international carriage by air which aims to achieve the dual purpose of modernizing as well as consolidating the various instruments comprising the Warsaw System.

As of July 2010, 97 countries signed the Montreal Protocol treaty which included the United States, members of the European Union (EU), Australia, Canada, China, India, Japan, Korea and Mexico.

India acceded to the Convention on 1<sup>st</sup> May 2009 and it entered into force in India on 30<sup>th</sup> June 2009.

In India, the Carriage by Air Act 1972 was amended by the Carriage by Air (Amendment) Act 2009 to give effect to the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th day of October, 1929 and to the said Convention as amended by the Hague Protocol on the 28th day of September, 1955 and also to the Montreal Convention signed on the 28th day of May, 1999 and to make provision for applying the rules contained in the said Convention in its original form and in the amended form

subject to exceptions, adaptations and modification to non-international carriage by air and for matters connected therewith.

The principal Act came into force w.e.f.15th May, 1973 vide Gazette of India, Part II, Section 3 (ii) (Ext) dated 26th March, 1973 and the Carriage by Air (Amendment) Act, 2009 came into force w.e.f.1st July,2009 vide Gazette of India, Part II, Section 3 (ii) (Ext) dated 20th March, 2009.

The Warsaw System allowed four choices of jurisdiction for filing of a claim by the passenger namely, place of issue of ticket, principle place of business of the carrier, the place of destination of the passenger and the place of domicile of the carrier. Through the Montreal Convention a fifth jurisdiction is added which is the place of domicile of the passenger, provided the airline has a presence there. Therefore an Indian would be able to file claim in India even if the journey was undertaken outside India.

The Montreal Convention re-establishes urgently needed uniformity and predictability of the rules relating to the international carriage of passengers, baggage and cargo. While maintaining a core of provisions, which have successfully served the international air transport community for several decades, the new Convention achieves the required modernization in a number of key areas. It protects the interests of passenger by introducing a modern two-tier liability system and by facilitating the swift recovery or proven damages without the need for lengthy litigation. Air carriers, on the other hand, will be able to achieve substantive operational savings through the use of electronically produced and simplified documents of carriage, especially in the cargo field, and the ability to manage risks more efficiently.

Since a large number of flights operate between India and many of the countries that have ratified or acceded to the Montreal Convention 1999 (for example, USA and UK), non-accession of the Convention by India would have given rise to a situation involving serious discrimination between the passengers of the same flight with regard to compensation. To cite an instance, those passengers whose journey originated in USA or UK will be entitled to much higher compensation compared to those whose journey originated in India. This would, by and large, go against the interests of Indian passengers. Moreover, if India had not acceded to the Montreal Convention, Indian nationals would be denied the benefit of the fifth jurisdiction.

By amending certain provisions of the Carriage by Air Act, 1972 and including the text of the Montreal Convention to the said Act as the Third Schedule, this would have the force of law in India in relation to any carriage by air to which

those rules apply irrespective of the nationality of the aircraft performing the carriage.

In view of this, the Government had acceded to the Montreal Convention, 1999 and deposited the Instruments of Accession with ICAO. Before doing so, necessary legislative action was required in order to give effect to the provisions of the Convention in India. The rules contained in the First Schedule of the Act shall be applicable if the international carriage is between the Contracting Parties to the Warsaw Convention, those contained in the Second Schedule shall apply in respect of carriage between the Contracting Parties to the Warsaw Convention as amended by the Hague Protocol and the provisions in the Third Schedule shall be applicable for carriage between the States parties to the Montreal Convention, 1999.

### **Warsaw Convention**

The Warsaw Convention is an international convention which regulates liability for international carriage of persons, luggage or goods performed by aircraft for reward.

Originally signed in 1929 in Warsaw (hence the name), it was amended in 1955 at The Hague and in 1975 in Montreal. United States courts have held that, at least for some purposes, the Warsaw Convention is a different instrument from the Warsaw Convention as Amended by the Hague Protocol.

In particular, the Warsaw Convention:

- mandates carriers to issue passenger tickets;
- requires carriers to issue baggage checks for checked luggage;
- creates a limitation period of 2 years within which a claim must be brought (Article 29); and
- limits a carrier's liability to at most:
  1. 250,000 Francs or 16,600 Special Drawing Rights (SDR) for personal injury;
  2. 17 SDR per kilogram for checked luggage and cargo, or \$20USD per kilogram for non-signatories of the amended Montreal Protocols.
  3. 5,000 Francs or 332 SDR for the hand luggage of a traveller.

The sums limiting liability were originally given in Francs (defined in terms of a particular quantity of gold by article 22 paragraph 5 of the convention). These sums were amended by the Montreal Additional Protocol No. 2 to substitute an expression given in terms of SDR's. These sums are valid in the absence of a differing agreement (on a higher sum) with the carrier. Agreements on lower sums are null and void.

A court may also award a claiming party's costs, unless the carrier made an offer within 6 months of the loss (or at least 6 months before the beginning of any legal proceedings) which the claiming party has failed to beat.

The Montreal Convention, signed in 1999, replaced the Warsaw Convention system.

### Applicability of Warsaw Convention to India

The rules contained in the First Schedule to the Carriage by Air Act 1972, being the provisions of the Warsaw Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of the said Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

For the purpose of the Act, the High Contracting Parties to the Convention and the date of enforcement of the said Convention shall be such as are included in Part I of the Annexure to the Act. A whole Annexure was inserted by the Carriage by Air (Amendment) Act, 2009.

### Montreal Convention

The Montreal Convention, formally the Convention for the Unification of Certain Rules for International Carriage, is a treaty adopted by a Diplomatic meeting of ICAO member states in 1999. It amended important provisions of the Warsaw Convention's regime concerning compensation for the victims of air disasters. The Convention re-establishes urgently needed uniformity and predictability of rules relating to the international carriage of passengers, baggage and cargo. Whilst maintaining the core provisions which have successfully served the international air transport community for several decades (i.e. the Warsaw regime), the new convention achieves the required modernisation in a number of key areas. It protects passengers by introducing a two-tier liability system and by facilitating the swift recovery of proven damages without the need for lengthy litigation.

