

## THAILAND TRANSPORTATION Q&A

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### Overview

Presented in a Q&A format, this document provides an introductory overview of transportation law in Thailand. Questions address issues of aviation, inland transportation, insurance, maritime law, and multimodal transportation.

### Aviation

#### **Is Thailand a party to the Warsaw Convention?**

The general rules of carriage of goods and carriage of passengers apply to disputes on loss of or damage to goods or delay in delivery and loss of life and personal injury to passengers and loss of or damage to their baggage.

#### **Does the Thai court allow the application of relevant international conventions as the governing law of contract?**

Yes, as long as they are not in conflict with the general rules of the Civil and Commercial Code of Thailand.

#### **Is there any limitation of liability for the carrier?**

No. The carrier is liable for full damages proved to be suffered by an injured party.

#### **Will there be any change in the law in the near future?**

Yes. Thailand is now preparing a draft Bill on Carriage of Goods by Air in line with the Montreal Convention 1999. It is expected to become law in the near future.

### Inland Transportation

#### **What law governs liabilities arising from the performance of inland transport?**

The Civil and Commercial Code on Carriage of Goods.

### **What is the basis of liability of the carrier?**

Strict liability. The carrier is liable for the loss of or damage to the goods or delay in delivery unless he can prove that the loss, damage or delay was caused by force majeure, the nature of such goods, or the fault of the consignor or consignee.

### **Can the carrier make out a provision in a receipt, consignment note or other documents delivered to the consignor to exclude or limit his liability?**

No. Such provision is null and void under the Civil and Commercial Code, unless the consignor expressly agreed to such exclusion or limitation of liability.

## **Insurance**

### **Does Thailand have specific laws on marine insurance?**

Although the Civil and Commerce Code provides that contracts of marine insurance shall be governed by the provisions of the maritime law, there is currently no maritime law that deals with marine insurance. However, the Thai court is prepared to adopt the principles of English marine insurance law, provided that it is established that such principles are the general rules of law.

### **Under what conditions may the insurer subrogate the rights of the assured?**

If the loss is caused by an act of a third party, the insurer who paid compensation is subrogated (up to the amount paid by him) to the rights of the assured and of the beneficiary against such third party. If the insurer has paid only part of the compensation, he cannot exercise his right to the prejudice of the right of the assured or of the beneficiary to claim the remainder of the loss from the third party.

### **Who is responsible for the expenses for valuation of loss?**

The insurer. The actual amount of the loss shall be valued at the place where, and at the time when, the loss occurred.

### **What is the effect of insurance where the subject matter insured is assigned to a third party?**

If the subject matter passes from the assured by will or operation of law, the rights under the contract of insurance will be transferred with it. For other cases, unless otherwise provided by the contract, if the assured transfers the subject matter, he needs to notify the insurance company of the transfer, otherwise the rights under the insurance contract will not be transferred with it. However, if by such transfer the risk is substantially altered or increased, the contract of insurance will become void.

## **Maritime**

### **Has Thailand ratified either the Hague or the Hague-Visby Rules?**

Thailand has not ratified either one. Thailand has its Carriage of Goods by Sea Act.

### **What is the Carriage of Goods by Sea Act applicable to?**

The Act applies to carriage of goods by sea from one place in Thailand to another place outside Thailand, or from a place outside Thailand to another place within Thailand, except where it is provided in the bill of lading that the law of another country or international law shall apply. However, if it appears that one of the parties is a Thai national or is a juristic person established under Thai law, the Act shall apply.

### **What is the statute of limitations in claims for damages arising from loss of or damage to goods or for delay in delivery of the goods carried under a contract of carriage?**

One year from the day the carrier delivered the goods or would have delivered the goods.

### **Is there any limitation of liability of the carrier?**

Yes. The liability of the carrier for damages resulting from loss of or damage to goods entrusted to him is limited to Baht 10,000 per shipping unit or Baht 30 per kilogram of the net weight of the goods, whichever is higher.

### **Is it possible to arrest a vessel in Thai waters?**

Yes, subject to certain conditions and requirements under the Arrest of Vessels Act.

### **How can a vessel be arrested in Thai waters?**

A creditor who is domiciled in Thailand must submit an ex parte application requesting the court to issue a writ of arrest.

## **Multimodal Transport**

### **Does Thailand have any specific laws governing multimodal transport?**

Yes, the Multimodal Transport Act 2005.

### **What is the Multimodal Transport Act 2005 applicable to?**

The Act applies to carriage of goods by at least two different modes of transport under one multimodal transport contract from a place in one country where multimodal transport operator takes charge of goods, to a place designated for delivery in another country. The Act also applies to carriage of goods by at least two different modes of transport in Thailand under a unimodal transport contract if agreed in writing by the parties.

### **What is a multimodal transport contract?**

A multimodal transport contract is a contract whereby a consignor agrees to engage a multimodal transport operator to perform or procure multimodal transport and to pay freight to the multimodal transport operator.

### **Are there any specific requirements for operating multimodal transport in Thailand?**

Yes, a multimodal transport operator is required to register with the competent authority prior to operating multimodal transport.

**What is the statute of limitations in claims for damages arising from loss of or damage to goods or for delay in delivery of goods carried under a multimodal transport contract?**

Nine months from the day the multimodal transport operator delivered the goods or should have delivered the goods.

**Is there any limitation of liability of the multimodal transport operator?**

Yes, there is limitation of liability in the following circumstances:

1. Where the goods charged to the care of the multimodal transport operator are lost or damaged, the liability of the multimodal transport operator is limited to 666.67 SDR per one shipping unit, or 2 SDR per kilogram of the gross weight of the goods, whichever is higher.
2. Where the loss of or damage to the goods resulted from a delay in delivery or from extraordinary circumstances, other than the loss of or damage to the goods, the liability of the multimodal transport operator is limited to an amount not exceeding the freight under the multimodal transport contract.
3. Where the multimodal transport contract does not include a carriage of goods by sea or internal waters, the liability of the multimodal transport operator is limited to 8.33 SDR per kilogram of the gross weight of the goods lost or damaged.
4. Where the goods are lost or damaged during one particular stage of multimodal transport, for which the national law of the country where such loss or damage occurred or an international convention would have provided a limitation of liability of the carrier, the liability of the multimodal transport operator is limited to the amount provided in the said national law or international convention.

**Is there any exclusion of liability of the multimodal transport operator?**

Yes. The Act provides a list of exclusion of liability of the multimodal transport operator. The multimodal transport operator is excluded from liability if he can prove that the loss, damage or delay in delivery occurred or resulted from force majeure; willful act or negligence of the consignor, the consignee, representative or agent of the consignor or the consignee; insufficient or defective packing, marking or numbering of the goods, etc.