

# IUMI Liability Committee QUESTIONNAIRE on the UNCITRAL Draft Instrument

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The proposed UNCITRAL Instrument is intended to cover the carriage of goods by sea but is also considered that it should cover the inland legs in connection with the sea leg.

## 1. Do you feel that it would be helpful to have a single Liability scheme applicable to door-to-door shipments which involve an overseas leg?

Absolutely. As Slovenia is mainly transit country with sea port, we feel that IT would be of great importance to have a single liability scheme. That would make solving problems about assessing liability limits, exclusions of liability, time bars, etc., easier.

## 2. What problems are commonly experienced today, if any, as a result of the existing system of liability regimes for door-to-door carriage of the goods?

The main problem is to assess the liability of the carrier on which part of voyage the loss occurred. In nowadays we are facing troubles of different liability regimes such as

- General trading conditions of Slovene freight forwarders (based on Obligation Act of Slovenia 2001),
- CMR Convention for international road carriers (the domestic carriage is of little importance in a country where 99% of carriage by road is falling under CMR Convention),
- Hague Rules for sea leg of transport,
- Warsaw Convention for air carriage,
- Various trading conditions of terminal operators, stevedores, warehouse keepers, etc. based on Obligation Act of Slovenia.

All of them have different liability regimes, what in practice means, that there is a problem of liability limitations and exclusions. The problem increases in the case of difficulty of assessment the exact moment of voyage on which the loss occurred.

## 3. In those cases, where the existing international conventions are applied to land transport, such as the Convention on the international Carriage of Goods by Road (CMR), should those conventions continue to control the liability of the land carrier when the land carrier is involved in the carriage of the goods over sea and land?

No. We feel it is more important to have single liability regime. The CMR Convention should remain in force only for “pure” road carriage where there is no involvement of other transport means or services additional to transport (warehouse, etc.). Otherwise we prefer the single liability regime.

## 4. Or alternatively should all the participants in the door-to-door carriage of goods, such as stevedores, terminal operators, truckers, railroads, warehouse keepers and others be subject to the same liability regime as the ocean carrier?

Yes, it would be of great importance.

**5. Should the liability limit and exclusions for the inland carriage be different from the liability for the sea carriage? If yes, under which circumstances?**

No, the limit and exclusions for inland carriage should be same as for sea carriage (if the single liability convention should apply).

**6. Should the subcontractors, such as stevedores, terminal operators, truckers, railroads, warehouse keepers and others, be subject to direct claims by cargo interests or should the cargo, interests have a right to claim only against the contracting carriers?**

The right of direct claim should be against both, contracting carriers and their subcontractors.

**7. Do you agree that the present system of risk allocation is balanced and thus should be maintained?**

No, the present system of risk allocation shouldn't be maintained.

**8. Do you prefer that the following amendments should be generally adopted? (please answer either yes or no to each point):**

**8.1 The exemption of carriers liability for error in navigation or management of the ship should be deleted.**

Yes.

**8.2 The exemption of carrier's liability for fire should be deleted.**

Yes.

**8.3 The seaworthiness obligation should be extended through the whole sea voyage, instead of just at the beginning of the voyage.**

Yes.

**8.4 Two alternative solutions have been suggested for those cases in which there are concurrent causes for a loss of or damage to the cargo.**

**A) The carrier is liable for the entire loss except to the extent he can prove that the loss was caused by an event for which he is not liable.**

**B) The carrier and the claiming party share the burden of proving the cause of the loss. In absence of this proof the parties are to share the loss in equal (50/50) parts.**

**Which of these alternatives A or B do you support?**

A.

**9. Should the carrier be allowed to act in different roles during the voyage i.e. to act only as an agent for some part of the voyage?**

No.

**10. Are the three days allowed to the receiver to claim a loss or damage (not apparent upon delivery of the goods) adequate and possible to meet in practice?  
In case the Instrument will cover also the door-to-door transports, should the time limit be the same?  
If not, why? What would be the appropriate time limit?**

No, the time limit for not apparent loss is too short. It would be appropriate to set a time limit of 7 days. It gives the receiver the possibility of inspection of the goods.

**11. Is the proposed one-year's limitation period for suit adequate in practice? If not, why?  
Does the present practice of acquiring time-extensions from the carrier cause your market additional workload and friction costs?  
If yes, please give some estimation about the costs.**

The one-year's time bar is long enough.

**12. Would you support the alternative that the time limit for suit should not run while the carrier is considering the claim, as in the CMR Convention?**

Yes.

**13. Which of the provisions should be mandatory? To what extent and which parties should be able to contract out of the provisions of the new Instrument? Should the provisions on charter parties, transport of animals, shippers and/or carrier's liability be mandatory?**

The provisions of carriers (performing party) liability should be mandatory, including limitations and exclusions of liability. The only withdrawal from this mandatory provisions should be allowed in the case of setting stronger carriers (performing party) liability. The provisions on charter parties, transport of animals, shippers and/or carrier's liability should be mandatory.

**14. Do you think that an international instrument governing liability arising from multimodal transportation would be desirable?**

**If yes, which of the following approaches do you consider the most appropriate:**

- a) a new international instrument to govern multimodal transport;
- b) a revision of the 1980 Multimodal Convention, which has not entered into force or
- c) the extension of an international sea-carriage liability regime to all contracts for multimodal transport involving a sea leg, like that proposed in the UNCITRAL Instrument.

The most appropriate approach would be b).

**Changes to the carrier's liability might have an effect on the present system of risk allocation between cargo interests and transport operators/shipowners. It has been requested by UNCITRAL that IUMI would provide statistics on the eventual effect of these changes to the present system of risk allocation between cargo insurance and P & I insurance. Please inform us if your market is able to provide the requested statistics or alternatively some estimation on the effects, if any.**

**In answering to the questions 8.1-8.4 please indicate the statistical influence you estimate the suggested new solution will have on the present system of risk allocation, If no statistics are available please give your estimates according to the following scheme;**

**8.1. - the risk of cargo insurers would be reduced by 20 % (a similar % of increase of risk will remain upon the carriers and their liability insurers),**

**8.2 - the risk of cargo insurers would be reduced by 5 % (a similar % of increase of risk will remain upon the carriers and their liability insurers),**

**8.3 - the risk of cargo insurers would be reduced by 1 % (a similar % of increase of risk will remain upon the carriers and their liability insurers),**

**8.4 - the division of 50/50 of the loss would increase the risk of cargo insurers by 10 % (a similar % of reduction of risk will affect the carriers and their liability insurers)**

**Please take this opportunity to indicate if you have any further comments or observations in respect to the Instrument and its effects on marine insurance**

Even as there were big efforts made to change the existing liability regime governing the sea carriage and door-to-door transport, it is still protecting the sea carriers. There is an important list of liability exclusions in UNCITRAL's Instrument. That means additional need of insurance protection in cases where carrier's liability exclusions applies. This means no difference from the existing insurance practice. There will remain both cargo and liability insurance in force with no substantial change in insurance premium for cargo or liability insurance.