



**Guidelines for Minimum Standards
and Codes of Professional Conduct
for Freight Forwarders, Non-Vessel
Operating Common Carriers and
Multimodal Transport**

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of Professional Conduct for Freight Forwarders,
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Multimodal Transport Operators**



2011

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LIST OF ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
BOD	Board of directors
BRUFA	Brunei Freight Forwarders Association
CIFA	China International Freight Forwarders Association
CIFFA	Canada International Freight Forwarders Association
CPC	Code of Professional Conduct
ESCAP	Economic and Social Commission for Asia and the Pacific
FIATA	International Federation of Freight Forwarders Associations
ICC	International Chamber of Commerce
INFA	Indonesian Forwarders and Logistics Service Providers Association
MTO	Multimodal Transport Operator
NVOCC	Non-Vessel Operating Common Carrier
PIFFA	Pakistan International Freight Forwarders Association
PISFA	Philippine International Sea freight Forwarders Association Inc.
RMB	Renminbi
SAAFF	South African Association of Freight Forwarders
SDR	Special Drawing Rights
SLA	Singapore Logistics Association
SWEDLOGSWISS	Association of Swiss Freight Forwarding and Logistics Companies
TIFFA	Thai International Freight Forwarders Association
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

I. INTRODUCTION

The publication of the guidelines for minimum standards and codes of conduct for freight forwarders, multimodal transport operators and logistics service providers was mandated by member States, as indicated in the Regional Action Programme for Transport Development in Asia and the Pacific, phase I (2007-2011)¹, and Bangkok Declaration on Transport Development in Asia.²

The purpose of the Guidelines is to provide governments and industry of member countries with a tool for formulating, reviewing and revising relevant regulations in order to enhance the professionalism and competitiveness of freight forwarders, non-vessel operating common carriers (NVOCCs) and multimodal transport operators (MTOs) in the ESCAP region.

In order to develop the Guidelines, the ESCAP secretariat has collected relevant data and information since 2007, and reviewed:

- National rules and regulations in selected countries;
- Industry rules and regulations in selected countries;
- Codes of conduct of national associations in selected countries;
- International conventions and rules, including:
 - United Nations Convention on International Multimodal Transport of Goods
 - UNCTAD³/ICC⁴ Rules for Multimodal Transport
 - ASEAN⁵ Framework Agreement on Multimodal Transport, 2005
 - UNCTAD Minimum Standards for Shipping Agents, 1988
- Academic papers on government regulations and industry self regulations; and
- Relevant practices, government rules and regulations in other industries.

The preliminary research findings were discussed at the ESCAP annual meetings for freight forwarders, multimodal transport operators and logistics service providers from 2007 to 2010. In 2011, the secretariat visited China and Sri Lanka to carry out in-depth discussion with relevant Government officials and the industry. A workshop on drafting the Guidelines was held at Bangkok on 9-10 May 2011.

Based on the research, discussion and comments received from the Workshop, the secretariat presented a working draft of the Guidelines to the ESCAP Regional Forum of Freight Forwarders, Multimodal Transport Operators and Logistics Service Providers held at Bangkok on 23 June 2011 for comment. The participants of the Forum were also requested to provide further comments within one month after the Forum. The secretariat finalized the draft Guidelines with incorporation of the comments made at and submitted after the Forum.

As the minimum standards and codes of conduct for logistics service providers are more complicated, the preparation of the guidelines on them will require further study and

¹ Adopted by the Ministerial Conference on Transport held at Busan, Republic of Korea, on 6 - 11 November 2006, and further endorsed by the Commission at its 63rd session held at Almaty, Kazakhstan on 17-23 May 2007.

² Adopted by the first session of the Forum of Asian Ministers of Transport, held at Bangkok on 14-18 December 2009.

³ UNCTAD - United Nations Conference on Trade and Development.

⁴ ICC - International Chamber of Commerce.

⁵ ASEAN – Association of Southeast Asian Nations.

consultation. The present edition of the Guidelines focuses on the issues relating to freight forwarders, NVOCCs and MTOs.

The Guidelines provide general information, comments and recommendations on each of important issues in management of the industry. Chapter II discusses classification and main characteristics of freight forwarders, NVOCCs and MTOs for the Guidelines. Chapter III discusses three models for regulation of the industry. Chapters IV through VI provide overview, comments and recommendations on the minimum capital requirement, staffing and training and liability insurance for establishment of a business. Chapter VII presents the need and approaches for compliance, monitoring and enforcement of regulations. Chapter VIII summarizes main features of the existing codes of conduct and recommends a standard template for reference of the associations. As the International Federation of Freight Forwarders Associations (FIATA) provides the model rules for freight forwarders, the Guidelines remind the readers to use the FIATA model rules for standard trading conditions in Chapter IX.

II. CLASSIFICATION AND THE MAIN CHARACTERISTICS OF FREIGHT FORWARDER, NVOCC AND MTO

A. Classification

Freight forwarders, NVOCCs and MTOs are often defined differently in different countries. Their official definitions are embedded in the regulations on transport or freight forwarding. Some countries enforce separate regulations for freight forwarders, NVOCCs and MTOs respectively. Some countries enforce only one set of regulations for freight forwarders, NVOCCs and MTOs. In addition, many operators are called freight forwarders but provide NVOCC and multimodal transport services.

Consequently, it would be difficult to provide the definitions for freight forwarder, NVOCC and MTO which are agreeable for all ESCAP member countries in the Guidelines. Despite this, classification and descriptive definitions of freight forwarder, NVOCC and MTO are essential for the Guidelines to convey clear information and recommendations for each type of the operations.

Therefore, the terms of freight forwarder, NVOCC and MTO are classified and described in Table 1 as basis for the discussion in the Guidelines.

Table 1: Classification of operators

Operators	Main Functions
Freight Forwarder	Freight forwarder means the person or company, as an agent, concluding a contract with a customer on freight forwarding services relating to the carriage, consolidation, storage, handling, packing or distribution of the goods as well as ancillary and advisory services in connection therewith. ⁶
NVOCC	A NVOCC arranges transport of goods as a carrier and issues own bills of lading or equivalent document but does not own or operate a major means of transport. ⁷
MTO	Multimodal transport operator means any person who on his own behalf or through another person acting on his behalf concludes a multimodal transport contract and who acts as a principal, not as an agent or on behalf of the consignor or of the carriers participating in the multimodal transport operations, and who assumes responsibility for the performance of the contract. ⁸

In Table 1, ‘freight forwarder’ is specially considered as an agent rather than a principal to distinguish clearly from NVOCC and MTO. In this case, NVOCCs and MTOs differ from freight forwarders (as agents) in the sense that both NVOCC and MTO operate as common carriers and as principals.

In the Guidelines, the difference between MTO and NVOCC lies in the fact that MTOs include the vessel operating MTOs and non-vessel operating MTOs. In the case of the

⁶ Source: FIATA. *FIATA Model Rules for Freight Forwarding Services*, paragraphs 2.1-2.2.

⁷ Summarized by the secretariat from UNCTAD Multimodal Transport Handbook 1997, definitions in the Regulations on International Maritime Transport of China 2001, Revised Rules on Freight Forwarding of the Philippines 2005, US Shipping Act 1984 and Glossary of Shipping Terms by the US Maritime Administration, and explanations in dictionaries.