Under the Montreal Convention, air carriers are strictly liable for proven damages up to 100,000 Special Drawing Rights (SDR), a mix of currency values established by the International Monetary Fund (IMF), approximately \$138,000 per passenger at the time of its ratification by the United States in 2003 (as of June 2009, around \$154,800). Where damages of more than 100,000 SDR are



sought, the airline may avoid liability by proving that the accident which caused the injury or death was not due to their negligence or was attributable to the negligence of a third party. This defence is not available where damages of less than 100,000 SDR are sought. The Convention also amended the jurisdictional provisions of Warsaw and now allows the victim or their families to sue foreign carriers where they maintain their principal residence, and requires all air carriers to carry liability insurance.

The Montreal Convention changes and generally increases the maximum liability of airlines for lost baggage to a fixed amount 1000 SDR (the amount in the Warsaw Convention is based on weight of the baggage). The amount has now been increased to 1131SDR.

Montreal Convention was brought about mainly to amend liabilities to be paid to families for death or injury whilst on board an aircraft.

#### Applicability of the Montreal Convention to India

The rules contained in the Third Schedule, being the provisions of the Montreal Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in India in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

For the purpose of the Act, the State Parties to the Montreal Convention and the date of enforcement of the said Montreal Convention shall be such as are included in Part III of the Annexure. A whole Annexure was inserted by the Carriage by Air (Amendment) Act, 2009 giving the Parties to the Convention and the date of enforcement.

#### Application of Act to carriage by air, which is not International

The Central Government may, by notification in the Official Gazette:

- i. Apply the rules contained in the First Schedule of the Carriage by Air Act 1972 and any provision of section 3 or section 5 or section 6 of the said Act to such carriage by air, not, being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.
- ii. Apply the rules contained in the Second Schedule and any provision of section 4 or section 5 or section 6 to such carriage by air, not being international carriage by air as defined in the Second Schedule, as may be specified in the notification,

subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified.

iii. Apply the rules contained in the Third Schedule and any provision of section 4A or section 5 or section 6A to such carriage by air, not being international carriage by air as defined in the Third Schedule, as may be specified in the notification, subject, however, to such exceptions, adaptations and modifications, if any, as may be so specified (w.e.f 1<sup>st</sup> July 2009)

### **Administrative Machinery**

The Ministry of Civil Aviation is the nodal Ministry responsible for the formulation of national policies and programmes for development and regulation of Civil Aviation and for devising and implementing schemes for the orderly growth and expansion of civil air transport. Its functions also extend to overseeing airport facilities, air traffic services and carriage of passengers and goods by air. It is responsible for the administration of the Aircraft Act, 1934, Aircraft Rules, 1937 and various other legislations pertaining to the aviation sector in the country. This Ministry exercises administrative control over attached and autonomous organizations like the Directorate General of Civil Aviation, Bureau of Civil Aviation Security and Indira Gandhi Rashtriya Udan Academy and affiliated Public Sector Undertakings like National Aviation Company of India Limited, Airports Authority of India and Pawan Hans Helicopters Limited. The Commission of Railway Safety, which is responsible for safety in rail travel and operations in terms of the provisions of the Railways Act, 1989 also comes under the administrative control of this Ministry

### **The Airports Economic Regulatory Authority of India**

The Airports Economic and Regulatory Authority of India was created by the enactment of the Airports Economic Regulatory Authority of India Act 2008 (AERA Act 2008).

It is An Act to provide for the establishment of an Airports Economic Regulatory Authority to regulate tariff and other charges for the aeronautical services rendered at airports and to monitor performance standards of airports and also to establish Appellate Tribunal to adjudicate disputes and dispose of appeals and for matters connected therewith or incidental thereto.

Thus, AERA is the economic regulator of the airport infrastructure sector and air navigation services in the country

AERA Act, 2008, was enacted by Parliament and was notified in the Gazette of

India vide Gazette No.36 dated 05.12.2008. The Act contains VII Chapters divided into 55 sections and contains One Schedule.

All provisions of AERA Act, except chapter III and chapter VI, came into force on 1st day of January 2009. The provisions of Chapter III and VI also came into force from first day of September,2009.

The Airports Economic Regulatory Authority (AERA) is a statutory body constituted under the Airports Economic Regulatory Authority of India Act, 2008 (27 of 2008) notified vide Gazette Notification dated 5th December 2008.

The Central Government has notified the establishment of the Airports Economic Regulatory Authority with effect from 12th May, 2009 vide its notification no GSR 317 (E). The Head Office of The Authority is at New Delhi.

The Airports Economic Regulatory Authority (AERA), will not have regulation over Army and Para-military Airports.

AERA will prescribe tariffs every five years, and will also keep a check on the economic and operational viability of airports.

Airport operators will have to get the prior approval of the regulator before charging a specific user development fee at an airport. Besides, it will also prescribe the passenger service fees.

The statutory functions of the AERA as enshrined in the Airports Economic Regulatory Authority of India Act, 2008 are as below:

- a. To determine the tariff for the aeronautical services taking into consideration.
  - i. The capital expenditure incurred and timely investment in improvement of airport facilities.
  - ii. The service provided, its quality and other relevant factors.
  - iii. The cost for improving efficiency.
  - iv. Economic and viable operation of major airports.
  - v. Revenue received from services other than the aeronautical services.
  - vi. The concession offered by the Central Government in any agreement or memorandum of understanding or otherwise.
  - vii. Any other factor which may be relevant for the purposes of this Act.
- b. To determine the amount of the Development Fees in respect of major airports.
- c. To determine the amount of the Passengers Service Fee levied under rule 88 of the Aircraft Rules, 1937 made under the Aircraft Act, 1934.
- d. To monitor the set Performance Standards relating to quality, continuity and reliability of service as may be specified by the Central Government or any authority authorized by it in this behalf.

