


TRACECA: Trade Facilitation,  
Customs Procedures & Freight  
Forwarding Project

## Trade Facilitation Institutions

February 1997

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## EXECUTIVE SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

- 1) The institutional objectives in the project Terms of Reference have been limited to Freight Forwarding Associations and Customs Consultative Councils. This is because these two organisations are primarily focused on trade facilitation and their establishment would have most benefit on overall trade.
- 2) The forwarding industry has developed from the state transport activities but its growth has been constrained and is fragmented.
- 3) The role of the Freight Forwarding Association would be represent, promote and protect the interests of the forwarding community at both national and international level.
- 4) There is a need for such Associations to represent the industry as a whole because of its fragmented development, the need to be able to influence trade facilitation and to be able to have meaningful contact with governmental organisations such as Customs.
- 5) Membership of the International Federation of Freight Forwarders is required to enable national forwarders to be involved in a world-wide market and use essential international documentation systems
- 6) Only Uzbekistan has established an Association and obtained national membership of FIATA. However as part of this projects initiatives are being carried out in a number of other Republics to establish similar organisations.
- 7) It is necessary to obtain sponsorship in the initial stages to provide technical assistance and fund a secretariat until the Association is self-financing.
- 8) Membership should be available to all forwarding organisations operating in a country - state owned forwarders, national forwarders and international forwarding companies. Foreign organisations can bring benefits through their expertise, contacts and possible training assistance.
- 9) The initial action required is to issue letters of invitation and at a meeting appoint a Steering Committee.
- 10) The Freight forwarders Association will need a legal form to comply with national legislation and protect its membership. This will probably require the production of a Memorandum of Association (the terms of reference), Articles of Association (the rules) and Bye-laws (the sub-rules).
- 11) The Association should have a permanent independent secretariat with a Director General (or equivalent) and a National Council.

- 12) The funding system should recognise the difference in size of the member companies and structure the fees such that smaller organisations can afford to join.
- 13) To be effective the Association needs to establish contacts with Ministries and other government organisations as well as participate in other trade associations and the Chamber of Commerce.
- 14) Customs have evolved from the old Soviet system but will need to further adapt and accept new concepts to meet the demands of the new market economy.
- 15) The concept of Customs being a “service provider” and traders and forwarders as “customers” is not yet recognised as in Europe.
- 16) There is not an established basis of trust and co-operation between Customs and the trade due to mutual suspicions. A Customs Consultative Council is designed to break down these traditional barriers by creating a forum for consultation.
- 17) The benefits to Customs of a Council are that it improves planning and implementation of change by being able to assess the impact with those most effected before final commitment. It also provides a medium for promoting services and publication of changes.
- 18) The benefits to Forwarders and traders is that they can establish a closer relationship with Customs and are involved in the consultation process prior to implementation of changes.
- 19) The benefits to Ministries are that they obtain improved knowledge of freight facilitation and can consult with the parties on the imposition of proposed changes in Government policy.
- 20) There are no proposals for Customs Consultative Councils in any of the countries. However, the concept has been discussed and interest expressed.
- 21) The Customs will need to act as the sponsor as their participation and direction is essential.
- 22) Membership should involve representatives from Customs, forwarding, traders and the Ministries. It should not be available to individual corporate members.
- 23) The Council can be formed on the basis of a letter of invitation and appointment of a Council.
- 24) The Council should not require legal form or registration. However it is recommended that a Memorandum of Association (Terms of Reference) is agreed to provide focus to the consultation process

- 25) The council should meet on a quarterly basis and ad-hoc meetings can be called to discuss technical subjects or specific issues.
- 26) The Chairman of the Council should be a senior Customs official, preferably the Head of Customs or his deputy to give the Council appropriate influence.

## 1. INTRODUCTION

The trade and transport systems of the Republics located along the TRACECA corridor were inherited from the command Economy of the former Soviet Union. These systems were designated for trade and economic relations planned by, directed from and centred on Moscow. It thus controlled internal and external trade policy, customs administration and practice and the membership or international associations. There was little or no private sector activity and hence independent trade facilitation activities, such as Freight Forwarding Associations and Customs Consultative Councils, were never developed. The project Terms of Reference specified the following objectives:

- co-operation between Customs Authorities and freight forwarders throughout the region
- assistance in the creation of trade and freight forwarding associations in the TRACECA region and the encouragement of links between the national associations.

