



Unintended Consequences of the Indian MTGA 1993

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+ INDIAN MTGA 1993



- Applies to
 - ◆ Multimodal Transportation (S 2k)
 - ◆ International movement
 - ◆ Out of India ie export movement
 - however, no restriction for inward movements

- Unimodal Transport
 - ◆ Carriage of Goods by Sea Act, 1925
 - ◆ Carriage by Air Act, 1972
 - ◆ No legislation for International Road Transport





Reasons for implementation of MTGA 1993

- Majority of Cargo emanating from Hinterland

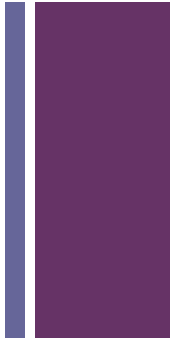


+ Reasons for implementation of MTGA 1993

- Deal with one party for international transport
- Avoid administrative issues
- Common responsibility and liability regime



+ Provision of MTGA

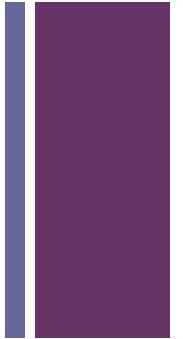


- Application: Carriage of Goods by 2 or more modes of Transport from a place in India to a place outside India
 - ◆ Only outward International shipments from India...
 - ◆ Why inward shipments not included?
 - ◆ ICC wordings allow for both inward and outward shipments as long there is incorporation of the contract

- Definitions:
 - ◆ Multimodal Transport: At least 2 modes of transport under a multimodal transport contract
 - ◆ Multimodal Transport Contract: Contract where a Multimodal Transport Operator undertakes to perform ...
 - ◆ Multimodal Transport Operator: Needs to be registered in India
 - Unregistered companies in India cannot act as MTO in India?



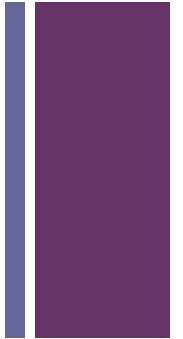
+ Requirements of the Act



- Registration required to act as a MTO (ss3 of S4)
- Failure to register – no sanction provided!
- Valid Insurance cover
 - ◆ Valid not defined
 - ◆ Limit of the policy – not defined!
 - ◆ No concurrent liability to the officers for failure to take proper cover?
 - ◆ In practice – checks for cover available for
 - Liability to Cargo
 - Third Party Liability
 - Errors & Omissions
 - Liability to Authorities



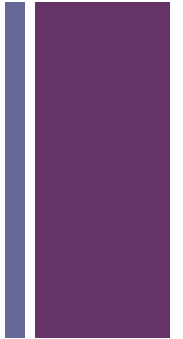
+ Requirements of the Act



- Insurance cover for liabilities arising under MTD
- Indian Law and Jurisdiction
- Issues:
 - ◆ Breach of policy terms
 - ◆ Whether English Law should be preferred due to developments such as Insurance Act 2015 and/or Enterprise Bill 2015 (which would hopefully become law in the near future)



+ Requirements of the Act



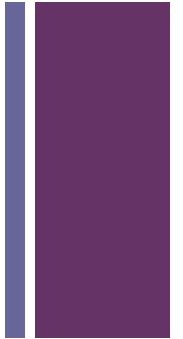
- Limitation of Liability
 - ◆ 2 SDR / Kg or 666.67 per package
 - ◆ If no Sea Carriage, limitation would be 8.33 SDR

- Notice of Loss
 - ◆ Written notice at the time of delivery
 - ◆ Within 7 days of delivery if damage is not apparent

- Time Bar
 - ◆ 9 months of the date of delivery of the goods
 - ◆ Or the date when goods should have been delivered
 - ◆ No provision for Indemnity claims as provided in the Hague Visby Rules



+ Requirements of the Act

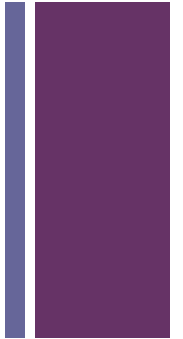


- Application for Inward / Unimodal Shipments
 - ◆ Act provides for outward shipments only
 - ◆ ICC Rules allow Rules to be applied for all shipments / Unimodal Shipments as long as the contract provides for the application of the rules
 - Potential conflict with Unimodal Conventions / Local Laws!

- Dispute Resolution
 - ◆ Litigation
 - ◆ Indian Consumer Protection Act 1986 – additional bite of the cherry
 - ◆ Arbitration as means of resolving disputes – potentially oust Litigation & Consumer Fora!



+ Actual Interpretation



- Applies to inward shipments – *Carboarandum Universal Ltd vs M.G.International Transport GmbH* decided by High Court of Madras
- Overrules compulsory acts – Hague Rules / German Transport Law from country of export!



+ Conflict with other conventions



■ Exclusion of Liability

- ◆ Differs from the blanket exclusions available under HV Rules – Operator needs to prove that the loss occurred without his fault or neglect
- ◆ Easier for cargo interests to pursue MTD than other conventions
- ◆ MTD pursuit overlying carriers would depend on the contract / compulsory conventions/ laws applicable

■ Limitation of Liability

- ◆ Same as HV Rules – however gap for other modes of transport – particularly domestic road / rail haulage

■ Time Bar

- ◆ 9 months - lesser than HV Rules leading to Gaps



+ Application of MTGA to other transport documents / Unimodal



■ CTD

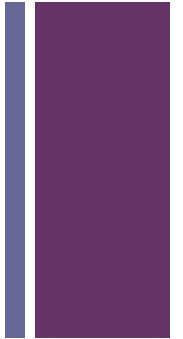
- ◆ Is it different from a MTD?
 - MTD: Multimodal Transport Document
 - CTD: Combined Transport Document
- ◆ Sanctions?

■ MTD for unimodal carriage

- ◆ MTD definition for 2 or more modes
- ◆ Indian COGSA 1925 – is it compulsorily applicable?
- ◆ Common Law - see *Vita Food Products Inc v Unus Shipping Co Ltd*
- ◆ Insurance cover issues?



+ Other issues

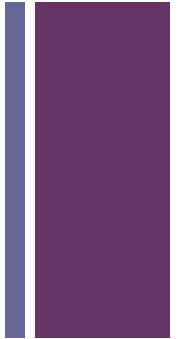


■ Merchant Haulage

- ◆ Should cargo interests deal with intermediate Transport providers?
- ◆ Price differential
- ◆ Administrative issues



+ Observations



- MTGA to simplify the process – however, actual effect, it has made it more complicated
- Barriers for MTO's who have voluntarily registered including Insurance requirements which are not applicable to others
- Insurance for what? Is there any corresponding liability to Insurers?
- Operators may prefer not to register and be below the radar!
 - ◆ Only be involved in Port to Port movement
 - ◆ Act as agents for International Operators (non-Indian entities)
 - ◆ Or act without registration – no sanctions
- Who suffers? Operators who register



+ Conclusion



- Amend wordings in the MTGA and COGSA 1925 so as to avoid ambiguity in the wordings
- MTGA needs to consider the different modes of transport so as to avoid gaps!
- Market can self – regulate. Regulation for the sake of regulation serves no effect and therefore best to de-regulate
- If legislation necessary, effect should be same for all parties ie both for registered and non registered entities! Failure to follow the law should result in clear sanctions
- Ratification of Rotterdam Rules - possible solution



+ Indian MTGA 1993

- Any Questions?