⁸ Article 1, United Nations Convention on International Multimodal Transport of Goods, 1980.

former, the MTO has its own transport means such as vessel and conduct multimodal transport, while in the case of the latter, the MTO is similar to NVOCC in the sense that they act as principals but neither of them has their own major transport means.

Another difference between NVOCC and MTO is that NVOCC traditionally deals with uni-modal transport (ocean shipping) and acts like an ocean carrier. Often the bill of lading issued by a NVOCC is similar to those issued by an ocean carrier. A MTO often deals with multi-modal transport and issues multimodal transport bill of lading. However, this classification should not be treated stringently, because in reality, a NVOCC can deal with multimodal transport whilst a MTO can also deal with uni-modal transport.

An operator may be named differently (whether it is called a freight forwarder, NVOCC or MTO) in a country, the Guidelines can be used in accordance with its functions. The particular parts of the Guidelines for freight forwarders may be applied to the freight forwarding functions of an operator as an agent. If an operator has multiple functions as a freight forwarder and also a MTO, the relevant parts of the Guidelines on both of freight forwarders and MTOs can be applied.

In practice, the regulatory regimes of freight forwarders, NVOCCs and MTOs in some countries may exactly fall into the classification in Table 1. In other countries, such regimes are not directly matched with the classification in Table 1. For example, in China, both freight forwarders and MTOs indicated in Table 1 are regulated under the name of freight forwarders. In such case, the discussions on freight forwarders and MTOs in the Guidelines are applicable. On the other side, NVOCCs in China is regulated with a different set of rules, which is applicable to the discussions on NVOCCs in the Guidelines.

B. Governing rules and responsible government departments or agencies

In some countries, different operators often obtain licenses or register with different government departments or agencies. In such a case, different laws, rules and regulations are applicable, as summarized in Table 2.

Table 2: Relevant rules and regulations on different operators in the selected member countries

Country	Operator	Responsible government agency	Applicable regulations
Bangladesh	Freight forwarder and MTO	National Revenue Board, Ministry of Finance	Freight Forwarders (Licensing and Operations) Rules, 2008
China	Freight forwarder and MTO	Ministry of Commerce	1) Regulations of the People's Republic of China on Management of International Freight Forwarding Industry; 2) Implementation Regulations of "Regulations of the People's Republic of China on Management of International Freight Forwarding Industry", promulgated in 1998 and revised in 2004; and 3) Regulations on foreign investment in freight forwarder in China, 2005
		Ministry of Commerce and State Administration for Industry and Commerce	Notice on registration and management of international freight forwarders, 2005
	NVOCC	Ministry of Transport	Regulations of the People's Republic of

			China on International Ocean Shipping, 2001
India	Customs house agent	Central Board of Excise and Customs, Ministry of Finance	Custom House Agents Licensing Regulations, 2004
	Multimodal transport operator	Department of Shipping, Ministry of Shipping	Multimodal Transportation of Goods Act, 1993
Philippines	NVOCC	Philippine Shippers' Bureau, Department of Trade and Industry	Administrative Order No 6, Philippine Shippers' Bureau - revised Rules on Freight Forwarding, 2005
	International Freight Forwarder		
	Domestic Freight Forwarder		
Republic of Korea	Freight forwarder and MTO	Ministry of Land, Transport and Maritime Affairs	Basic Logistics Policy Act, 2009
Thailand	Freight Forwarder	Ministry of Transport	Carriage of Goods by Sea Act, 1991
		Ministry of Commerce	Civil and Commercial Code (first promulgated on 11 November 1925, and amended a number of times)
	Multimodal transport operator	Ministry of Transport	Carriage of Goods by Sea Act, 1991 Multimodal Transport Act, 2005
		Ministry of Commerce	Civil and Commercial Code

Also, different operators are often subject to different minimum requirements. As an illustrative example, Table 3 shows separate and different minimum capital requirements for freight forwarders and NVOCCs in China.

Table 3: Minimum capital requirement for freight forwarders and NVOCCs in China

Operator	Minimum requirement
Freight Forwarder and MTO	<ul style="list-style-type: none"> ▪ The minimum amount of registered capital of an international freight forwarder for maritime transport is RMB⁹ 5 million. ▪ The minimum amount of registered capital of an international freight forwarder for air transport is RMB 3 million. ▪ The minimum amount of registered capital of an international freight forwarder for land transport or international express service is RMB 2 million. ▪ For an enterprise engaged in two or more than two businesses mentioned above, its minimum amount of registered capital is that of the item with the highest amount of registered capital. ▪ In setting up a branch an international freight forwarder should add a registered capital of RMB 500, 000.
NVOCC	<ul style="list-style-type: none"> ▪ No requirement of assets, but companies must pay deposit of RMB 0.8 Million to the Ministry of Transport

C. Comments and recommendations

- (1) It is desirable to have coordinated rules for managing freight forwarders, NVOCCs and MTOs.
- (2) According to coordinated rules, as mentioned in the above paragraph (1), a potential operator can choose to be a freight forwarder, NVOCC or MTO, or combination of

⁹ Renminbi – the currency of China.

them, depending on his or her willingness and capability of meeting the minimum requirements for a license or registration of a freight forwarder, NVOCC or MTO.

- (3) In most cases, the requirements for a freight forwarder (as an agent), NVOCC and MTO is incremental, thus a NVOCC should be automatically eligible for undertaking business activities for freight forwarder (as agent), and a MTO should be automatically eligible for undertaking business activities for both freight forwarder (as agent) and NVOCC.

III. GOVERNMENT REGULATION AND INDUSTRY SELF-REGULATION

A. General discussion on government regulation and industry self-regulation

There are two main types of regulatory controls in the set-up process for firms in developing countries: registration/filing and licensing. Registration/filing requires the applicant to furnish the public authority with required information prior to being allowed legally to engage in the business activities. Government authorities often need to verify that all required information is provided and subsequently grant registration.

The granting of a license is to test the suitability of applicants and/or their circumstances against substantive conditions which may be more or less rigorous, and more or less explicit in the legislation governing the process. Licensing authority has the responsibility for checking competency and ensuring performance of the licensees. In some cases, governments put restrictions on total number of licenses to be issued.

Industry self-regulation often relies on the voluntary industry association of firms to take measures to control their activities for the benefits of the members of the association and the growth of industry as a whole. In order to ensure the effectiveness of industry self-regulation, the association rules are usually established and followed by the members of the association to maintain the credibility of the industry.

There are at least two factors underlining the success or failure of industry self regulation. The first is the effective monitoring of the conduct of the members. This requires sufficient funding for personnel to keep tracking the performance of the members. In case there is a report of unethical, unprofessional or unlawful conduct of a member, there should be some responsible people in the association to investigate the case and take appropriate actions. The second factor is whether sufficient sanctions and penalties can be implemented. For instance, the industry association may have the rights to cease the membership, but often does not have the rights to revoke the license in the case that licensing system is adopted in the country.