The project was required to promote the development of national and regional:

- Freight Forwarding Associations
- Customs Consultative Councils
- Customs Agents Associations
- Trade and Transport Associations

This report is concerned only with the Freight Forwarding Associations and Customs Consultative Councils. The reasons for not developing the other types of council are as follows:

- **Customs Agents Associations** represent customs brokers and act as a representative organisation for the purposes of consultation with Customs and other Governmental organisations. In a market economy, it is usual that freight forwarders are also customs brokers. This enables them to offer a full range of services, including integrated door-to-door services. It is considered that a developed Freight Forwarding Association could perform the consultation role of the Custom Agents Association, either directly or through the use of a sub-committee, rather than creating a separate organisation which would be promoting non-integrated development.
- **Trade and Transport Associations** covers a multitude of possible associations covering specific transport or trade sectors. The road transport projects within the TRACECA programme are assisting with the establishment of international road transport associations and therefore it is important to avoid duplication. Trade associations can have diverse interests, involve many different market sectors in each country and are often related to specific industries. It is considered that these other industrial associations can be developed at national level without external assistance. The Chamber of Commerce is usually present and performs some of the functions which would be provided by a general trade association. Some

information is provided on both Chambers of Commerce and road transport associations in this report.

The project has concentrated, therefore, on the two organisations which are primarily focused on trade facilitation and which would be most beneficial to the development of overall trade.



## 2. FREIGHT FORWARDING ASSOCIATIONS

The state transport system developed using all the modes but with limited integration between them. In a command economy, forwarding activity consisted mainly of commercial sections within these state transport organisations. They were responsible for obtaining signed contracts for movement and arranging for the production organisation to deliver to a particular point for the long distance movement or advising a receiving organisation to collect from a point of delivery. They were, therefore, not independent freight forwarders in a commercial sense. Transportation was monopolistic in nature with either no or only limited competition.

The changes towards a market economy have resulted in significant competition in the transport environment and the development of private freight forwarders alongside more commercially-oriented state transport organisations. There has also been growth in the presence of foreign forwarders, through representative offices, joint ventures or direct subsidiaries. As a result, the forwarding market is expanding to be able to offer both importers and exporters an increasing range of commercial services, similar to those available in western Europe.

This development has been fragmented and forwarding has grown more rapidly in some countries than others. This is due to differing political, legal, trade and transport environments. However, it is recognised that there is a gradual trend towards liberalisation of the market with more private operators, consisting of both national and internationally based companies, and a phased decline in the control exerted by the state transport organisations. Some state organisations are expected to continue but will become increasingly market orientated and commercial in their operations.

This fragmentation has resulted in significant problems, particularly with regard to common approaches to national issues and standards. There has been no single organisation which reflects the views and interests of this high growth, but diverse, industry. This function would normally be undertaken in a western market economy by the Freight Forwarders Association which represent the view of its industry members.

### 2.1 Benefits of Formation

The principal roles of a Freight Forwarding Association are to:

- represent
- promote
- protect

the interests of the forwarding community in that country, both at national and international level (if members of FIATA).

It is important to clarify the role of a forwarder in a market economy. In simple terms, he manages the activities along the “international transport chain”. This commences at the point of dispatch and is completed on final delivery and normally includes some or all of the following processes:

- booking of transport, container, flight or sailing
- issuing collection and delivery instructions to transporter
- obtaining export clearance
- supervising loading
- issuing of export documentation
- arranging transit documentation
- obtaining import clearance
- issuing collection and delivery instructions to transporter
- providing proof of delivery documents
- paying for the transportation services
- paying for the documentation services
- paying for import and export clearance charges and duties
- arranging of insurance

The more integrated the forwarder, then the more activities he will either perform or arrange. The freight forwarder is essentially an “arranger” of international transport services, which he may provide with his own resources, but in most cases will subcontract. A standard road haulage company is not a forwarder unless he is physically taking responsibility for the cargo during an international movement. Many forwarders are also road transporters but few road transporters are forwarders.

The freight forwarding industry develops more rapidly within a liberalised market economy. Because the main role is as an “arranger”, he is, in effect, trading, in transport services - buying wholesale from a supplier (airline, shipping line, road transporter) and selling retail to his customer (importer or exporter). His profits are generated from the trading margins between buying and selling, as well as some fixed charges for performing documentation and clearance activities. This profile means that:

- it does not require significant capital to become a forwarder, because he is a trader rather than supplier of transport assets
- there is intense competition between companies to fix their own deals

As indicated the forwarding industry tends to become very fragmented. This is because of the ease of entry with minimal capital or human resources and the degree of competition between the various organisations. There is consequently a need to have a central organisation which represents the interests of the differing types and sizes of freight forwarders providing mutual benefit and protection.

