

Definition of freight forwarder and determination of his obligations and rights and distinction between forwarding and other businesses in this field

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I. Definition of the Freight Forwarder

a. Freight forwarder as principal

Freight forwarder as principal is every physical or moral person working in his own name for the account of his mandatory (generally the exporter or the importer), undertaking to offer services and deliver goods to destinations and having the opportunity to choose the mode and means of transport against fixed remuneration who will receive it from his mandatory.

It appears that the freight forwarder is:

1. A forwarder who does not personally own the means of transportation otherwise he becomes a carrier and not a forwarder.
2. A free organizer of transportation since beginning to end free to choose the methods and means that he may deem appropriate to deliver the goods in good condition with lower costs and good quality of service.
3. A professional working in his name and collecting a fixed remuneration determined upon mutual agreement with his mandatory, not obliged to submit a management detailed report to his mandatory contrary to the agent.

For this reason, he was called the Architect of Transport since he carries out all necessary studies and establishes the appropriate plans to execute his function in the most appropriate manner and with lower costs.

b. Freight Forwarder as agent

Freight forwarder as agent is every physical or moral person working in the name and for the account of his mandatory (generally the exporter or the importer), executing his instructions without having the opportunity to choose methods and means of transportation.

II. Nature of Work of the Freight Forwarder

The freight forwarder spares no effort to ensure the success of the transportation process from beginning to end or in other terms delivery of goods to destinations in the most appropriate time and lower costs taking into consideration the quality of service.

Upon taking charge of the entire and complete transportation process the freight forwarder, issues a Bill of Lading called House Bill of Lading in which, the consignor will be the importer or exporter depending on the person contracting with the forwarder and the consignee will be the person authorized to receive the goods from the freight forwarder. This bill of lading issued by the freight forwarder is subject to the Master Bill of Lading in which the consignor is the freight forwarder contracting with the carrier and the consignee agent of the freight forwarder at the delivery point.

The freight forwarder as principal is completely free to choose the mode and means of delivery, storage and carrying of goods provided that the interest of his mandatory is preserved.

During the forwarding process, the freight forwarder carries out financial and legal activities and is in charge of contracting carriers, port administration, customs administration and insurance companies upon request of his mandatory, in order to facilitate his function.

The freight forwarder gives advices to his mandatory by providing him with the sufficient information related to the transportation total costs of goods imported or exported as well as the customs duties due on these goods in the country of destination in order to be competitive in the market.

The freight forwarder gives also advices to his mandatory about the necessary documents in order to clear the goods e.g. packing list, certificate of origin and invoices and he informs him about the procedures

of authentication and legalization of these documents, makes contacts with the maritime agents, the road transportation companies as well as airline companies in order to be sure of the shortest and simplest way to deliver the goods with lower costs.

The freight forwarder carries out consolidation activities in order to decrease transportation costs, this method became very easy due to containers' technique.

Upon request of the mandatory, the freight forwarder assists his mandatory in order to obtain the lower costs of insurance for the goods against risks during transportation process. He may also upon the request of the mandatory store goods in public warehouses or in his own warehouses.

The freight forwarder carries out in general all activities necessary for the benefit of his mandatory.

III. Obligation of the freight forwarder

The freight forwarder as principal is bound by an obligation of result contrary to the freight forwarder as agent who is bound by an obligation of means.

The freight forwarder as principal may evade responsibility as any creditor bound by an obligation of result by proving that the damage is caused by an Act of God or an unexpected and outside one's control circumstances.

The freight forwarder is bound:

1. To choose the appropriate persons to contract with them, noting that the freight forwarder is not responsible for the contracting parties' faults in case they were well chosen by him.
2. To control and supervise the good execution of contracts concluded by him for the account of his mandatory.
3. To protect the rights of his mandatory by carrying out all procedures necessary to ensure that these rights won't be lost or prescribed before the carrier and the insurer as for example make the necessary reservations in case of any apparent goods'

deficiency at the end of the transportation process or at the end of any stage of this process.

4. To safe keep the goods in his possession until their final delivery.
5. To provide and keep all documents proving the contracts carried out by the freight forwarder as agent upon request of his mandatory and provide the latter with these documents upon request.

IV. Rights of the freight forwarder

Like any other mutual contract, the freight forwarding contract gives the forwarder the following rights:

1. Debt of the freight forwarder

The debt of the freight forwarder is constituted of advances spent from his own funds, expenses assumed on behalf of his mandatory as well as freight and services fees.

The freight forwarder as principal establishes a global invoice including all amounts assumed for the account of his mandatory including freight fees. This invoice includes his fixed remunerations determined by prior agreement.