- e. To call for such information as may be necessary to determine the tariff under clause (a).
- f. To perform such other functions relating to tariff, as may be entrusted to it by the Central Government or as may be necessary to carry out the provisions of this Act.

Important points under the Act:

1. Aeronautical charges are the tariff for providing the aeronautical services.
2. Under Section 2(a) of the Act "aeronautical service" means any service provided-
  - (i) for navigation, surveillance and supportive communication thereto for air traffic management;
  - (ii) for the landing, housing or parking of an aircraft or any other ground facility offered in connection with aircraft operations at an airport;
  - (iii) for ground safety services at an airport;
  - (iv) for ground handling services relating to aircraft, passengers and cargo at an airport;
  - (v) for the cargo facility at an airport;
  - (vi) for supplying fuel to the aircraft at an airport; and
  - (vii) for a stake-holder at an airport, for which the charges, in the opinion of the Central Government for the reasons to be recorded in writing, may be determined by the Authority;
3. Passenger Service Fee (PSF) : Passenger Service Fee is levied under rule 88 of the Indian Aircraft Rules 1937 which is collected by licensee from embarking passengers. It has two components, namely, Security Component and Facilitation Component. Security Component is utilised for incurring the expenditure in respect of the Aviation Security Force deployed at the airports and related equipments. The Facilitation Component is appropriated by the airport operator (s) towards services provided to the passengers at the airport. Further, Section 22 of the Airports Authority of India Act 1994 (AAI Act) empowers the AAI to charge fees for the amenities given to the passengers and visitors at any airport, civil enclave, heliport or airstrip.
4. Development Fee (DF) : Development Fee (DF) is levied on embarking passengers at an airport at the rate as may be prescribed by Central Government, as per Airports Authority of India Act, 1994 (Section 22A) for following purposes:
  - a. Funding or financing the costs of upgradation, expansion or development of the airport at which the fee is collected; or
  - b. Establishment or development of a new airport in lieu of the airport referred to in clause (a); or
  - c. Investment in the equity in respect of shares to be subscribed by the Authority in companies engaged in establishing, owning, developing, operating or

maintaining a private airport in lieu of the airport referred to in clause (a) or advancement of loans to such companies or other persons engaged in such activities.

It is a 'pre-funding' measure. In terms of Section 13(1)(b) of the AERA Act, AERA is required to determine the amount of development fee in respect of major airports.

5. User Development Fee(UDF) :User Development Fee is levied under rule 89 of the Aircraft rules 1937. Though the rule does not prescribe the specific purpose of levy, UDF is conventionally levied to ensure fair return to the airport operators on the investments made for providing airport services. In other words, UDF is a revenue enhancing measure to cover any deficit in revenues so as to ensure fair return on investment.

### **CARRIAGE OF GOODS BY SEA**

Maritime Transport is a critical infrastructure for the social and economic development of a country. It influences the pace, structure and pattern of development.

In India, carriage of goods by sea is governed by the Indian Bills of Lading Act, 1856, the Indian Carriage of Goods by Sea Act, 1925, the Merchant Shipping Act, 1958, and general statutes, such as the Marine Insurance Act, 1963, the Contract Act, 1872, the Evidence Act, 1872, the Indian Penal Code, 1860, the Transfer of Property Act, 1882, the Code of Civil Procedure, 1908, the Criminal Procedure Code, 1973, the Companies Act, 1956 etc as well as the general principles of law such as the law of tort, public and private international law etc. In this connection, reference may also be made to the Indian Ports Act, 1908 and the Major Port Trusts Act, 1963 concerning the administration of the port and the jurisdiction over ships in port, the Customs Act, 1962 containing various regulatory measures affecting ships, goods and persons in connection with importation or exportation of goods, as well as the provisions governing employment of labour. The Indian Bills of Lading Act, 1856 emphasises the negotiable and other characteristics of a bill of lading. The Carriage of Goods by Sea Act, 1925, contains the Hague Rules regulating the respective rights and liabilities of the parties to a contract governed by bills of lading or similar documents of title for carriage of goods by sea "from any port in India to any other port whether in India or outside India". The Merchant Shipping Act embodies rules regarding registration of Indian ships; transfers or mortgages of ships or shares; national character and flag; employment of seamen; safety, nuclear ships; collisions; accidents at sea and liability; limitation of liability; navigation; prevention of pollution; investigation and enquiries; wreck and salvage; coasting trade; sailing vessels; penalties and procedure, etc. Many of

these provisions have been adopted from rules formulated by various international conventions.

Indian statutes lag behind the development of international law in comparison to contemporaneous statutes in England and other maritime countries. Although the Hague Rules are embodied in the Carriage of Goods by Sea Act, 1925, India never became a party to the International Convention laying down those rules (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, Brussels 1924). The Carriage of Goods by Sea Act, 1925 merely followed the (United Kingdom) Carriage of Goods by Sea Act, 1924.

The United Kingdom repealed the Carriage of Goods by Sea Act, 1924 with a view to incorporating the Visby Rules adopted by the Brussels Protocol of 1968. The Hague-Visby Rules were accordingly adopted by the Carriage of Goods by Sea Act, 1971 (United Kingdom). Indian Legislation has not, however, progressed, notwithstanding the Brussels Protocol of 1968 adopting the Visby Rules or the United Nations Convention on the Carriage of Goods by Sea, 1978 adopting the Hamburg Rules. The Hamburg Rules prescribe the minimum liabilities of the carrier far more justly and equitably than the Hague Rules so as to correct the tilt in the latter in favour of the carriers. The Hamburg Rules are acclaimed to be a great improvement on the Hague Rules and far more beneficial from the point of view of the cargo owners. India has also not adopted the International Convention relating to the Arrest of Sea-going Ships, Brussels, 1952. Nor has India adopted the Brussels Conventions of 1952 on civil and penal jurisdiction in matters of collision; nor the Brussels Conventions of 1926 and 1967 relating to maritime liens and mortgages. Although these conventions have not been adopted by legislation, the principles incorporated in the conventions are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships.