Both government regulation and industry self-regulation have their strength and weakness. Government regulation has legislative power so that they are often more visible, effective, credible and accountable in implementing and enforcing in comparison with industry self regulation.

Government regulation is applied to all operators in the market. Industry self-regulation, on the other hand, is only applicable to the members of industry association. Non-members are not subject to obligations of the industry association.

The benefits of industry self-regulation vis-à-vis government regulation include: speed, flexibility, sensitivity to market circumstances and lower costs. Because standard setting and identification of breaches are the responsibility of practitioners with deep knowledge of the industry, this will arguably lead to more practicable standards. There is also the potential for utilizing peer pressure and for successfully internalizing responsibility for compliance.

On the other hand, self-regulation often fails to fulfill its theoretical promise, more commonly serving the industry rather than the public interest. Self-regulatory standards are sometimes weak, enforcement is ineffective and punishment is secret and mild. Moreover, industry self-regulation is often weaker than government regulation in terms of visibility, credibility, accountability and enforcement to all.

B. Overview of regulations for freight forwarders, NVOCCs and MTOs

In the ESCAP region, freight forwarders, NVOCCs and MTOs are often differently governed in different countries. Table 4 shows the overview of regulations for freight forwarders in some countries in Asia which had information available for the study.

Table 4: Overview of regulations for freight forwarders

Country	Government regulation	Industry self-regulation
Bangladesh	Yes	Yes
China	Yes	Yes
Indonesia	Yes	Yes
Philippines	Yes	Yes
Republic of Korea	Yes	Yes
India	No	Yes
Lao PDR	No	Yes
Myanmar	No	Yes
Singapore	No	Yes
Sri Lanka	No	Yes
Thailand	No	Yes

The regulatory framework for freight forwarders, NVOCCs and MTOs in the region can be grouped into three models, as shown in Table 5.

Table 5: Models for regulatory framework for freight forwarders, NVOCCs and MTOs

Model 1: industry self regulation	There is no government regulation exclusively designated for freight forwarders, NVOCCs and MTOs and the industry relies on self regulation through association
Model 2: licensing	There is government regulation and licenses are required
Model 3: registration/filing	There is government regulation, and licenses are not required, but registration/filing is required

Model 1: Industry self regulation

In this model group, there are no specific national rules or regulations exclusively designated for freight forwarders, NVOCCs and MTOs. The common commercial codes or acts are applicable to these operators. The industry relies largely on self-regulation.

A typical example of this model is Singapore. In Singapore, the general laws and regulations set low requirement for market entry. For instance, the relevant laws stipulate that the minimum capital for setting up a company is one Singapore Dollar. In such a case, any individual can easily register and enter the freight forwarding industry. However, the industry association requires the minimum capital of Singapore Dollars 100,000 and additional liability insurance for its membership. The association regulates the services of its members.

Model 2: Licensing

Under the framework of Model 2, government regulation plays a dominant role in regulating and managing freight forwarders, NVOCCs and MTOs. Table 2 indicates the main rules and regulations and management authorities for freight forwarders, NVOCCs and MTOs in some countries.

In the countries with licensing, national regulations specify the entry requirements as conditions for issuance of a license. Government department/agency is responsible for issuance of licenses. For example, in Bangladesh, the National Board of Revenue is responsible for licensing; in Indonesia, the onus is on the Ministry of Communications; while in the Philippines, licensing is managed by the Philippine Shippers' Bureau.

Normally the total number of licenses is not controlled for freight forwarders, NVOCCs and MTOs.

Under the framework of this model, industry associations play a role in assisting governments to govern the industry. For example, many associations in the region assisted governments in formulating government regulations. The associations on behalf of its members also communicate with governments on issues of concerns.

Model 3: Registration/filing

In essence, Model 3 (registration/filing) is similar to Model 2 (licensing) in the sense that applicants need to meet government's requirements for market entry before they can start their business but the control is less stringent.

Examples of Model 3 include China and the Republic of Korea. It is useful to note that both China and the Republic of Korea evolved from stringent licensing system to registration system. The advantages of such change are that the procedures for application are much more simplified and waiting time for paper work has been much shortened.

Different models in the same country

It is possible that freight forwarders, NVOCCs and MTOs are governed under different models within the same country. For example, in Thailand freight forwarders and MTOs are governed in the framework of models 1 and 2 respectively. The relevant laws for freight forwarders include the Carriage of Goods by Sea Act and the Civil and Commercial Code. These two laws are not exclusively designated for managing freight forwarders. MTOs in Thailand, on the other hand, are governed according to the Multimodal Transport Act. A MTO operator is required to have a registration certificate for its operations.

Both freight forwarders and MTOs in Thailand can become members of the Thai International Freight Forwarders Association (TIFFA). Once they become members of TIFFA, they are managed and governed by the industry association as well.

C. Comments and recommendations

- (1) In a country, the regulatory framework for freight forwarders, NVOCCs and MTOs may mix the use of different models as summarized in the Guidelines according to its local situation, i.e., self-regulation, licensing and/or registration/filing.
- (2) In choosing a model, the following factors need to be taken into consideration:
 - Level of economic development;
 - Developing stage of the industry;
 - Legal regime; and
 - National policy on the industry.
- (3) It is desirable for a country to set up a single government agency in managing freight forwarders, NVOCCs and MTOs.
- (4) If different government authorities are in charge of different types of operators, coordination among them need to be promoted.

IV. MINIMUM CAPITAL REQUIREMENT

A. General discussion

The minimum capital is often required for the purpose of registration and licensing of companies.

The minimum capital can take two forms: in cash or in kind. In the case of the former, a company needs to deposit minimum amount of money in the bank for the required time period and obtain bank statement to apply for business license. In the case of the latter, the asset of a company (such as land) can be valued by professional accounting or credit rating institutions and mortgaged.

In some countries, bank guarantee is required as an essential condition for obtaining a business license.

There are different opinions on minimum capital requirement. Arguments favouring minimum capital requirement include:

- Such requirement can largely prevent careless establishment of a company. The minimum capital potentially enables the potential investors to think about investment carefully. Also such requirement to some extent can screen out the opportunists without financial capability in running business.
- Such requirement to some extent ensures that a company has adequate resources for operating business. and
- Such requirement potentially enables the owner(s) of a company to have capacity to pay back the debt.

Arguments against minimum capital requirement include:

- Practically in many countries, investor(s) or owner(s) of a company may immediately withdraw the money from the bank after obtaining business license. Thus minimum capital requirement does not have its practical value.
- The value of minimum capital is often arbitrary thus cannot reflect the business needs of different companies or different types of business. and
- A high minimum capital requirement limits market competition because only a small group of individuals or companies can meet such requirement.

Globally, 103 economies still require entrepreneurs to put up a predetermined amount of capital before starting registration or licensing formalities. On the other hand 39 economies around the world have reduced or abolished their minimum capital requirement for the past seven years. Different countries require different amounts of minimum capitals. As observed by the World Bank, developed countries tend to request lower minimum capital than developing countries. In the Asia-Pacific region, Australia, New Zealand and Singapore do not require minimum capital. China, India, Indonesia, Mongolia and Uzbekistan have higher minimum capital requirement than other countries in the region.¹⁰

Many ESCAP member countries have taken initiatives to streamline the business start-up process and reduce required minimum capital. In China, in 2005 a new company law

¹⁰ Source: The World Bank, *Doing Business 2011*, p. 22.

reduced what had been one of the world's highest minimum capital requirements from 1,236 per cent of income per capita to 118 per cent.¹¹ Recently Kazakhstan amended its company law and introduced regulations to streamline business start-up and reduce the minimum capital requirement to Tenge100 (US \$0.70)¹².

