



India Juris



LOGISTICS & MULTIMODAL TRANSPORT

**LAWS & FOREIGN
INVESTMENT IN INDIA**

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INTRODUCTION

The concept of multimodal transport system is about the door-to-door movement of goods under the responsibility of a single transport operator. This came into existence with the growth of international trade and globalization of our planet. Trade and transport are inextricably linked as efficient transport services are a prerequisite to successful trading.

The transport operators world over are realizing the importance of such an integrated transport system and the growing requirement for it. Even, the legal and political systems are lending their support to establish these systems as an essential ingredient of better trade system.

In India, political and social environment is conducive for business like never before. Consequently, there is a significant increase in competition and so both quality as well as profitability has to be preserved. In India, competitive trade requires an efficacious and simpler door-door liability mechanism.

MULTIMODAL TRANSPORT

Multimodal transport refers to a transport system operated by one carrier with more than one mode of transport under the control or ownership of one operator. In simple terms, it means, carriage of goods by

two or more modes of transport such as a combination of truck, train, and airplane or ship in succession to each other.

In international trade due to its very nature, goods indispensably pass through the hands of more than one carrier and one mode of transportation. Under conventional system of transportation, consignee enters into separate contracts with each other where the liability of each carrier is limited to the service provided by him. On the other hand, under multi-modal system only the consignor or his agents have to make all arrangements required for trans-shipment of goods from one mode to another, so much so that this even includes warehousing of such goods i.e. the carrier organizing the transport takes responsibility for the entire door-to-door transport and issues a multimodal transport document.

Therefore, multimodal transport is a system where the responsibility for transport activities is placed on one operator. Hence, a multimodal transport operator (MTO) acts as a principal and accepts whole responsibility and liability to perform the transportation contract; and thus becomes the sole interface point for the shipper's transport function.

Typically, if merchandise is moving within India from Rohtak in Haryana to Mumbai, it may be sent by road from Rohtak to Delhi and by rail from Delhi to Mumbai. During the whole process, a road transporter and a rail

operator is involved and the shipper has to coordinate with both operators for the cargo to reach its destination. Whereas, in a multimodal transport, a MTO single handedly arranges for the consignment to reach its destination by furnishing a single bill to the shipper rather than providing multiple bills.

A planned and coordinated multimodal transport minimizes the loss of time and the risk of loss, pilferage and damage to cargo at transshipment points. It reduces the burden of issuing multiple documentation and helps to reduce the cost of exports.

Moreover, combining private and public transport in a multimodal transport system offers opportunities to capitalize on the strengths of the various systems while avoiding their weaknesses, and might therefore be an interesting alternative.

The manufacturing cores in India are located in terrain lands and faraway from the gateway ports. The major manufacturing centers in India are located in Punjab, Haryana, Uttar Pradesh, National Capital and Gujarat, Maharashtra and Tamil Nadu Region. The manufactured products from these regions contribute a major part of exports. Thus, multimodal transportation system has great potential in India.

LEGAL FRAMEWORK

The concept of multimodal transport is not new and efforts to establish a suitable legal regime for multimodal transport were first made by the International Institute for the Unification of Private Law (UNIDROIT) in the 1930. At that time, these efforts were weighed more theoretical than practical in commercial circles (UNCTAD, 1994). The term multimodal transport was introduced officially by the United Nations sponsoring Multimodal Transport Convention in 1980 but the term attained legal recognition on 1 January 1992 with the introduction of the 1992 UNCTAD/ICC Rules for Multimodal Transport.

Initially, in India there was no uniformity in multi-modal transport of goods. Government introduced a uniform system with an opinion that absence of uniformity leads to ambiguity and imbalance of interests between operators and cargo owners. Consequently, Multimodal Transportation of Goods Act, 1993 (the "Act") was enacted (which was deemed to come into force in India on 16th day of October, 1992). This Act provides for the registration of a person as a multi-modal transport operator. After the enactment of the Act, multi-modal transportation can only be carried out by a person registered as a multi-modal transport operator, under the Act. The Act was introduced to expedite exports by assuring exporters 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.

This Act was amended in 2002 to simplify the procedure. Section 4 of this act stated that-

“Any person may apply for registration to the competent authority to carry on or commence the business of multimodal transportation.”

The Director General of Shipping has been notified as competent authority to perform the functions under the Act including registration of multimodal operator. The Act provides registration for three years which can be renewed from time to time for a further period of three years.

The Indian law on Multi-Modal Transportation System has been progressive and has borrowed some of its provisions from the Carriers Act and United Nations Convention on International Multi Modal Transport of Goods held in Geneva in 1980.

REQUIREMENTS FOR REGISTRATION AS MULTIMODAL OPERATOR

The Multimodal Transportation of Goods Act, 1993 regulates the transportation of the goods from India to outside India or within India involving one or more modes

of transport on the basis of the single transport contract and according to it an unregistered multi-modal transport operator is absolutely forbidden 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.