### United Nations International Conventions on Carriage of Goods by Sea

<b>Hague Rules</b>	1924 International Convention on Carriage of Goods by Sea. These rules govern liability for loss or damage to goods carried by sea under a bill of lading.
<b>Hague-Visby Rules</b>	1968 Revision of Hague Rules.
<b>Hamburg Rules</b>	In March 1978 an international conference in Hamburg adopted a new set of rules (The Hamburg Rules), which radically alter the liability which

shipowners have to bear for loss or damage to goods in the courts of those nations where the rules apply.
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1. United Nations Convention on the Carriage of Goods by Sea (1978) (the "Hamburg Rules")

This Convention establishes a uniform legal regime governing the rights and obligations of shippers, carriers and consignees under a contract of carriage of goods by sea. It was prepared at the request of developing countries and its adoption by States has been endorsed by such intergovernmental organizations as UNCTAD, Asian-African Legal Consultative Committee and the Organization of American States. The twenty ratifications and accessions needed for the Convention to enter into force have been deposited and the Convention entered into force on 1 November 1992.

2. 2008 - United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea - the "Rotterdam Rules"

Adopted by the General Assembly on 11 December 2008, the Convention establishes a uniform and modern legal regime governing the rights and obligations of shippers, carriers and consignees under a contract for door-to-door carriage that includes an international sea leg. The Convention builds upon, and provides a modern alternative to, earlier conventions relating to the international carriage of goods by sea, in particular, the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (Brussels, 25 August 1924) ("the Hague Rules"), and its Protocols ("the Hague-Visby Rules"), and the United Nations Convention on the Carriage of Goods by Sea (Hamburg, 31 March 1978) ("the Hamburg Rules").

The Rotterdam Rules provide a legal framework that takes into account the many technological and commercial developments that have occurred in maritime transport since the adoption of those earlier conventions, including the growth of containerization, the desire for door-to-door carriage under a single contract, and the development of electronic transport documents. The Convention provides shippers and carriers with a binding and balanced universal regime to support the operation of maritime contracts of carriage that may involve other modes of transport.

### **Ministry of Shipping**

Ministry of Shipping was formed in 2009 by bifurcating the erstwhile Ministry of

Shipping, Road Transport and Highways into two independent ministries.

The Ministry of Shipping, a branch of the Government of India, is the apex body for formulation and administration of the rules and regulations and laws relating to Shipping.

The Ministry of Shipping encompasses within its fold shipping and port sectors which also include shipbuilding and ship repair, major ports and inland water transport. The Ministry has been entrusted with the responsibility to formulate policies and programmes on these sectors and their implementation.

The subjects allocated to the Ministry of Shipping are:

I. THE FOLLOWING SUBJECTS WHICH FALL WITHIN LIST 1 OF THE SEVENTH SCHEDULE TO THE CONSTITUTION OF INDIA

1. Maritime shipping and navigation; provision of education and training for the mercantile marine.
2. Lighthouses and lightships.
3. Administration of the Indian Ports Act, 1908 (15 of 1908) and Major Port Trusts Act, 1963 (38 of 1963) and Ports declared as major ports.
4. Shipping and navigation including carriage of passengers and goods on inland waterways declared by Parliament by law to be national waterways as regards mechanically propelled vessels, the rule of the roads on such waterways.
5. Ship-building and ship-repair industry
6. Fishing Vessels Industry
7. Floating Craft Industry

II IN RESPECT OF THE UNION TERRITORIES

8. Inland Waterways and traffic thereon.

III IN RESPECT OF THE UNION TERRITORIES OF THE ANDAMAN AND NICOBAR ISLANDS AND THE LAKSHADWEEP

9. Organisation and maintenance of mainland islands and inter-island shipping services.

IV OTHER SUBJECTS WHICH HAVE NOT BEEN INCLUDED UNDER THE PREVIOUS PARTS

10. Legislation relating to shipping and navigation on inland waterways as regards mechanically propelled vessels and the carriage of passengers and goods on inland waterways.



11. Legislation relating to and coordination of the Development of Minor and Major Ports.
12. Administration of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948) and the schemes framed thereunder other than the Dock Workers (Safety, Health and Welfare) Scheme 1961.
13. To make shipping arrangements for and on behalf of the Government of India/Public Sector Undertakings/State Governments/State Government Public Sector Undertakings and Autonomous Bodies in respect of Import of Cargo on free on: Board/free along side and export on cost and freight/cost insurance and freight basis.
14. Planning of Inland Water Transport.
15. Formulation of the Privatisation Policy in the Infrastructure Areas of ports, shipping and inland waterways.
16. The development of township of Gandhidham.
17. Prevention and control of Pollution:
  - (a) Prevention and control of pollution arising from ships, shipwrecks and abandoned ships in the sea, including the port area;
  - (b) Enactment and administration of legislation relating to prevention, control and combating of pollution arising from ships; and
  - (c) Monitoring and combating of oil pollution in the port areas.

