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Part 2

Government of Nepal

Ministry of Law, Justice and Parliamentary Affairs

The following Act enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063 (2006) is hereby published for information of the general public.

Act number 14 of the year 2063 (2006)

An Act Made to Provide for Multimodal Transportation of Goods

Preamble:

Whereas, it is expedient to make legal provisions on multimodal transportation in order to enhance the trade capacity of the country by developing and operating the multimodal transportation service and to consolidate the economy of the country by diversifying international trade;

Now, therefore, be it enacted by the House of Representatives in the First Year of the issuance of the Proclamation of the House of Representatives, 2063 (2006).

CHAPTER-1

Preliminary

1. Short title and commencement:

- (1) This Act may be cited as the "Multimodal Transportation of Goods Act, 2063(2006)."
- (2) It shall come into force at once.

2. Definitions:

In this Act, unless the subject or the context otherwise requires,-

- (a) "multimodal transportation" means carriage of goods on the basis of a multimodal transportation contract;
- (b) "multimodal transport contract" means a contract entered into by a consignor and a multimodal transport operator whereby the multimodal transport operator undertakes

to take charge of goods from the consigner in any place of the State of Nepal and deliver the goods to any specified place outside the State of Nepal, by using two or more modes of transport;

- (c) "multimodal transport operator" means any company licensed under Section 4 to operate the multimodal transport service;
- (d) "Department" means the Ministry of Industries, Commerce and Supplies, Department of Commerce;
- (e) "consigner" means a person who enters into a multimodal transport contract with a multimodal transport operation in relation to the delivery of goods.
- (f) "consignee" means a person who is entitled to take delivery of goods from a multimodal transport operator or his authorized agent or representative under the multimodal transport contract;
- (g) "multimodal transport document" means a document certifying the multimodal transport contract under which the multimodal transport operator undertakes the liability to take charge of goods from the consigner and to transport and deliver such goods in accordance with the multimodal transport contract;
- (h) "negotiable multimodal transport document" means a multimodal transport document which is made out to order or to bearer or made out to order and is transferable by endorsement or without endorsement;
- (i) "non-negotiable multimodal transport document" means a multimodal transport document which indicates the name of consignee;
- (j) "delivery" means delivering of the goods to the consignee or any other person **as specified by the consigner** through authorization in writing;
- (k) "taking charge" means the taking charge of goods by the multimodal transport operator from the consigner to transport and deliver the goods to the consignee under the multimodal transport contract;
- (l) "goods" includes containers or boxes whether packed or not, pallets or similar articles of transport and live animals;
- (m) "S. D. R." means the S. D. R. as defined by the International Monetary Fund from time to time;
- (n) "endorsement" means the signing by the consignee after adding a direction on the front or back of a multimodal transport document to pass the property in the goods mentioned in the multimodal transport document to a specified person in accordance with the multimodal transport contract;
- (o) "prescribed" or "as prescribed" means prescribed or as prescribed in the rules framed under this Act.

CHAPTER-2

Provisions Relating to License

3. No person to operate multimodal transport service without license:

No person shall operate the multimodal transportation service without obtaining a license under this Act.

4. Provisions relating to license:

(1) A company, which has the following qualification and intends to operate the multimodal transportation service, shall make an application, accompanied by the prescribed application fees, to the Department:

- (a) Having the paid-up capital of at least ten million rupees in the name of the company;
- (b) Having its branch, authorized agent or representative in at least two countries, outside Nepal; and
- (c) Having the human resource, physical asset and other managerial capacity as prescribed.

(2) If, while examining the application made pursuant to subsection (1), it appears reasonable to issue the license to the applicant to operate the multimodal transportation service, the Department shall issue the license within sixty days after the making of application, by collecting the fees of twenty five thousand rupees for the license.

(3) If, while examining the application pursuant to sub-section (2), it appears that the license cannot be issued as demanded by the applicant, the Department shall give an information thereof, setting out the reason for the same, to the applicant within sixty days after the making of application.

(4) The term of license issued pursuant to sub-section (2) shall be five years. If, on the expiration of that term, the licensee intends to get the license renewed, it may get the license renewed by paying the prescribed fees to the Department.

5. Cancellation of license:

(1) The license issued pursuant to Section 4 shall be cancelled in any of the following circumstances:

- (a) If it is proved that the paid-up capital of the licensed company is not ten million rupees; or
- (b) If it is found that the licensed company has no branch, authorized agent or representative in at least two countries, outside Nepal; or
- (c) If the licensee fails to get the license renewed pursuant to Section 4.

- (2) If any licensee does any other act contrary to this Act or the rules framed under this Act, other than those mentioned in sub-section (1), the Department shall give a reasonable period of time and an opportunity to such licensee to rectify that act within that period. If, despite such opportunity, the licensee fails to rectify its act, the Department shall cancel the license issued to such licensee.

