

KS.18: Convention on Negotiable Cargo Documents (NCDs)

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Ganesh Vishwanathan

The draft Convention on NCD was recently approved by The United Nations Commission on International Trade Law (UNCITRAL) for adoption by the UNGA. We examine how this will transform the supply chain going forward

Overview of NCDs

As on date, the Bill of Lading as a negotiable legal transport document, has benefitted only the maritime sector. CMR Consignment Notes, Rail Consignment Notes or Air Waybills typically do not perform this function. UNCITRAL recognises that this disparity has restricted the global growth of seamless door-to-door multimodal transportation, hindered access to trade finance, created cashflow problems for businesses and limited opportunities in landlocked regions for cross border trade. The Convention seeks to establish a uniform legal framework for the issuance, transfer and legal effects of negotiable cargo documents (NCDs) which will function as a negotiable document of title across all modes of transport in a multimodal or unimodal context.

Like a Bill of Lading, an NCD holder will acquire the right to delivery of the goods at destination, the right of disposal, and the right to bring a claim against the transport operator. However, NCDs will not regulate the underlying transport contract or the liability of the parties for loss or damage to goods. The Convention explicitly states that it does not modify the rights and obligations of the transport operator, consignor and consignee and their liability under applicable international conventions or national law governing the transport contract.

The Convention is designed as an opt-in framework, providing commercial parties with the option to request or issue an NCD in either paper or electronic form. This flexibility fits market needs and provides carriers with the option to adopt or exclude NCDs in their own commercial terms. To issue an NCD commercial parties must ensure the NCD contains a conspicuous annotation with reference to the Convention.

An NCD can be issued by one of two methods:

- i) by entering an annotation signed by the transport operator in a transport document;
or
- ii) if no transport document has been issued or if a transport document has been issued but has been subsequently cancelled, then an NCD can issued.

NCDs must also meet comprehensive information requirements set out in the Convention which include the name and address of the transport operator and consignor, the general nature and condition of the goods, the place and date of taking in charge of the goods by the transport operator, place and date of issuance of the NCD, reference to any transport document, place of delivery, and other standard details commonly found in transport documents.

The NCD will be issued when the goods are taken in charge by the transport operator.

Benefits and opportunities

The new legal framework for NCDs offers several benefits and opportunities for all commercial parties in the logistics sector, particularly those involved in multimodal transport.

Global supply chains

By establishing uniform rules for negotiable transport documents across all modes of transport, commercial parties will significantly benefit from a single, standardised document that simplifies global trade, reduces administrative complexity, increases operational efficiency, reduces costs for inland routes and facilitates seamless door-to-door transportation.

Legal Certainty

The Convention provides certainty as to the legal effect of NCDs, as well as the rights, obligations and liabilities of the holder of the NCD. This is likely to encourage widespread adoption of NCDs and allow commercial parties to engage in the sale of goods in transit and capitalise on the operational benefits presented to global supply chains. Financial institutions, banks and other stakeholders will also be encouraged to accept such documents as security, increasing access to trade finance and encouraging the sale of goods resulting in greater international trade. The preservation of existing liability regimes also provides certainty for carriers, shippers and freight forwarders in respect of their rights and responsibilities.

Digital transformation

The option to issue NCDs in digital form will enhance data reliability and operational efficiency once the necessary systems are in place, supporting end-to-end digitalisation and innovation in the logistics sector. The integration of digital NCDs into existing operations will allow shippers and carriers to compete more effectively through benefiting from faster document exchange, reduced reliance on paper-based processes, and improved data accuracy allowing for quicker responses to fluctuating market demands.

Opt-in Framework

Commercial parties can opt to use NCDs to address the ownership or financing requirements of their trade routes while still relying on the applicable transport liability regimes. Shippers, carriers and freight forwarders can choose whether they would like to make use of the Convention, integrate any new practices within their existing operations, and use NCDs on a tailored commercial basis if it is suitable for their business needs.

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