B. Minimum capital requirement and the World Trade Organization

In many developing countries, different regulations and requirements are often applied to domestic and foreign investments. Often a higher capital is required for foreign investments.

However, if a country becomes a member of the World Trade Organization (WTO), depending on the outcome of negotiation, the country often needs to adjust the requirement for foreign investments to be in line with relevant WTO requirements.

C. Minimum capital requirement for freight forwarders, NVOCCs and MTOs

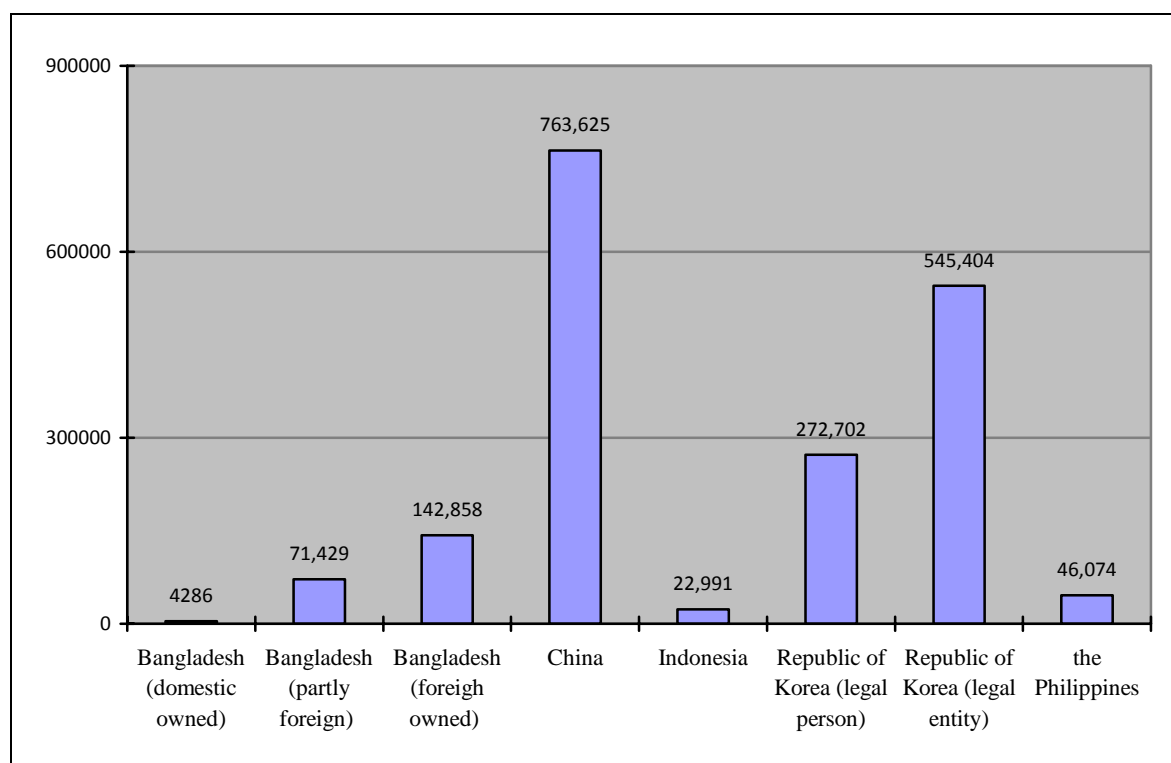
The minimum capital requirement for freight forwarders, NVOCCs and MTOs are defined either by commercial codes and business regulations for general business and small and medium enterprises when there is no specific rules or regulations for freight forwarders, NVOCCs and MTOs, or the specific rules and regulations which are exclusively set for freight forwarders, NVOCCs and MTOs.

Figure 1 shows that the minimum capital requirement for granting licenses to freight forwarders and/or MTOs in selected ESCAP member countries by relevant government regulations varies from one country to another. China has the highest capital requirement (roughly equivalent to US\$ 763,625) while the freight forwarders and MTOs in Bangladesh (investor and owners are Bangladeshi) has the lowest capital requirement (roughly equivalent to US\$ 4,286). Capital requirements of Indonesia and the Philippines are US\$ 22,991 and US\$ 46,074 respectively. In average, the minimum capital in these selected countries is US\$ 201,447, while the ratio of the highest to lowest capital requirements is 178.

¹¹ Source: The World Bank, *Doing Business 2011*, p. 6.

¹² Source: The World Bank, *Doing Business 2011*, p. 5.

Figure 1. Minimum capital requirement for freight forwarders and/or MTOs (in US\$)



Considering the countries are at different economic development levels, the purchasing power of one dollar in one country may differ significantly from another country. In order to make the comparison in Figure 1 meaningful, the Guidelines provide information on minimum capital in terms of percentage of Gross National Income (GNI) per capita, as shown in Table 6.

Table 6: Minimum capital requirement for freight forwarders and/or MTOs vis-a-vis national minimum capital requirement for general business

	Bangladesh	China	Indonesia	Philippines	Republic of Korea
Gross National Income per capita (US\$)	590	3,620	2,230	1,790	19,830
Minimum capital for freight forwarder and/or MTO	4,286	763,625	22,991	46,074	272,702 (legal person)
Minimum capital (% of GNI per capita) – freight forwarders and/or MTO	726%	21,095 %	1,031%	2,574%	1,375%
Minimum capital for general business (% of GNI per capita)	0%	118.3 %	53.1%	6%	0 %

Table 6 shows that: (1) in the selected ESCAP member countries, minimum capital for freight forwarders and MTOs is much higher than national minimum requirement for general business. For instance, the minimum capital for freight forwarders and MTOs in China is 179 times higher than the national minimum requirement for general business. (2) a comparison among countries shows that countries, such as Indonesia, the Philippines and the

Republic of Korea have minimum capital, as measured in percentage of GNI per capita, fall within the range between 1,000 – 3,000 percent. Again, China recorded the highest minimum capital (21,095 per cent).

In some countries in the region, government regulation requires very low minimum capital for start-up of business, while the industry associations require their members to have higher minimum capital. For example, in Singapore, the Government regulation requires one Singapore Dollar (US\$ 0.8) to set up a company, while the Singapore Logistics Association (SLA) requires its members to have US\$ 79,264 as minimum capital. Similarly in Thailand, the industry association requires its members to have minimum capital of US \$ 65,833.

Minimum capital requirement for a NVOCC has seldom been mentioned in the government regulations with the exception of China and the Philippines. In China, the NVOCC applicant needs to register with the Ministry of Transport and pays deposit of RMB 0.8 millions (roughly equivalent to US\$ 123,617). In the Philippines, the minimum capital for a NVOCC is US\$ 92,148.