#### V. SUBORDINATE OFFICES

18. Director General of Shipping
19. Andaman, Lakshadweep Harbour Works
20. Directorate General of Lighthouses and Lightships
21. Minor Ports Survey Organisation

#### VI AUTONOMOUS BODIES

22. Tariff Authority of Major Ports (TAMP)
23. Port Trusts at Mumbai, Kolkata, Kochi, Kandla, Chennai, Mormugao, Jawaharlal Nehru (Nhava Shevs), Paradip, Tuticorin, Visakhapatnam and New Mangalore
24. Dock Labour Boards at Kolkata and Visakhapatnam
25. Inland Waterways Authority of India
26. Seamen's Provident Fund Organisation

#### VII SOCIETIES/ ASSOCIATIONS

27. National Institute of Port Management

28. National Ship Design and Research Centre.
29. Seafarer's Welfare Fund Society

#### VIII PUBLIC SECTOR UNDERTAKINGS

30. Shipping Corporation of India
31. Hindustan Shipyard Limited
32. Cochin Shipyard Limited
33. Central Inland Water Transport Corporation Limited
34. Dredging Corporation of India
35. Hooghly Dock and Ports Engineers Limited
36. Ennore Port Limited

#### IX INTERNATIONAL ASPECTS

37. International Maritime Organisation

#### X ACTS

38. Indian Ports Act 1908 (15 of 1908)
39. The Inland Vessels act, 1917 (1 of 1917).
40. Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948)
41. The Merchant Shipping Act, 1958 (44 of 1958).
42. The Major Port Trusts Act, 1963 (38 of 1963)
43. The Seamen's Provident Fund Act, 1966 (4 of 1966).
44. The Inland Waterways Authority of India Act, 1985 (82 of 1985).
45. The Multimodal Transportation of Goods Act, 1993 (28 of 1993).

### **Indian Legislation**

The law relating to shipping in India is contained in the Indian Bills of Lading Act, The (Indian) Carriage of Goods by Sea Act 1925, as amended by the Multimodal Transportation of Goods Act, 1993, Merchant Shipping Act, and Marine Insurance Act.

It is also contained within other general statutes including the Contract Act, Evidence Act, Indian Penal Code, Transfer of Property Act, Code of Civil Procedure, Criminal Procedure Code, and Companies Act. The Constitution of India is, of course, the Supreme Law.

The Indian Carriage of Goods by Sea Act 1925 applies to the carriage of goods by sea under bills of lading, or similar documents of title, from a port in India to any other port in or outside India. The substantive rights, recognised by the statute, are of equal application to foreign merchant ships as they are to Indian merchant

ships. However, the Carriage of Goods by Sea Act does not contain any provision for the enforcement of the right by arresting a foreign vessel found in Indian waters.

A contract of carriage of goods by sea is called 'contract of affreightment'

## **MULTI MODAL TRANSPORTATION OF GOODS**

With the changing economic scenario, factors such as globalisation of markets, international economic integration, and removal of barriers to business and trade and increased competition have enhanced the need of transportation. It is one of the most important infrastructure requirements, which is essential for the expansion of opportunities and plays an important role in making or breaking the competitive positioning.

The cargo industry is still an expanding market. The need for a comprehensive logistics systems in transportation, communications and information sector, continues to grow. Freight forwarding services alone are no longer sufficient, special deals are to be initiated on regular intervals to lure the customers to maintain them on permanent status, especially to cater to the increasing needs of seasonal vendors.

Therefore, the cargo market demands a global solution and network linking all four modes of transportation i.e. (a) Air (b) Road (c) Rail (d) Sea. The combination of these modes is defined as 'multimodal transport system' A worldwide network linking airlines, roadways, railways and shipping lines in one chain with a motive of better quality of service to customers with the most economical costing and dependable schedule.

Multimodal transportation is the movement of cargo from the point of origin to the final destination, by using two or more modes of transport. In its essence Multi Modal Transportation of goods means transportation of cargo from the premises of the shipper to those of the consignee, by more than one mode of transportation, under a single contract which has its evidence in form of a single multimodal transport contract.

In India Multi-Modal Transportation of Goods is regulated by, Multi-modal transportation of Goods act of 1993, which stands amended by, the Multi-modal transportation of goods act of, 2000.

## **Multimodal Transportation of Goods Act, 1993**

The Multimodal Transportation of Goods Act, 1993 was introduced to facilitate the exporters and give them a sense of security in transporting their goods. Multi-modal transportation reduces logistics costs of exporter and makes products more competitive in the international market.

The concept of door-to-door delivery, which is Multimodal Transportation is all about, is catching up fast in international trade. Reduction of logistics costs is one of the important aspects of Multimodal Transportation, thereby reducing the overall cost to the exporter and making his products more competitive in the international market. It is in this context that the Government of India thought it necessary to codify the rules and regulations governing Multimodal Transportation and enacted the Multimodal Transportation of Goods Act, 1993 based on the UNCTAD/ICC (United Nations Council for Trade and Development/ International Council for Commerce) rules which have gained widespread acceptance.

The Multimodal Transportation Act lays down the standard terms and conditions governing this activity. Under the provision of the Act only those companies who are registered by the competent authority which has been notified to be the Director General of Shipping, can carry out Multimodal Transportation. This requirement of registration has been imposed by the government to ensure that only such companies which have the necessary expertise infrastructure and financial capability are allowed to undertake Multimodal Transportation so that the interests of shippers are fully protected.

The Multimodal Transport of Goods Act, 1993 is divided into five chapters under the heads (1) Preliminary aspects (2) Regulation of Multimodal transportation (3) Multimodal Transport Document (4) Responsibilities and liabilities of the Multimodal Transport Operator (5) Miscellaneous aspects. A schedule is also attached to the Act which brings in certain amendments to (1) The Carriers Act, 1865 (2) The Indian Carriage of Goods by Sea Act, 1925 (3) The Sale of Goods Act, 1930.

‘Multimodal transportation’ as defined by Section 2(k) of the Act means carriage of goods by two or more modes of transport from the place of acceptance of the goods in India to a place of delivery of the goods outside India. So a transport to be a multimodal transport, 3 conditions has to be satisfied: (1) the goods are to be carried by two or more modes of transport (2) the place of acceptance of the goods should be in India.(3) the place of delivery of the goods should be outside India.

Section 2(j) precisely defines what are the modes of transport sought after by the Act. They include carriage of goods: 1) by road 2) by air 3) by rail 4) by inland waterways, or 4) by sea.