The criteria to be fulfilled for being registered as a multi-modal transport operator are as follows:

- The applicant should be a company, firm or proprietary concern.
- If the Applicant is engaged either in the business of shipping or freight forwarding in India or abroad, 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 case the applicant is not from India, the turnover may be certified by any authority competent to certify the accounts of a company of that country.]

- Where the applicant is a company, firm or proprietary concern other than one engaged in the business of shipping or freight forwarding in India or abroad, and that the subscribed share capital or aggregate balance in its capital account or that in the capital account of its partners or proprietor's capital account is not less than Rs. 50 Lakhs and that the applicant has offices, agents or representatives in not less than two other countries.
 - Where the applicant is not a resident of India and where the applicant is not engaged in the business of shipping, he must establish a place of business in India.
 - The competent authority on being satisfied about the existence of the abovementioned credentials shall, register the applicant as a multi-modal transport operator and will grant him a certificate to carry on or commence the business of multi-modal transportation
- To get registered as multimodal operator person should fulfill following requirements-
1. Application form duly completed in all respects.
 2. Company should provide Memorandum and Article of Association, if company is Private Ltd.
 3. Should have place of business in India.
 4. Incorporation certificate of the Applicant Company from the Registrar of Company / Registration under Partnership Act / Registration Certificate under Shops & Establishment Act.
 5. Documentary proof reflecting the registered office address of the applicant company.
 6. Subscribed and paid up share capital in case of companies registered under Companies Act or aggregate balance in the capital account of the partners of the firm under Partnership act or in case of proprietorship firm.
 7. The Company turnover of last three years should be Rs.50 Lakh or more
 8. Complete audited account including audited report for the preceding last three financial years.
 9. In case of new entity, highest turnover of last six month which should be necessarily fifty Lakhs and above.
 10. Submit a certificate of turnover duly authorized by Chartered Accountant within the meaning of C.A. Act, 1949.
 11. Copies of Income Tax Returns for the preceding financial year.

12. Details of the company's infrastructure.
13. Particulars of company including branches of company or agents of company in India or abroad.
14. List of directors & partners of the applicant company with their contact details.
15. Statement indicating staff details of the applicant company with proof viz. PF return or the Tax Deducted at source on salaries or a copy of the last salary certificates.
16. Copies of Agency Agreements of the applicant company from two foreign agents (from two different foreign countries), reflecting the date of Agency Agreement with date, sign and stamp. The agreement should cover the following:-
 - a. Applicant concern should act as a 'Principal' and the foreign counterpart will act as agent;
 - b. Date of signing the Agreement should be specifically mentioned;
 - c. Confirmation of Agency Agreement by foreign Agents, in addition to the Agency Agreement.
17. Copy of the provisional insurance cover policy with MTO liability.
18. Specimen copy of multimodal transport document with terms and conditions.
19. Details of authorized signatories who sign the MTOs, with their names, designation and specimen signature in original.
20. Experience of the applicant company in freight forwarding.
21. An undertaking as prescribed by the director General of Shipping on the applicant company letter head.
22. Requisite fee in Demand Draft in favour of the Director General of Shipping, Mumbai.

Company seeking to be a multimodal operator should fulfill above mentioned requirements, as to ensure that only such companies which have necessary infrastructure and financial capability are allowed to undertake multimodal transportation so that the interest of the shippers can be protected.

FDI IN LOGISTICS AND MTO

Government of India has keenly persuaded policies to promote foreign direct investment (FDI) in this industry. FDI can be done in two possible ways in India-

1. **The Automatic Route-** where investors do not require approval from Reserve Bank of India or Government of India.

2. **The Government Route-** for all activities which are not covered under automatic route can be done through after getting approval Foreign Investment Promotion Board (FIPB), which is mandatory.

FDI Limits

Industry Type	Entry Route	% FDI allowed
Logistics services	Automatic	100
Courier services	FIPB	100
Storage and Warehousing including warehousing of agricultural products with cold storage	Automatic	100
Transport and Transport support services	Automatic	100
Ports and Harbors	Automatic	100
Air transport services	Automatic	49

HOW INDIA JURIS CAN ASSIST POTENTIAL INVESTORS

India Juris can provide legal, regulatory and business advisory assistance to Indian and foreign private sector companies and independent contractors. Our Services in Logistics and Multimodal Transport

Operator Sector can be summarized broadly as under:

- Developing structure and roadmap for entry into the Logistics and Multimodal Transport Operations business in India.
- Assistance and advisory on MTO registration and other assistance.
- Setting up of the Companies, Subsidiary, Liaison/ Branch Office in India for foreign logistic companies.
- Joint Ventures, M&A, Collaboration, MoUs, Strategic acquisitions in Logistics.
- Taxation
- Repatriation and remittance of money and other legal services not included here.
- Legal advisory on foreign exchange laws and corporate compliances.
- Dispute resolution legal services including litigation & arbitration in Logistic business.

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