According to the ASEAN Framework Agreement on Multimodal Transport, 2005, a MTO is required “to maintain minimum assets equivalent to SDR 80,000”¹³ (roughly equivalent to US\$ 128,280).

D. Comments and recommendations

- (1) It is desirable for freight forwarders, NVOCCs and MTOs to have initial capital to cover the operational costs and essential liabilities.
- (2) As the liabilities of freight forwarders, NVOCCs and MTOs are normally incremental in accordance with the classification in the Guidelines, their minimum capitals should also be incremental.
- (3) When determining the minimum capital, applicable national laws, regulations and commercial codes need to be reviewed to ensure that the required minimum capital is in line with them.
- (4) Government may consult with the industry on the amount of required minimum capital.
- (5) When considering the amount of minimum capital the initial operational costs for at least six months and average cost of possible liabilities need to be taken into consideration. If the liabilities are covered by insurance, the minimum capital may be reduced by deducting the costs for covered liabilities by insurance.
- (6) Essential requirements for office and equipment need to be taken into consideration for determining minimum capital.

¹³ Special Drawing Rights (SDR) is defined as a unit of account defined by the International Monetary Fund (IMF).

V. REQUIREMENTS FOR STAFF AND PROFESSIONAL TRAINING¹⁴

As the business operations of freight forwarders, NVOCCs and MTOs are generally not capital-intensive, the core strength of this type of business is the professional knowledge and competence of staff working in the companies. Thus it is important to examine core elements for staff including minimum number of staff, their industry experience and professional training.

A. Staff requirements

Government regulation

Requirements of minimum number of staff and their professional experience have been mentioned in a number of government regulations and laws in the ESCAP member countries. In China, according to the Implementation Regulations of “Regulations of the People's Republic of China on Management of International Freight Forwarding Industry”, a freight forwarder or MTO needs to have at least five staff with three years of industrial experience, and the industry experience of the staff needs to be verified by their previous employer(s). In Sri Lanka, according to the draft Freight Forwarders and Non-Vessel Operating Common Carriers (Licensing) Regulations, a freight forwarder or NVOCC must have a person in the capacity of director or general manager with minimum five years of experience and at least two permanent staff who have completed professional training and hold valid certificate in cargo handling.

In other countries, requirements for staff have been loosely defined by relevant government regulations and rules. For example, in the Philippines, it is required that ‘any one of the key operating officers must have at least three years of experience in shipping, freight forwarding, and/or related activities, and must submit a certificate or proof of employment from previous employer(s). However, the rules do not indicate the minimum number of staff.

In Singapore, companies are principally governed by the Companies Act (Cap 50, 1994 Rev Ed). By law, any person may, upon lodgment of the requisite documents and payment of the prescribed fee, register a company in Singapore.¹⁵ Again there are no direct requirements for the minimum number of staff and professional experience.

Industry self-regulation

The industry associations often have specific requirements for the number of staff and professional experience. The Indonesian Forwarders and Logistics Service Providers Association (INFA) requires its members to have at least two persons at head office and one person at branch office with the FIATA Diploma. In Singapore, SLA requires its member to have one director with five years of experience in a management position in logistics service providing company. In Sri Lanka, the freight forwarders association requires its members to have a director or general manager with five years of experience in Sri Lanka in international freight forwarding. In Myanmar, the industry association requires its members to have a director with at least three years of experience in international freight forwarding. In Pakistan,

¹⁴ Discussion in this Chapter is particularly relevant to a freight forwarder as either an agent or a principal, Accordingly the role of a freight forwarder as an agent is not specially emphasized in this Chapter.

¹⁵ Source: <http://www.singaporelaw.sg/content/CompanyLaw.html>.

the industry association, the Pakistan International Freight Forwarders Association (PIFFA), requires its members to have minimum five employees and minimum two persons who have completed the basic course for forwarding from any designated institute.

B. Requirement for professional training

Government regulation

Government regulations rarely include the training or educational qualification of staff as a prerequisite for licensing or registration. Only two examples are found in the region, namely China and Sri Lanka. According to the Implementation Regulations of “Regulations of the People's Republic of China on Management of International Freight Forwarding Industry”, to register a freight forwarder or MTO company in China, the company needs either to have five staff with three years of experience, or the staff who have participated in the training programme accredited by the Ministry of Commerce and subsequently the staff need to pass the relevant examination. In this case, it can be understood that in China, to have professional training serves as a substitute for industry experience. In the draft Freight Forwarders and Non-Vessel Operating Common Carriers (Licensing) Regulations in Sri Lanka, a freight forwarder or NVOCC must have at least two permanent staff who have completed professional training and hold valid certificate in cargo handling. It is obvious that participation in training is required in the draft regulations of Sri Lanka.

Industry self-regulation

In the region, it is noticeable that the industry associations have played a very active role in promoting training. For example, industry associations in many countries encourage their members to take the FIATA training course and obtain the FIATA certificate.

In some countries, industry associations make it compulsory for its members to take professional training. In Indonesia, the industry association requires its members to have at least two persons at head office and one person at branch office with the FIATA Diploma. In Pakistan, the PIFFA requires its members to have minimum two persons who have completed the basic course for freight forwarding from any designated institute.

C. Industry features and need for professional training

The industry of freight forwarding and multimodal transport has a strong knowledge- and skill-intensive feature. This feature requires the staff of a freight forwarder, NVOCC and MTO to sufficiently equip with professional knowledge and continue to learn in a dynamic world and market. These operators face a complex market filled with many different practices and regulations, involving international law, economics, finance or trade. They need to be aware of overseas markets, shipping methods, insurance policy and practices, paperwork, cargoes and customs procedures. They also need to communicate effectively and professionally with carriers, shippers and government departments.

In this respect, assistance from governments is also needed to work collaboratively with industry, financial institutions and development partners to facilitate and encourage professional training and continuous learning for the industry.

D. Comments and recommendations

- (1) If the Models 2 (licensing) or 3 (registration/filing) is adopted, the minimum requirements on number of staff and professional experience are needed for setup of a freight forwarder, NVOCC and MTO.
- (2) The minimum number of staff of a freight forwarder, NVOCC and MTO should be able to fulfill the basic requirements for functioning of the company.
- (3) The minimum requirement for core management team could be at least three years of industrial experience for a freight forwarder, NVOCC and MTO.
- (4) The countries with well-established training institutions and programmes should be encouraged to include the educational/training qualifications into minimum requirement.
- (5) The countries with less developed training programmes and institutions may provide a transitional period for the requirement of educational/training qualifications and provide assistance for education and professional training.

VI. LIABILITIES AND LIABILITY INSURANCE

A. Liabilities

A freight forwarder as an agent is usually liable for some errors and omissions. Examples include:

- a) Surrendering / releasing cargo without taking in exchange a properly endorsed bill of lading;
- b) Delivering cargo before collecting payment resulting in losses;
- c) Incorrect instructions given to a carrier;
- d) Mis-routing resulting in delay and additional charges for storage / rerouting / handling charges;
- e) Issuing and signing transport document by mistake resulting in losses;
- f) Errors in cargo storage resulting in losses;
- g) Forgetting or failing to obtain clear evidence indicating the cargo status, thus the shippers cannot claim from the responsible carriers or third party;
- h) Errors in packing and de-consolidation leading to the losses;
- i) Errors in customs brokerage and failing to follow import and export procedures resulting in losses; and
- j) Errors in arranging insurance for the shippers resulting in the losses.