As per the MMTG Act three categories of companies are eligible to be registered as Multimodal transport operators (MTO). They are (1) shipping Companies (2) Freight Forwarding Companies (3) Companies which do not fall in either of the above two categories. In the case of Shipping Companies (which own and operate vessels) as well as Freight Forwarding Companies it must have a minimum annual turn over of Rs 50 Lakh, during the immediately preceding financial year or must have an annual average turn over of Rs 50 Lakh, during the preceding three financial years. However the same needs to be certified by a chartered accountant.

In the case of a company falling under third category above, the Subscribed share Capital of the company should be Rs 50 lakh or more or aggregate balance in its capital account or that in the capital account of its partners or proprietor should not be less than Rs 50 Lakhs.

In addition the applicant company should have offices/agents/representative in atleast two other countries.

### **Objective of the Act**

An Act to provide for the regulation of the multimodal transportation of goods, from any place in India to a place outside India, on the basis of a multimodal transport contract and for matters connected therewith or incidental thereto.

### **Registration for Multi Modal Transportation**

No person shall carry on or commence the business of Multimodal transportation unless he is registered under this Act; Provided that a person carrying on the business of multimodal transportation immediately before the commencement of this Act, may continue to do so for a period of three months from such commencement; and if he has made an application for registration within the said period, till the disposal of such application.

Such a requirement is mandatory, thus in absence of compliance with the requirements of registration, a non-registered multi-modal transport operator would not be permitted to carry on the business of multi-modal transportation .

Section-3, 4, 5&6 of Multi-Modal transportation of goods act deal with the law regulating various aspects such as registration, cancellation and appeal against such registration or cancellation of registration of multi-modal transport

operator.

Any person may apply for registration in the prescribed form accompanied by a fee of ten thousand rupees to the competent authority to carry on or commence the business of multimodal transportation.

On receipt of the application, the competent authority shall satisfy that the applicant fulfils the following conditions, namely and on being so satisfied, register the applicant as a multimodal transport operator and grant a certificate to it to carry on or commence the business of multimodal transportation:-

1. (i) that the applicant is a company, firm or proprietary concern, engaged in the business of Shipping, or freight forwarding in India or abroad with a minimum annual turnover of Rs.50Lkhs rupees during the immediately preceding financial year or an average annual turnover of Rs. 50Lkhs rupees during the preceding three financial years as certified by a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949;

(ii) that if the applicant is a company, firm or proprietary concern other than a company, firm or proprietary concern specified in sub-clause (i), the subscribed share capital of such company or the aggregate balance in the capital account of the partners of the firm, or the capital of the proprietor is not less than fifty lakh rupees; and

2. that the applicant has offices or agents or representatives in not less than two other countries,

Any applicant who is not a resident of India and who is not engaged in the business of shipping shall not be granted registration unless he has established a place of business in India. In respect of any applicant who is not a resident of India, the turnover may be certified by any authority competent to certify the accounts of a company in that country.

A Registration certificate granted shall be valid for a period of three years and may be renewed from time to time for a further period of three years at a time.

#### Renewal Of Certificate

An application for renewal shall be made in such form as may be prescribed and shall be accompanied by such amount of fees as may be notified by the Central

Government. Provided that such fees shall not be less than rupees ten Thousand and shall not exceed rupees twenty thousand.

The competent authority shall renew the registration certificate if the applicant continues to fulfill the conditions as laid down at the time of registration.

### **Appeal**

Section-6, of Multi-modal transportation of goods act, 1993 provides for provision of appeal against a refusal by the competent authority to

- (a) Grant or renew registration, or
- (b) On cancellation of registration

An appeal against refusal by the competent authority to grant, renew or cancel registration lies with the Central Government. Generally an appeal preferred after the expiry of the prescribed period shall not be admitted, but where the appellant satisfies the central government that he has sufficient cause, for not preferring the appeal within the prescribed period, his appeal may be preferred even after the expiry of such prescribed period. All Appeals should be made in the prescribed form and on the payment of the prescribed fee. All Appeals shall be accompanied by a copy of order, against which such an appeal has been preferred.

Where the central government receives an application for appeal, it shall after giving parties a reasonable opportunity of being heard, & after making such inquiry as the central government deems proper, make such order as it deems fit.

### **Multi Modal Transport Operator (MTO)**

"multimodal transport operator" means any person who--

- (i) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
- (ii) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract;

### **Responsibilities and Liabilities of the Multimodal Transport Operator**

Basis of liability of multimodal transport operator.

The multimodal transport operator shall be liable for loss resulting from-

- (a) any loss of, or damage to the consignment;
- (b) delay in delivery of the consignment and
- (c) any consequential loss or damage arising from such delay,

However a multi-modal transporter shall be liable only in instances where such loss, damage or delay in delivery of consignment took place at a time when the consignment was in the charge of such multi-modal transport operator.

The multimodal transport operator shall not be liable if he proves that no fault or neglect on his part or that of his servants or agents had caused or contributed to such loss, damage or delay in delivery:

Moreover, the multimodal transport operator shall not be liable for loss or damage arising out of delay in delivery including any consequential loss or damage arising from such delay unless the consignor had made a declaration of interest in timely delivery which has been accepted by the multimodal transport operator.

NOTE:

"Delay in delivery" shall be deemed to occur when the consignment has not been delivered within the time expressly agreed upon or, in the absence of such agreement, within a reasonable time required by a diligent multimodal transport operator, having regard to the circumstances of the case, to effect the delivery of the consignment.

If the consignment has not been delivered within ninety consecutive days following the date of delivery expressly agreed upon or the reasonable time (required by a diligent multi-modal transport operator, having regard to the circumstances of the case), the claimant may treat the consignment as lost.

Limits of liability when the nature & value of the consignment have not been declared & stage of transport where loss or damage occurred is not known.

Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value where of have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss of damage occurred is not known, then the liability of the multimodal transport operator to pay compensation shall not exceed two Special Drawing Rights per kilogram of the gross weight of the consignment lost or damaged or 666.67



Special Drawing Rights per package or unit lost or Damaged, whichever is higher.