Provided that, prior to so canceling the license, such licensee shall not be deprived of an opportunity to defend itself.

6. Appeal:

- (1) In the event of cancellation of license pursuant to subsection (2) of Section 5, the concerned company may make an appeal to the Secretary at the Ministry of Industries, Commerce and Supplies within thirty-five days after the date of receipt of information of such cancellation of license.
- (2) If an appeal is made pursuant to sub-section (1), the concerned Secretary shall made decision on the appeal within three months after the date on which the appeal has been made; and such decision shall be final.

CHAPTER-3

Multimodal Transport Document and Delivery of Goods

7. Issue of multimodal transport document:

- (1) While taking charge of goods from a consigner for transportation, the multimodal transport operator shall issue a multimodal transport document.
- (2) The multimodal transport document to be issued pursuant to sub-section (1) may, at the option of the consigner, be negotiable or non-negotiable.
- (3) Where the consignee is named in the multimodal transport document, such consignee or, where a negotiable multimodal transport document is issued and is transferred to an endorsee by endorsement, such endorsee, or the bearer of such transport document shall be considered to have possession of the goods mentioned in such transport document.

8. Multimodal transport document to be signed:

- (1) The multimodal transport operator shall sign the multimodal transport document.
- (2) The signature on the multimodal transport document may be handwritten or through any such other whatever medium as may be recognized by the laws in force.

9. Contents of multimodal transport document:

The multimodal transport document shall contain the following matters:

- (a) The nature of the goods, identification mark of the goods, details of the dangerous goods, if any, number of packages or units, gross weight and quantity of the goods, and such other particular as furnished by the consigner;

- (b) Apparent condition of the goods;
- (c) The name and principal place of business of the multimodal transport operator;
- (d) The name and address 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, date and period of delivery of the goods, as agreed to between the parties to the multimodal transport contract;
- (h) Whether the multimodal transport document is negotiable or non-negotiable;
- (i) The place and date of issue of the multimodal transport document;
- (j) The signature of the multimodal transport operator or of a person duly authorized by the operator;
- (k) The freight payable by the consignor or the consignee, or details thereof if the freight has already been paid;
- (l) The journey route and modes of transport as agreed to between the parties to the multimodal transport contract;
- (m) Such other contents which the parties to the multimodal transport contract may agree to insert in the multimodal transport document.

10. Issue of negotiable multimodal transport document:

A negotiable multimodal transport document shall be issued in the following manner:

- (a) It shall be issued to the order or to the bearer;
- (b) The negotiable multimodal transport document issued to the order is transferable to endorsee by endorsement;
- (c) The negotiable multimodal transport document issued to be bearer is transferable to another person without endorsee;
- (d) Where more than one multimodal transport document are issued, that matter shall be mentioned in such transport document.

11. Delivery of goods by negotiable multimodal transport document:

- (1) Any multimodal transport operator or its agent or representative may deliver the goods under the negotiable multimodal transport document issued pursuant to Section 10 to any consignee or his or her agent or representative.
- (2) Where the goods are delivered pursuant to sub-section (1), they shall be deemed to have been duly delivered.

Provided that in the case where a non-negotiable negotiable multimodal transport document is issued, nothing shall prevent the delivering of goods, by obtaining written authorization of the consigner, to any other person named in such authorization.

12. Reservation in multimodal transport document:

- (1) Where the multimodal transport operator or a person acting on its behalf knows, or has reasonable grounds to suspect, that the nature, identification mark of the goods, number of packages or units, weight or quantity of the goods as furnished by the consignor in the multimodal transport document at the time of issue of that document do not accurately represent the goods actually taken in charge, or where the operator or such person has no reasonable means of checking such particulars, the multimodal transport operator or the person acting on its behalf shall insert in the multimodal transport document a reservation specifying such inaccuracies, if any, the grounds of suspicion or the absence of reasonable means of checking the particulars.
- (2) Notwithstanding anything contained in sub-section (1), nothing shall be deemed to adversely affect, in any manner, the legal validity of a multimodal transport document by the reason only that any one or more than one of the particulars mentioned in that sub-section is or are not mentioned in that document.

13. Taking charge of goods by indicating reservation:

- (1) Notwithstanding anything contained in Section 12, if while taking charge of the goods from a consigner or his or her authorized agent or representative for transportation, a multimodal transport operator or its authorized representative has any suspect that the particulars of goods furnished in the transport document do not actually represent the goods, the operator or its authorized representative may take charge of the goods by indicating a reservation thereof.
- (2) Where the multimodal transport operator or its authorized representative takes charge of the goods from the consigner or his or her authorized agent or representative for transportation without indicating any reservation pursuant to sub-section (1), the goods mentioned in the transport document shall be deemed to have been in good condition.