The freight forwarder as principal is not bound to submit to his mandatory a detailed management report contrary to the freight forwarder as agent who is bound to submit to his mandatory all invoices issued by the contracting parties.

2. Privilege of the freight forwarder

The nature of the forwarder's functions require almost from him to advance sums from his own funds on behalf of his mandatory. For this purpose, the Lebanese Code Of Commerce gave the freight forwarder a privilege right over the goods delivered, stored or deposited in his premises in order to receive all loans, advances and expenses either before receipt of the goods or within the period of having them at his custody. The capital, interests and commissions are included in the privileged debt of the forwarder.

In case the products were sold or delivered to the mandatory or to his account, the forwarder will have the privilege to collect the value of his debt on these goods.

It is worth mentioning that the privilege given to the freight forwarder is broader than the one given to the carrier limited to the freight and its subsidiary and is not applied except on goods subject to the transportation contract as per the provisions of the Lebanese Maritime Code of Commerce. Otherwise, the forwarder's privilege ensures also the payment of his remunerations and the goods in his possession due to the transactions that resulted in his debt or to other previous or subsequent transactions.

As per the general legal principles, the freight forwarder who pays the freight to the carrier replaces him as for rights towards the exporter or the importer.

3.Right of seizure

According to the general legal principle, the freight forwarder have the right to seize the goods that are in his possession until payment of his due amounts.

In case of seizure of the goods by the freight forwarder, this latter will be bound to protect them and will be responsible of all damages caused to the goods due to his fault.

The debt of the freight forwarder giving him the right to seize the goods in his possession should satisfy and meet all general legal conditions especially the following conditions:

- It should be related to the professional business of the freight forwarder.
- It should be fixed.
- It should be due.

V. Distinction of freight forwarding from other businesses in the forwarding field

1.Business of the maritime agent

The maritime agent is the agent of the owners, suppliers or chartered of vessels within the port where he resides.

Maritime agencies carry out in general in the Lebanese ports the functions of the trustee of the vessel, noting that the vessel's trustee is the representative of the suppliers and plays the role of the intermediary between the captain and those to whom the goods are sent. He replaces the captain when necessary and he is bound to deliver the goods to the owners upon delivery of the nominal original bill of lading or the one endorsed to their order and collect the freight in case it was not paid in advance.

It is worth mentioning that the maritime agent is responsible for his personal faults only which causes damages to the goods as from the date of their receipt until the date of their delivery to the owners provided prove of these faults.

The responsibility of the maritime agent towards the vessel's owners, suppliers or chartered is the responsibility of the ordinary agent.

2. Business of the transporter

The transporter executes the transportation operation while the forwarder organizes the entire and complete operation.

The freight forwarder carries out legal activities especially when dealing with different carriers for the account of his mandator while the transporter carries out material activities upon execution of a transportation operation.

It is evident that the distinction between the two businesses is somewhat difficult since the carrier may subsequently carry out legal activities as for example the receipt of the amounts due by the consignee in case of delivery against payment. The freight forwarder may execute part of the transportation operation or other material activities as for example, storing the delivered goods and their safeguard.

The jurisprudence considered that in such similar cases mentioned hereinabove, the nature of the essential activities should be considered and the supplementary activities neglected.

3. Business of transit agent

The transit agent interferes in the phase that separates the two parts of one transportation operation of the goods. He receives the goods from

the carrier and delivers them to another carrier who may be a maritime, road or air carrier. His function does not exceed the frame of the place, the port or the frontier where he has to interfere. He is an agent that executes the order of his mandatory, does not choose the means and methods, and is bound to comply with an obligation of means.

The distinction between the business of the freight forwarder and business of the transit agent is extremely subtle. For this reason, and in order to exactly consider the nature of the functions vested in the intermediary and give it the exact legal definition, we should refer to the provisions of the agreements concluded between the parties and not to content with the nomination given to them.

The transit agent is responsible for his personal faults like the freight forwarder as agent contrary to the freight forwarder as principal. Nevertheless, it should be agreed upon to exempt the transit agent from the responsibility or limit his responsibility. The exemption or limitation condition will be exact unless the transit agent commits a fraud or a serious offence.

4. Business of the customs agent

The authorized customs agent is the one who carries out the customs formalities related to goods that are not owned by him or registered in his name. He is responsible towards goods' owners or trustees and before the customs directorate and entities exploiting customs warehouses or magazines or free zones, of his employees' activities authorized by virtue of a power of attorney deposited at the customs directorate, and having the right to work within all customs offices.

It is worth mentioning that the customs clearer works for the account of the goods' owner or trustee whose name and address should be mentioned in the statement of specification submitted to the customs.

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