NOTE:

Where a container, pallet or similar article is stuffed with more than one package or units, the packages or units enumerated in the multimodal transport document, as packed in such container, pallet or similar article of transport shall be deemed as packages or units.

In Instances where the multi-modal transport contract does not include carriage of goods by Sea or Inland water ways, then in such a scenario, liability of a multimodal transport operator shall be limited to an amount not exceeding a maximum of 8.33 SDR (Special Drawing Rights per Kilogram of gross weight of goods lost or damaged).

Limits of liability when the nature & value of the consignment have not been declared and stage of transport where loss or damage occurred is known.

Where a multimodal transport operator becomes liable for any loss of, or damage to, any consignment, the nature and value whereof have not been declared by the consignor before such consignment has been taken in charge by the multimodal transport operator and the stage of transport at which such loss or damage occurred is known, then the limit of the liability of the multimodal transport operator for such loss of damage shall be determined in accordance with the provisions of the relevant law applicable in relation to the mode of transport during the course of which the loss or damage occurred and any stipulation in the multimodal transport contract to the contrary shall be void and unenforceable.

Provided that the multimodal transport operator shall not be liable for any loss, damage or delay in delivery due to a cause for which the carrier is exempted from liability in accordance with the applicable law".

Liability of the multimodal transport operator in case of delay in delivery of goods under certain circumstances.

Section 16, of the multi modal transportation of goods act deals with the liability of multi-modal transport operator in case of, delay in delivery of goods under certain circumstances.

Instances where delay in delivery of consignment occurs, due to:

Consignment not having been delivered within the time expressly agreed upon or in absence of such agreement, within such reasonable time as is required by a diligent multi-modal transport operator having regard to the circumstances of the case, to effect the delivery of the consignment or any consequential loss or damage that arises from such delay, then in such a situation liability of such a multi-modal transport operator shall be limited to the freight payable for the consignment so delayed.

Note: Where there is delay in delivery the liability of the multi-modal transport operator shall be limited to freight payable for the consignment so delayed.

#### Assessment of compensation.

Assessment of compensation for loss of or damage to, the consignment shall be made with reference to the value of such consignment at the place where, and the time at which, such consignment is delivered to the consignee or at the place and time when, in accordance with the multimodal transport contract, it should have been delivered.

The value of the consignment 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 the current market price is not ascertainable, with reference to the normal value of a consignment of the same kind and quantity.

#### Loss of right of multimodal transport operator to limit liability.

The multimodal transport operator shall not be entitled to the benefit of limitation of liability under any of the provisions of this Chapter if it is proved that the loss, damage or delay in delivery of consignment resulted from an act or omission of the multimodal transport operator with intent to cause such loss, damage or delay or recklessly and with knowledge that such loss, damage or delay would probably result.

#### Limit of liability of multimodal transport operator for total loss of goods.

The multimodal transport operator shall not, in any case, be liable for an amount greater than the liability for total loss of goods for which a person will be entitled to make a claim against him under the provisions of this Act.

#### Notice loss of or damage of goods.

Generally the delivery of consignment to the consignee by multi-modal transport operator shall be treated as a prima -facie evidence of delivery of goods of a description as have been described in a multi-modal transport document.

On any loss or damage being noticed in the consignment delivered by a multi-modal transport operator , it shall be necessary for such a consignee(receiver of goods) to give a written notice of the general nature of loss or damage to the goods. However such notice must be given in written & that too at the very instance of handing over of such goods to the consignee

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

#### **Multi Modal Transport Document (MTD)**

Increased containerization has resulted in Multimodal Transport of Goods under a single transport document covering all modes of transport from the exporters premises to the consignee's premises such Multimodal Transportation under a single document has a number of advantages like reduction in overall transport cost reduction in delays, smoother and quicker movement of and improvement in quality of services.

"Multimodal transport document" means a negotiable or non-negotiable document evidencing a multimodal transport contract and which can be replaced by electronic data interchange messages permitted by applicable law;

#### Issue of multimodal transport document.

Section -7 of the Multi Modal Transportation of Goods Act deals with the issuance of a Multi-Modal Transport Document.

Where the consignor and the multimodal transport operator have entered into a contract for the multimodal transportation and the multimodal transport operator has taken charge of the goods, he shall, at the option of the consignor, issue a negotiable or non-negotiable multimodal transport document.

However, the multimodal transport operator shall issue the multimodal transport document only after obtaining, and during the subsistence of a valid insurance cover.

The multimodal transport document shall be signed by the multimodal transport operator or by a person duly authorised by him.

#### Multimodal transport document to be regarded as document of title.

Every consignee named in the negotiable or non-negotiable multimodal transport document and every endorsee of such document, as the case may be, to whom the property in the goods mentioned therein shall pass, upon or by reason of such consignment or endorsement, shall have all the rights and liabilities of the consignor.

Nothing contained in the negotiable or non-negotiable multimodal transport document shall prejudice or affect the right of the multimodal transport operator to claim freight from the consignor or enforce any liability of the consignee or endorsee by reason of his being such consignee or endorsee.

#### Ingredients of the Multi Modal Transport Document

The multimodal transport document shall contain the following particulars, namely:-

(a) general information

- the general nature of the goods,
- the leading marks necessary for identification of the goods,
- the character of the goods (including dangerous goods),
- number of packages or units and
- the gross weight and quantity of the goods as declared by the consignor;

(b) 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 name of the consignee, if specified by the consignor;
- (f) the place and date of taking 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 by the multimodal transport operator as expressly agreed upon between the consignor and the multimodal transport operator;
- (i) whether it is negotiable or non-negotiable;
- (j) the place and date of its issue;
- (k) freight payable by the consignor or the consignee, as the case may be, to be mentioned only if expressly agreed by both the consignor and the consignee;
- (l) the signature of the multimodal transport operator or of a person duly authorised by him;
- (m) the intended journey route, modes of transport and places of transshipment, if known at the time of its issue;
- (n) terms of shipment and a statement that the document has been issued subject to and in accordance with this Act; and
- (o) any other particular which the parties may agree to insert in the document, if any such particular is not inconsistent with any law for the time being in force.