14. Multimodal transport document to be prima facie evidence:

Where a multimodal transport operator takes charge of the goods as described in a multimodal modal transport document from a consigner, such document shall be prima facie evidence of the act that the operator has so taken charge of goods.

15. Guarantee of particulars of goods described in transport document:

At the time when the goods are handed over to the multimodal transport operator for transportation, the consigner, his or her authorized agent or representative shall be deemed to have given general guarantee about the particulars of the goods described in the multimodal transport document and the particulars of the goods so handed over.

16. Mode of delivery of goods:

While delivering the goods to the consignee in accordance with the multimodal transport contract, the multimodal transport operator shall deliver such goods as follows:

- (a) In the case where the negotiable multimodal transport document naming the bearer has been issued, by making delivery to the person who produces the original copy thereof;
- (b) In the case where the negotiable multimodal transport document naming the order has been issued, by making delivery to the person who produces the multimodal transport document duly endorsed;
- (c) In the case where the non- negotiable multimodal transport document naming the consignee has been issued, by making delivery to the person who produces a reasonable evidence that he or she is the consignee named in the written authorization of the consigner.

CHAPTER-4

Liabilities of Multimodal Transport Operator

17. Liabilities of multimodal transport operator:

- (1) The multimodal transport operator shall, after it takes charge of the goods from the consigner in accordance with the multimodal transport contract, be fully liable for the goods until it delivers the goods pursuant to Section 16.
- (2) The multimodal transport operator shall be personally liable for any act whatsoever done by the multimodal transport operator itself, its employee or agent in the course of discharge of the multimodal transport contract.
- (3) Without prejudice to the generality of sub-section (1) or (2), the multimodal transport operator shall be personally liable for any loss of or damage to or destroy of the goods of which charge has been taken by the multimodal transport operator, its employee, its authorized agent or any other person who takes service from the operator in accordance with the contract or for any reasonable loss or damage caused to the consigner or the consignee resulted from failure to deliver such goods to the consignee within the specified period in accordance with the multimodal transport contract and the operator shall provide compensation for the same.

Provided that the multimodal transport operator shall not provide compensation if the multimodal transport operator proves that no fault or neglect on its part or that of its employee, agent or any other person who takes service from it had caused or contributed to such loss, damage or destroy.

18. Contract by multimodal transport operator:

- (1) The multimodal transport operator may, after undertaking to transport the goods by making a multimodal transport contract with the consignee, make contract with any

other person in relation to the transport of those goods, without prejudice to the terms and conditions of that contract.

- (2) Where the multimodal transport operator enters into a contract with any other person pursuant to sub-section (1) and transports the goods in accordance with that contract, it shall not be exempt from the liability referred to in Section 17.

19. Delay in delivery of goods to be deemed:

Delay in delivery of goods shall be deemed to occur when the goods have not been delivered by the multimodal transport operator within the time specified in the multimodal transport contract for the delivery of goods, and, in the absence of such specification of time, within a reasonable time having regard to the nature of goods to be transported, the condition of the multimodal transport operator and the overall circumstances of the transportation of goods.

20. Goods to be treated as lost:

If the goods have not been delivered by the multimodal transport operator even within ninety days following the time specified in the multimodal transport contract for the delivery of goods, the goods shall be treated as lost.

21. Limits of liability:

- (1) Except in the case where the value of the goods to be transported has been declared and specified in the multimodal transport contract before such goods have been taken in charge by the multimodal transport operator, the liability of the multimodal transport operator shall, for any loss resulting from any kind of loss of or damage to the goods taken in charge by the multimodal transport operator for transportation, not exceed six hundred sixty seven point sixty seven (666.67) Special Drawing Rights per package or unit of the goods so lost or damaged or two Special Drawing Rights per kilogram of such goods, whichever is higher.
- (2) While determining packages or units for the purposes of subsection (1), the packages or units as mentioned in the multimodal transport document shall be taken as the basis.
- (3) In the case of liability resulting from the delay in delivery of goods, the liability of the multimodal transport operator shall be limited, subject to the provisions contained in the multimodal transport contract in relation thereto.
- (4) Notwithstanding anything contained elsewhere in this Section, the liability of the multimodal transport operator shall not exceed the total value of all the goods to be transported by that operator in accordance with the multimodal transport contract.

22. Assessment of loss:

- (1) Where the goods after taken in charge by the multimodal transport operator for transportation in accordance with the multimodal transport contract and before their delivery in accordance with the multimodal transport contract are lost, damaged or otherwise destroyed the multimodal transport operator has to pay compensation for

loss, assessment of such loss shall be made with reference to the reasonable value of the goods so lost, damaged or destroyed at the place where such goods are delivered to the consigner, and the time at which such goods should have been delivered to the consignee.