A NVOCC or MTO has all the liabilities of a freight forwarder as an agent. In addition, they also have responsibilities in arranging cargo transport and storage, thus they have more liabilities. In the case of MTOs, their liabilities depend on whether MTOs have their own transport means or not. When a MTO has its own transport means, relevant international regulations and rules such as Visby Rules, the Hague-Visby Rules and Hamburg Rules may apply if they are included as appropriate in a contract between the MTO and the shipper.

When a MTO does not have its own transport means, its role is similar to NVOCC. In such a case, the UNCTAD/ICC Rules for Multimodal Transport Documents may apply if it is clearly included in the contract. The MTO (NVOCC) usually is liable for loss of or damage to the goods, as well as for delay in delivery, if the occurrence which caused the loss, damage or delay in delivery took place while the goods are in his or her charge, unless the MTO (NVOCC) proves that no fault or neglect of his or her own, his or her servants or agents or any other person has caused or contributed to the loss, damage or delay in delivery.

In the ASEAN subregion, if a country is a Contracting Party to the ASEAN Framework Agreement on Multimodal Transport, 2005, a MTO should have the liabilities detailed in the Agreement, if the relevant clauses in the Agreement, are included in the contract.

B. Liability insurance

In the existing national regulations on freight forwarders (as agents), issues on liability insurance have rarely been addressed. For NVOCCs and MTOs, the ASEAN Framework Agreement on Multimodal Transport, 2005, indicates that a multimodal transport operator “shall have an insurance policy, a coverage from a protection and indemnity club, or an alternative of a financial character to cover payment of obligations for loss, damage or

delay in delivery of goods under multimodal transport contracts, as well as contractual risks” (Article 30).

The industry associations often play an active role in promoting liability insurance. A noticeable example can be found in SLA which indicates that the applicant for the membership should have “in force a liability insurance policy which is appropriate to the nature of the logistics and/or ancillary services provided by it and has a minimum coverage of S\$100,000 for any one claim”.

In Sri Lanka, the Sri Lanka Freight Forwarders Association makes it imperative that their members need to obtain valid and recognized liability insurance covering at least Rupee 10,000,000 for legal liabilities and Rupee 5,000,000 for errors and omissions.

The Canada International Freight Forwarders Association (CIFFA) requires its members to “abide by CIFFA’s requirement to secure, at member’s cost, a freight forwarders liability insurance coverage, with a minimum liability of Canadian Dollar 250,000 per occurrence. Annual submission of proof of coverage required.”

In Switzerland, the Association of Swiss Freight Forwarding and Logistics Companies (SWEDLOGSWISS) require its member to “prove existence of liability insurance – contractual and non-contractual exposure coverage is Swiss Franc 1,000,000”.

C. Comments and recommendations

- (1) The freight forwarders, NVOCCs and MTOs should be fully aware of their liabilities.
- (2) There is a need for freight forwarders, NVOCCs and MTOs to have the liability insurance coverage. A freight forwarder as an agent should have at least insurance to cover errors and omissions.
- (3) It is desirable that the NVOCCs and MTOs have full scope of insurance coverage, such as third party insurance, customs duties insurance, transport liability insurance and liability insurance for errors and omissions.
- (4) If an ASEAN member country is a Contracting Party to ASEAN Framework Agreement on Multimodal Transport, 2005, the liabilities of a MTO are defined in the Agreement, as included in the contract.
- (5) Liability insurance specified in relevant international rules and/or subregional agreements could be set as a minimum requirement.

VII. COMPLIANCE, MONITORING AND ENFORCEMENT

A. The need for compliance, monitoring and enforcement

The term *Compliance* refers to the situation that freight forwarders, NVOCCs and MTOs comply with obligations and provisions of relevant and applicable laws, rules and regulations. The term *Monitoring* means periodic or continuous surveillance of compliance of freight forwarders, NVOCCs and MTOs by a public authority and/or an industry association. The term *Enforcement* means the range of actions that an enforcing authority may take in order to ensure compliance of freight forwarders, NVOCCs and MTOs with relevant and applicable laws and regulations. It can also refer to a range of enforcement measures that an enforcing authority can take, such as bringing legal proceedings by criminal or civil means, serving enforcement notices or other administrative penalties (such as undertakings or on-the-site fines), issuing formal warnings, and revoking business license.

Compliance, monitoring and enforcement are essential elements for effectiveness of government regulations and industry regulations because these regulations are only useful and effective insofar as they can be complied through appropriate monitoring and enforcement mechanisms.

Compliance, monitoring, and enforcement are involved in at least two areas, namely, market entry requirements and conducts. In terms of the former, minimum requirements for either licensing or membership of industry association are met at the time of registration or licensing, or application for membership. In order to keep the effectiveness and meaningfulness of such minimum requirements, they need to be met all the time by the operators.

In terms of the latter, the business and commercial conducts of the operators need to be monitored and market disciplines need to be enforced. In the case that there is unprofessional, unethical or unlawful conduct of operators, the concerned government agency and/or industry association need to take measures to persuade, warn or punish the operators involved.

B. Approaches and areas for monitoring and enforcement

There are generally two approaches to monitoring: top-down and bottom-up approaches. Top-down approach means that the relevant government authority and industry association designate dedicated personnel to monitor the market. Bottom-up approach means that cases or complaints are reported to the relevant government authority and/or industry association by any individual person, company or organization.

The following areas are normally monitored and enforced.

1. Entry requirements

The entry requirements set for the new comers of the market need to be met all the time. Otherwise, such requirements will lose its meaning over time. Governments often use the following strategies to measure whether freight forwarders, NVOCCs and MTOs meet the entry requirements or not.

- **Renewal of registration certificate or license.** This measure has been used by member countries such as Bangladesh, China and the Philippines. In Bangladesh, the business license for freight forwarders is valid for two years. In order to renew the license, the essential documents that the freight forwarders need to submit include: (1) taxpayer identification certificate; 2) the latest assessed income certificate issued by the income tax authority or income tax assessment order. In China, the first step to set up any type of companies, including a freight forwarder, NVOCC and MTO company, is to register at local Industry and Business Administration Bureau. In the registration form, the applicant needs to specify that freight forwarding is a key business of the company if applicable. The minimum capital requirement stipulated by the Ministry of Commerce also needs to be met. Every year from March to June, all types of companies (including freight forwarder, NVOCC and MTO) are subject to annual regulatory compliance audit by local Industry and Business Administration Bureau, with submission of annual financial report. In the Philippines, the business certificate has a life span of two years. Renewing of license requires the existing freight forwarders, NVOCCs and MTOs to also meet requirements for the new market entry operators.
- **Reports of financial statements.** Reports of financial statements can be coupled with renewing business licenses, but can also be conducted separately. For example, in China, submission of financial statement is on an annual basis, as discussed earlier.