The representation role is towards the Government and governmental institutions. Because of the fragmentation, it is difficult for the industry to influence government organisations because they are too small as individual companies. It is only by providing a

collective view representing a larger number of companies that some pressure can be applied to promote changes to be considered. The Governments and their institutions have similar difficulties in regulating and implementing changes within an industry which has large numbers of diverse companies. It would prefer to discuss trade facilitation issues with a central organisation which represents the views of the industry. An association therefore provides benefits to both freight forwarders and Government.

The promotion role is towards the customer. Because of the fragmentation, it is difficult for the customer to differentiate between companies and services on offer. He needs to have access to independent advice as to where he can go to buy specific services. A central organisation would be expected to maintain information on which forwarders provide what services to where, but generally not charges as these are for individual negotiation between the forwarder and his client. An association therefore provides benefits to both the freight forwarder and the customer.

The protection role is mainly in relation to the customer. He wishes to have confidence that the forwarder is responsible, financially sound, uses acceptable operating standards and that he is protected by liability insurance before entrusting him with their traffic. Membership of a Freight Forwarding Association should be able to provide some assurance of reliability and professionalism based on their entry standards. These normally only permit companies to become members if they meet certain criteria, such as adoption of standard trading conditions and adherence to a strict Code of Conduct. Many Associations provide training services issuing Certificates of Competency which ensure that members have suitably qualified staff to enable them to offer professional forwarding services. In addition to protecting the customer from unprofessional companies, it also provides some limited industry protection against new sub-standard operators entering the market and undercutting reliable organisations. An association therefore provides benefits to customers and the freight forwarder.

FIATA is the International Federation of Forwarder Associations. Membership of FIATA is usually achieved through the national Forwarding Association becoming a member of the international body. FIATA is represented in 141 countries and has more than 40,000 individual forwarding companies employing ten million people. Its role is similar to that of the national associations in terms of providing mutual benefit and protection through representation, promotion and protection in an international context. However, it also has additional benefits provided to full members. These include the right to use the FIATA documentation systems which are UN-aligned and internationally acceptable. For example, the FIATA Multimodal Bill of Lading is the most frequently used Bill of Lading for Letter of Credit purposes. Membership provides a listing in the international directory, the right to attend FIATA Institute and Working Group meetings and participation in the Annual World Congress. It therefore enables a national association to become involved on a world "stage" with access to new concepts, experience and contacts. Individual companies can obtain Associate Membership directly without formation of a national association but this type of membership has only limited rights. Only an Association provides benefits to forwarders by obtaining full membership of FIATA.

## 2.2 Current Situation in the Region

The development of Freight Forwarding Associations tends to be a reflection of the evolution of the industry in each Republic. In general, there has been greater development of freight forwarding in Central Asia than in the Caucasus region. The trade statistics for 1995 provides a key to the reasons:

Country	Exports	Imports
Armenia	\$290m	\$630m
Azerbaijan	\$485m	\$710m
Georgia	\$390m	\$710m
Kazakhstan	\$5000m	\$3800m
Kyrgyzstan	\$337m	\$473m
Tadjikistan	\$657m	\$628m
Turkmenistan	\$2000m	\$1500m
Uzbekistan	\$4000m	\$4100m

Freight forwarding is concerned with the import, export and transit of cargoes and therefore would be expected to be most active in those countries with the greatest amount of trade. Whilst there is some distortion due to large movements of oil and gas, which are not handled by forwarders, it would be expected that most forwarding activity would be in Kazakhstan and Uzbekistan and less in the Caucasus with lower international trade. This is in fact the situation, although there is increasing growth in forwarding generally as regulations are gradually relaxed and restrictions removed. The forwarding market situation is the subject of a separate report under the Trade Facilitation project. The current situation in each country is as follows:

### *Armenia*

There is no Freight Forwarding Association in existence. The principle reasons for this are the low volumes of international trade and restrictions on the activities of forwarders which have resulted in the formation of only a few forwarding companies. These tend to work in isolation or in competition to each other and there appears limited exchange of information between the organisations and Governmental departments.