- (2) While determining the value pursuant to sub-section (1), it shall be determined according to the current market price or, if the current market price is not ascertainable, with reference to the reasonable value of other goods of the same kind.
- (3) Notwithstanding anything contained elsewhere in this Act, where the multimodal transportation of goods to be transported in accordance with the multimodal transportation contract does not include carriage of goods by sea or by inland waterways, the liability of the multimodal transport operator, for the loss of, damage to, or destroy of, goods shall not exceed to an amount to be set by eight point three three (8.33) Special Drawing Rights per kilogram.

23. Liability under laws in force:

Notwithstanding anything contained elsewhere in this Act, if, in relation to the goods to be transported under the multimodal transport contract, additional liability is created in accordance with any international treaty to which the State of Nepal is party or any national law has also to be observed, the multimodal transport operator shall not be released also from the liability determined in accordance with such treaty or national law.

24. Loss of right to limit liability:

The multimodal transport operator shall not be entitled to the benefit of limitation of liability under this Act if it is proved that the loss, damage, destroy or delay in delivery of the goods to be transported in accordance with the multimodal transport contract resulted because of an intentional act or omission or malicious recklessness of the multimodal transport operator, its employee or agent.

CHAPTER-5

Miscellaneous

25. Special provisions relating to dangerous goods:

- (1) While handing over the prescribed dangerous goods for transportation, the consignor shall inform the multimodal transport operator or its agent or any other person acting on behalf of such operator of the nature of such goods and the precautions to be taken while transporting such goods.
- (2) While handing over the goods referred to in sub-section (1), clear details thereof shall, as far as possible, shall be mentioned on the outer part of each packing of such goods.
- (3) The consigner himself or herself shall be liable for any loss or damage caused to the multimodal transport operator in respect of the transportation of the goods described in the multimodal transport contract resulted from the failure to complete the

procedures referred to in sub-section (1) or from the default or recklessness of the consigner, his or her employee or agent.

- (4) Where the consignor fails to fulfill the terms referred to in subsection (1) or (2), the multimodal transport operator shall not be compelled to transport such goods and may at any time and at any place unload, destroy such goods or hand over the same to any person.
- (5) If, despite the knowledge of the situation referred to in subsection (1), the multimodal transport operator transport such goods, the multimodal transport operator itself shall be responsible for any possible loss or damage from such transport.

26. Delivery of goods to be treated in good condition:

- (1) If the consignee, after taking delivery of the goods from the multimodal transport operator, its employee or authorized agent, does not give a notice in writing of the general nature of loss of or damage to the goods to the multimodal transport operator, its employee or agent within, two days after the date of taking delivery of the goods, the goods described in the multimodal transport contract shall be treated as delivered in good condition.
- (2) If there is a reasonable ground that the goods the delivery of which has been taken by the consigner from the multimodal transport operator, its employee or agent cannot be examined immediately, and, in relation to such goods, the consigner does not give a notice referred to in sub-section (1) to the multimodal transport operator, its employee or agent within three days after the date of taking delivery of such goods, the goods described in the multimodal transport contract shall be treated as delivered in good condition.

27. Right to fix general average:

Notwithstanding anything contained in this Act or the laws in force, if the concerned parties to a multimodal transport contract wish to include a condition of general average, the liability as referred to in this Act may be determined subject to such condition.

28. Imposition of fine:

If any person operates the multimodal transportation service in contravention of Section, the Department may impose on such person a fine of ten thousand rupees to one hundred thousand rupees.

29. Limitation:

Any person who wishes to institute an action in respect of any act done or taken under this Act shall institute the action within six months after the following date:

- (a) the date of delivery of the goods, or
- (b) the date when the goods should have been delivered in accordance with the multimodal transport document, or

- (c) in the event of loss of goods, the date on which the goods are treated as lost under Section 20.

30. Jurisdiction for instituting action:

Any party who wishes to institute an action under this Act may institute the action in any of the following courts having jurisdiction under the laws in force of the concerned country:

- (a) a court situated in the habitual residence of or the principal place of business of the defendant;

- (b) a court situated in the place where the multimodal transport contract was made;

Provided that, in order for the establishment of jurisdiction in the place referred to in this clause, the defendant shall have a business center, branch or formal agent in such place and the multimodal transport contract shall have been entered into through such center, branch or agent.

- (c) a court in the place of taking charge of the goods or the place of delivery thereof, in accordance with the multimodal transport contract;

- (d) where the parties have specified any other place in respect of institution of action in accordance with the multimodal transport contract, a court in such place.

31. Power to frame Rules:

The Government of Nepal may frame necessary Rules in order to accomplish the objectives of this Act.

Date of certification: 2063.7.17.6 (Friday, Nov. 3, 2006)

By order,
Dr. Kul Ratna Bhurtel
Secretary of the Government of Nepal