2. Unprofessional, unethical or unlawful conducts

- **Public supervision:** a government department or authority needs to be designated to implement public supervision of the market behaviours. For example, in the Philippines, the Philippine Shippers' Bureau is in charge of monitoring and enforcing the conduct of freight forwarders and NVOCCs. Second, a proper reporting channel needs to be established. For instance, on the website of the Ministry of Transport, China, a function for complaining has been included. The customers may report their cases through this channel.
- **Inspections:** the relevant authorities may physically inspect the office and operation of operators. For example, in the Philippines, the relevant regulations enable the Philippine Shippers' Bureau to physically inspect "any establishment, office and premises which is being used by a covered firm, accredited or not, as its office, warehouse, garage, or for any of its business operations".
- **Association:** the industry associations may also play an important role in monitoring the conducts of their members by implementing and enforcing codes of conduct. This issue is discussed separately in Chapter VIII.

C. Strategies and measures for enforcement

The main enforcement measures normally include:

- 1. Persuasion;
- 2. Official warnings or notices;
- 3. Fine;
- 4. Temporary or permanent revocation of license; and
- 5. Criminal prosecution.

These five measures can be applied individually or in combination. For example, in the case of a serious offence of the law, the operator is likely to lose his license and faces criminal prosecution.

The principle applying these measures for different offences can be called a ‘pyramid’ enforcement strategy, which means in practice, the lower steps, corresponding to mild offences, should be more frequently than higher steps (corresponding to serious offences). This is because in most cases, offence should not be serious so penalty or enforcement measures should be mild.

Many countries in the region basically follow these enforcement measures. For example, the relevant regulations in Bangladesh and Indonesia specify the penalties from mild to severe according to the levels of offence. In China, the relevant regulations specify a range of offences and relevant enforcement measures, including: (1) official warnings or notices; and (2) temporary or permanent revocation of registration certificate. In the Philippines, the relevant regulations provide detailed information on various offences and corresponding enforcement measures, including; (1) official warnings or notices; (2) fines; (3) temporary or permanent revocation of license; and (4) criminal prosecution.

D. Effective and sustainable enforcement

In order to ensure the effectiveness of enforcement, governments need to play a more important role than the industry associations. This is because governments have the legislative power to enforce the compliance but the industry associations have no power to revoke a business license. Also the industry associations have no power to take any measures for non-members of the associations.

However, this does not mean nothing can be done by the industry associations in enforcement. They have the authority to take enforcement measures such as warning, temporary suspension or expulsion of membership.

Monitoring and enforcement require sufficient human and other resources from governments for implementation. Thus adequate resources need to be put in place by governments to ensure the effectiveness and sustainability of monitoring and enforcement. However, in many developing countries it remains a challenge to secure adequate resources for enforcement.

To overcome this challenge, a strong support from government is required to implement monitoring and enforcement. In addition, the relevant authorities need to allocate adequate financial and human resources for implementing enforcement.

E. Comments and recommendations

- (1) Monitoring and enforcement of freight forwarders, NVOCCs and MTOs are crucial to ensure that the relevant regulations and rules are complied with. Governments and the industry associations need to take measures for effective monitoring and enforcement of compliance.
- (2) Governments can play an important role in monitoring and enforcement of compliance of the industry in view of the legislative authority of governments.

- (3) Governments, the industry associations and the operators need to find most cost-effective measures for monitoring, compliance and enforcement.
- (4) If the Model 2 (Licensing) is adopted, it is desirable that the license be valid permanently unless it is suspended or revoked. Governments may require the license to be renewed every two years subject to provision of required document on operational and financial status of the operators.
- (5) It is desirable that the financial statements of freight forwarders, NVOCCs and MTOs be reported every year.
- (6) The industry associations may use the enforcement measures such as warning, temporary suspension or expulsion of membership.

VIII. CODES OF PROFESSIONAL CONDUCT

A. Background

Code of professional conduct (hereinafter referred to as CPC), sometimes also termed as code of conduct or code of ethics, serves as a useful tool for industry association to guide its members for proper professional and business conducts and enforcement of compliance of regulations by members.

CPC in the context of freight forwarder, NVOCC and MTO may refer to:

- Fulfill duties with regard to client(s) with honesty, integrity and impartiality;
- Provide services with due diligence;
- Comply with all national laws and other regulations relevant to the duties;
- Exercise due care to guard against fraudulent practices; and
- Keep any information of the customer confidential.

The Guidelines mainly focus on the structure and essential components of CPC. To this end, the Guidelines analyze and compare CPCs of the industry associations within and out of the region.

B. Analysis of typical components of CPCs

1. Structure

Some CPCs are of very simple structure and not divided into chapters. Often only main principles are included.

Some other CPCs have more complicated structure and are divided into chapters, dedicated, respectively, to the objectives of the code, main principles of operators' conduct and, in some cases, sanctions and enforcement.

Most typical contents of such chapters are analyzed below.

2. Objectives

This component is typically a general introduction indicating main purposes of CPC. For example, the Code of Conduct and Ethical Standards for Freight Forwarders issued by the Philippine International Seafreight Forwarders Association Inc. (PISFA) contains a preamble, stating:

“the Freight Forwarders duly accredited by the Philippine Shippers’ Bureau, in direct response to the government’s call for professionalism and greater involvement in enhancing the vital role of the industry in transport, trade and commerce, in cultivating solidarity and unity amid our ranks, and in institutionalizing an environment founded on equity, fairness and honesty towards our clients, do hereby adopt and promulgate this code of conduct and ethical standards for freight forwarders”.

Another example is Paragraph 1 of the Code of Conduct of the PIFFA:

“The objects of the Association and the intensions of the Association’s Code of Conduct are to:

- a. Ensure a fair business relationship between the Members and their clients, and between Members themselves.*
- b. Maintain and enhance the reputation, standing and the good name of the PIFFA and its members.*
- c. Generally watch over, promote and safeguard the credibility of the PIFFA and its members by establishing, maintaining and promoting professional behaviour of high standards with the object that Membership in the PIFFA shall be an indication of high standards and quality of service.*
- d. Generally promote public confidence in the profession particularly through prevention or correction of any abuses and malpractices that might undermine this confidence.*
- e. Promote the interest and welfare of freight forwarders and logistics providers, improve their professional status, and secure high standards of professional conduct and practice.*
- f. Promote and develop the general interests of all Members of the PIFFA in their relations with clients, with operators of all forms of transport and with one another”.*

The Code of Conduct of the South African Association of Freight Forwarders (SAAFF) states in its preamble:

“in recognition of the requirement that the members of the Association should maintain the highest ethical and professional standards and be mindful of the need to foster public trust and confidence in the forwarding and clearing industry, the Association has published the following Code of Ethical Conduct for adoption by its members”.

As such general introduction is of declarative nature, it may not be an obligatory element to be included into every CPC.

3. Principles and obligations

The key part of any CPC is the list of principles and obligations to be observed by the members of an association. Those principles and obligations can be generally divided into several groups, largely common for most of the sources analysed, although the wording may vary significantly.

(a) Relationship with clients

This principle regards fair relationship of an operator with its clients, which may include obligations to act professionally in their clients’ interests, to fulfil obligations properly and to avoid any fraudulent behaviour, etc..