The Armenian Chamber of Commerce and Industry appears well set up and offers a range of services to its 500 members, including trade facilitation information. They have established a representative group of traders in order to make recommendations to Government with a view to improving conditions for international trade and therefore is attempting to provide some of the services that a freight Forwarding Association would be expected to undertake.

As part of this project, the Ministry of Trade, Services and Tourism have commenced an initiative and meetings have been held with the few major forwarding companies. Interest was expressed in establishing such an association, although the membership is expected to be small in the initial stages. Simplified Articles of Association are being provided and formation will be developed by the Legal Framework project.

### *Azerbaijan*

There is currently no Freight Forwarding Association in existence. This has been mainly due to the low volumes of trade which has limited the number of forwarders. However, the development of the oil sector has resulted in a significant increase in both trade and the presence of western forwarders, either directly or through local agency arrangements.

As part of this project, the Ministry of Economics - Transport sector have commenced an initiative and contact has been established with certain key forwarders. Assistance has also been provided to obtain associate status for one of the major companies. Simplified Articles of Association are being provided and formation will be developed by the Legal Framework project.

There is a state funded Chamber of Commerce but traders and forwarders indicated that it does not adequately represent their interests. It was stated that the Chamber was mainly interested in exhibitions and similar promotions. There is an Association of International Road Carriers of Azerbaijan (ABADA) which is a member of the International Road Transport Union (IRU), although it is not yet authorised to issue TIR carnets. However, although it has 20 members only one is operating internationally. It is 90% funded by the state and is not undertaking work which would be undertaken by a Freight Forwarding association.

### *Georgia*

There is currently no Freight Forwarding Association in existence. This is mainly due to the low volumes of international trade and therefore the limited forwarding activity. There are some indications that traffic levels are increasing and that the developments of oil activity using TRACECA route to Azerbaijan will have positive effects on Georgian trade.

As part of this project, the Ministry of Trade has commenced an initiative to establish an Association and contacted the main forwarders. It is not anticipated that the membership will be high in the initial stages and therefore some state or external funding may be required. Simplified Articles of Association have been supplied and formation will be developed by the Legal Framework project. This will include the submission of an application to FIATA.

The Georgian Chamber of Commerce and Industry is funded by its members and operates under a democratic structure. Membership is compulsory for all business registered in Georgia, although annual fees are modest. The Chamber provides a full range of services, including provision of Certificates of Origin, business advice and promotional activities. It

is not specifically representing the interests of forwarders and therefore is not a substitute for an Association.

### *Kazakhstan*

There is currently no Freight Forwarding Association in existence. This is despite an active freight forwarding sector consisting of both state and private companies, as well as the presence of many of the major international companies. The reasons for the lack of an Association appears to be mainly due to the fragmented nature of the industry and some regulatory concerns which affect the industry.

As part of the project, an initiative has been commenced by the Ministry of Transport and the major forwarders have been contacted. Initial discussions have taken place and an Association has now been registered. A draft articles of Association were supplied and are being modified to meet Kazak requirements. Assistance is also being provided with an application for membership to FIATA. Some of the forwarding companies already have obtained associate status. Formation will continue through the Legal Framework project.

There is a Chamber of Commerce and Industry, which has exclusive rights to issue Certificates of Origin. It is a member of the International Chambers of Commerce, based in Paris. It also arranges trade exhibitions and provides re-insurance through a wholly owned subsidiary. The determining body is the Council elected by the membership with day-to-day management being with a nine person Presidium. There are regional offices in 19 Oblasts and about 200 companies in its membership.

There is also a Union of International Road Carriers of the Republic of Kazakhstan (Kazato). It was established in 1994 and became a member of the IRU in 1995. It commenced issuing TIR carnets in March 1996. Despite a potential membership of 100 companies recruitment has been constrained by difficulties in providing the deposits required by the IRU to secure TIR liabilities. Kazato provides information to its members and sells CMR consignment notes.

Neither of these two organisations fulfils the role of a FFA, although they do provide some limited benefits in terms of trade facilitation. There is therefore still a need to develop a Freight Forwarding Association.

### *Kyrgyzstan*

There is no Freight Forwarders Association in existence. This is mainly due to the low levels of trade and thus limited numbers of freight forwarders. There is no clear evidence of a significant increase in forwarders and little central information as to what forwarding companies are trading. The high percentage of international traffic being transported by rail, rather than road, means limited potential for private sector forwarders. It is possible that some forwarders may be operating using their Kazak organisations as a base, particularly as both countries are nominally in a Customs Union.