However, the absence of any of the particulars listed above shall not affect the legal character of the multimodal transport document

Reservation in the multimodal transport document:

Where the multimodal transport operator or a person acting on his behalf knows, or has reasonable grounds to suspect, that the particulars furnished by the consignor in the multimodal transport document do not accurately represent the goods actually taken in charge, or if he has no reasonable means of checking such particulars, the multimodal transport operator or a person acting on his behalf shall insert in the multimodal transport document a reservation specifying the

inaccuracies, if any, the grounds of suspicion or the absence of reasonable means of checking the particulars.

Where the multimodal transport operator or a person acting on his behalf fails to insert the reservation in the multimodal transport document relating to the apparent condition of the goods, he shall be deemed to have accepted the goods in apparent good condition.

#### Evidentiary effect of the multimodal transport document.

In all cases except those in which a reservation has been made in multi-modal transport document

(a) the multimodal transport document shall be prima facie evidence of the fact that the multimodal transport operator has taken charge of the goods as described in the document; and

(b) no proof to the contrary by the multimodal transport operator shall be admissible if the multimodal transport document is issued in negotiable form and has been transmitted to the consignee or transferred by the consignee to a third party, if the consignee or the third party has acted in good faith relying on the description of the goods in the document.

#### **USEFUL WEBSITES**

Ministry of Road Transport and Highways

<http://morth.nic.in/index1.asp?linkid=135&langid=2>

Ministry of Railways

<http://www.indianrailways.gov.in/indianrailways/indexhome.jsp>

Ministry of Shipping

<http://shipping.nic.in/>

Ministry of Civil Aviation

<http://civilaviation.nic.in/>

Directorate General of Civil Aviation

<http://www.dgca.gov.in/>

Bureau of Civil Aviation Security  
<http://bcasindia.gov.in/>

Airports Economic Regulatory Authority of India  
<http://aera.gov.in/>

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### **About the Author**

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*In addition to being a Chartered Accountant, Company Secretary, Cost Accountant, MBA, Dip IFR (UK), Mr. Adukia also holds a Degree in Law and Diploma in LaborLaws. He has been involved in the activities of the Institute of Chartered Accountants of India (ICAI) since 1984 as a convenor of Kalbadevi CPE study circle. He was the Chairman of the Western Region of Institute of Chartered Accountants of India in 1997 and has been actively involved in various committees of ICAI. He became a member of the Central Council in 1998 and ever since he has worked tirelessly towards knowledge sharing, professional development and enhancing professional opportunities for members. He is a regular contributor to the various committees of the ICAI. He is currently the Chairman of Committee for Members in Industry and Internal Audit Standard Board of ICAI.*

*Mr. Adukia is a rank holder from Bombay University. He did his graduation from Sydenham College of Commerce & Economics. He received a Gold Medal for highest marks in Accountancy & Auditing in the Examination. He passed the Chartered Accountancy with 1st Rank in Inter CA & 6th Rank in Final CA, and 3rd Rank in Final Cost Accountancy Course in 1983. He started his practice as a Chartered Accountant on 1st July 1983, in the three decades following which he left no stone unturned, be it academic expertise or professional development. His level of knowledge, source of information, professional expertise spread across a wide range of subjects has made him a strong and sought after professional in every form of professional assignment. He has been coordinating with various professional institutions, associations' universities, University Grants Commission and other educational institutions. Besides he has actively participated with accountability and standards-setting organizations in India and at the international level. He was a member of J.J. Irani committee which drafted Companies Bill 2008. He is also member of Secretarial Standards Board of ICSI. He represented ASSOCHAM as member of Cost Accounting Standards Board of ICWAI. He was a member of working group of Competition Commission of India, National Housing Bank, NABARD, RBI, CBI etc.*

*He has served on the Board of Directors in the capacity of independent director at BOI Asset management Co. Ltd, Bharat Sanchar Nigam Limited and SBI Mutual Funds Management Pvt Ltd. He was also a member of the London Fraud Investigation Team. Mr. Rajkumar Adukia specializes in IFRS, Enterprise Risk Management, Internal Audit, Business Advisory and Planning, Commercial Law Compliance, XBRL, Labor Laws, Real Estate, Foreign Exchange Management, Insurance, Project Work, Carbon Credit, Taxation and Trusts. His clientele include large corporations, owner-managed companies, small manufacturers, service businesses, property management and construction, exporters and importers, and professionals. He has undertaken specific assignments on fraud investigation and reporting in the corporate sector and has developed background material on the same.*

*Based on his rich experience, he has written numerous articles on critical aspects of finance-accounting, auditing, taxation, valuation, public finance. His authoritative articles appear regularly in financial papers like Business India, Financial Express, Economic Times and other professional / business magazines. He has authored several accounting and auditing manuals. He has authored books on vast range of topics including IFRS, Internal Audit, Bank Audit, Green Audit, SEZ, CARO, PMLA, Antidumping, Income Tax Search, Survey and Seizure, Real Estate etc. His books are known for their practicality and for their proactive approaches to meeting practice needs.*

*Mr. Rajkumar is a frequent speaker on trade and finance at seminars and conferences organized by the Institute of Chartered Accountants of India, various Chambers of Commerce, Income Tax Offices and other Professional Associations. He has also lectured at the S.P. Jain Institute of Management, Intensive Coaching Classes for Inter & Final*



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***Professional Association:*** *Mr. Rajkumar S Adukia with his well chartered approach towards professional assignments has explored every possible opportunity in the fields of business and profession. Interested professionals are welcome to share their thoughts in this regard.*