Here are some examples of wording of that principle. The PIFFA Code of Conduct indicates (Paragraph 2, Sub-paragraphs a and b):

- a. *At all times, within the law, Members shall act professionally and in the interest of their clients, subject to their own proper and reasonable commercial considerations and undertake to provide confidential and competent services;*
- b. *Members undertake not intentionally to mislead the clients”.*

The PISFA Code of Conduct and Ethical Standards for Freight Forwarders indicates: *“Freight Forwarder shall always uphold his clients' interest over and above his personal gain. He shall at all times regard clients' satisfaction of paramount importance and that this can be achieved through efficient and quality service, reasonable rates and reliability in the timely shipment and safe handling of goods. Honesty to clients must be given premium to preserve the credibility of the freight forwarder, and the integrity of the industry as a whole”.*

(b) Rules of competition and relationship with other industry members

This principle establishes commitment of a member of an association to the rules of fair competition and mutual respect with other member companies. For example, the Ethics Code of the INFA:

“We, Indonesian forwarder and a member GAFEKSI/ INFA, always put deliberation and consensus in solving every problem that can harm a fellow Forwarder and expeditor” (extract).

The Code of Conduct of the Association of Forwarding and Logistics of the Czech Republic includes the following principles:

- *“business competition amongst themselves shall be led in an honorable and honest way*
- *they respect the rules of economic competition and business customs.”*

(c) Obligations towards the association

Some of the documents reviewed, mainly those called Codes of Ethics, concentrate on members' obligations towards their association, such as observing internal regulations, timely payment of membership fees, and participation in the association's activities including attending meetings and responding to surveys, etc..

An extract from the Code of Ethics of the Brunei Freight Forwarders Association (BRUFA) shows an example of that component:

“We "Members" Shall;

- *abide strictly by the "BRUFA Constitution”;*
- *be obliged to promptly settle all fees due to the "Association”;*
- *appoint two "Accredited Representatives" of their companies to the "Association”;*
- *be obliged to send an "Accredited Representative" to attend annual conferences of the "Association”;*
- *be obliged to respond to all surveys initiated by the Administrator and sub-committee”.*

The decision upon the necessity of including such kind of paragraph into the CPC may depend upon the decision of drafters. In some cases, such clauses can be contained in the statute (constitution) of an association as part of obligations of its members. Perhaps, in such cases there is no need to duplicate such clauses in the CPC.

(d) Information and confidentiality

A row of the CPCs reviewed contain obligations of the respective associations' members to keep information received from their partners or clients in the course of business operations confidential and to refrain from spreading of untruthful or incomplete information, especially on their competitors or clients.

This is an important component of a CPC, as due care with handling information strongly affects any kind of business, including freight forwarding, in today's information society.

(e) Respect for laws, rules and regulations

Obligation to respect and observe all the laws, rules and regulations of any country of their operation is included in most CPCs. Some of the CPCs go further in this topic. For example, the Code of Conduct of the China International Freight Forwarders Association (CIFA) (Article 10) states that its members should observe the international agreements signed by the country.

(f) Monopolism

This principle implicates refraining from involvement in any restrictive trade practices or unlawful cartel agreements and, in case of market domination, its execution in an honourable way.

(g) Violations and enforcement

The CPCs usually contain provisions concerning the association members' responsibilities in case of failure to observe the CPCs. The most common responsibility measure is the expulsion from the professional associations, which in some cases may be preceded by an official warning. The CPCs may also provide for the procedures of considering the matters connected with violations of the associations' CPCs. The example of a detailed description of such procedures can be found in Paragraph 3 of the PIFFA Code of Conduct:

- a. *“The Board of Directors (BOD) of the PIFFA has the power to appoint a sub-committee to deal with issues relating to the conduct of members.*
- b. *Members, clients and all other concerned shall refer all disputes to the above sub-committee.*
- c. *The Sub-committee is empowered to consider any complaint made by a member of the public or a dispute arising between Members. The Member against whom a complaint has been made shall, upon request by the sub-committee, provide information and document(s), and within such period as may be reasonably required by the sub-committee. The sub-committee is not entitled to apply or recommend the application of any action against the said Member without*

giving the said Member an opportunity to make representation (in writing or in person) in connection with the said complaint.

- d. On receipt of a complaint, the sub-committee will be obliged to acknowledge the complaint within 15 days of its receipt and thereafter must set into process their deliberations on the complaint matter. The sub-committee is charged to effect conclusion of their recommendations within a period of 90 days, as far as possible, and to submit the same to the Board of Directors without undue delay.*
- e. The BOD of the PIFFA is empowered to:*
 - i. issue such cautions, warnings and reprimands as it may consider necessary;*
 - ii. require from such Member any specific or general undertaking as to such member's future conduct; and/or*
 - iii. suspend or terminate the membership of any such Member;*
 - iv. delegate its disciplinary powers under sub-paragraph (i) and (ii) above to the sub – committee”.*

Non-compliance with the CPC should result in enforcement measures including sanctions imposed on the members of a professional association. Otherwise, the CPC would remain a pure declaration, and its practical effect would be diminished.

C. A template for preparing the CPCs

In view of the above-mentioned elements, a template is prepared for the associations to use wholly or partly in formulating or revising their CPCs (see Annex I).

IX. STANDARD TRADING CONDITIONS

The FIATA Model Rules for Freight Forwarding Services¹⁶ may be considered by an industry association as a basis for developing a country specific standard trading conditions.

¹⁶ For details, see http://www.fiata.com/uploads/media/Model_Rules_05.pdf.

Annex 1. Template for preparing the CPCs

1) Objectives

The Freight Forwarders (NVOCC, Multimodal Transport Operators) of (full name of association) have agreed to maintain the provisions of this Code of Professional Conduct with the following objectives :

- to maintain the good reputation of the industry;
- to strengthen public trust towards the profession;
- to ensure high standards and quality of service;
- to develop proper and fair relationship between freight forwarders and their clients; and
- to maintain observation of the principles of fair competition.

2) Principles

A) The relationship with clients:

- to act professionally in the interest of their clients;
- to conclude freight forwarding and other contracts with clearly established basic principles;
- to fulfil properly all the obligations arising out of the contracts concluded; and
- to handle the claims truthfully.

B) The rules of competition:

- to lead competition amongst themselves on the principles of fair play and with a respect to the mutual interests; and
- to respect the rules of business ethics and business customs in the relationship with other industry members.

C) Information and confidentiality:

- to maintain and safeguard business confidentiality; and
- to refrain from spreading of untruthful or incomplete information, especially on their competitors, clients or employees.

D) Respect for the laws and of their associations' internal rules:

- to observe all the laws, rules and regulations of any country of their operation;
- to observe relevant international agreements to which their country is a Contracting Party; and
- to respect the internal rules of the (full name of association).

E) Monopolism:

- to refrain from involvement in restrictive trade practices or unlawful cartel agreements; and
- to execute market domination in a honourable way.

3) Compliance and enforcement

- All members are urged to follow and respect for the Code of Professional Conduct.
- Enforcement measures will be taken for violation of Code of Professional Conduct. and
- The sanctions are imposed in accordance with the provisions of the Statute of (full name of association).



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