The Chamber of Commerce and Industry is a non-governmental organisation with voluntary membership. It provides a range of services, including issue of Certificates of Origin, information dissemination, trade missions, exhibitions and arbitration services.

There is a trade association in existence which represents the interests of road carriers. This is part of the Ministry of Transport and is not yet authorised to issue TIR carnets because it has not fulfilled the IRU requirements.

As part of the project, the Ministry of Transport has undertaken some limited market research to identify forwarders based in Bishkek. Simplified Articles of Association are to be provided but such an Association is clearly at an early development stage. This will be progressed through the Legal Framework project.

### *Tadjikistan*

There is no Freight Forwarders Association in existence. This is mainly due to the low levels of trade and other difficulties arising from the continuing civil conflict situation. The international trade is predominantly moved by rail presenting limited opportunities for private sector forwarding companies to develop. It is understood that there are less than five forwarders with a presence in Tadjikistan.

There is a Chamber of Commerce and Industry which is a non-governmental organisation with voluntary membership. However, it does have close links with government departments and provides a range of services including issuing of Certificates of Origin, information dissemination, trade missions and organisation of exhibitions. It also provides a service for checking quality and quantity of goods.

The Tadjik Association of International Transport Carriers has recently been formed. Initial work has been limited to market research. There appears limited potential to establish a Freight Forwarders Association in the short term until the market becomes more liberalised and traffic volumes reach former levels. The situation will be monitored and potential exists to assist the few private sector operators to obtain associate membership of FIATA as an initial phase. It is possible a Freight Forwarding Association could be developed from the Carriers Association as some of the key participants are also forwarders.

### *Turkmenistan*

There is no Freight Forwarders Association in existence. The main reasons for this appear to be the limited liberalisation of the market which would allow private sector forwarding to develop. International transport arrangements are still mainly retained within the state sector. One joint enterprise forwarder has obtained associate membership of FIATA. Despite this situation, documents have been prepared for the formation of a freight forwarders trade association, although there was no indication of when this might be taken forward.

The Turkmenistan Chamber of Commerce and Industry was re-organised in 1993. Membership is voluntary and there are currently approximately 200 members. The Chamber organises exhibitions, is engaged in marketing activities, validates Certificates of Origin and has arbitration and translation services. The Chamber is also a major declarant for Customs purposes and other declarants appear to follow the charging structure and rates set by the Chamber. It plans to become a member of the ICC at a future date.

There is a trade association representing the interests of the road carriers. It is a member of the IRU but is not authorised to issue TIR carnets. The association is operated by the state through the Ministry of Transport and has 14 members, some of whom are from the private sector. It does not sell CMR notes.

Given the size of trade and potential forwarding activity, there should be scope to develop a Freight Forwarding Association. The fact that some initial documents were prepared is evidence of interest in establishing this representative organisation. The initial proposed Articles will be examined and checked against international versions with a view to agreeing a format which would be capable of meeting FIATA requirements. The development of such an Association will be undertaken through the Legal framework project.

### *Uzbekistan*

Uzbekistan is the only one of the countries in the TRACECA corridor which has a Freight Forwarders Association. This was formed in 1996 based on work undertaken by Uzbveshtrans, part of the state transport organisation. Uzbekistan became a member of FIATA at the Annual World Congress in Caracas, Venezuela in 1996.

It has now been possible to obtain a copy of the Articles of Association and a list of the members. The membership is not widespread and representative of the industry as a whole and the Association was not well known at this stage. The forwarding market in Uzbekistan has not yet been fully liberalised and therefore membership may be restricted to Uzbek organisations only.

There is no Chamber of Commerce, though there was one during the time of the Soviet Union. There are plans to re-establish the Chamber but this is at an early stage.

There is a trade association which represents the interest of the road transporters. It is a member of the IRU but is not yet authorised to issue TIR carnets.

Since there is already an Association in existence, any future development by the Legal Framework project should be towards liberalisation of the international transport market such that there can be an increase in the numbers of forwarders, both national and foreign which can trade. A wider membership of the new association would be a natural result.



## 2.3 Formation of an Association

This section provides guidelines to establishing a Freight Forwarders Association from inception through to full formation and application to become a member of FIATA.

### *Sponsorship*

It is desirable to have a sponsor who will assist in the initial stages of development. During this project, those countries which have started the development process have generally used the Ministry of Transport. This is partly because the project recipient is the Ministry of Transport and partly because forwarding would logically be a responsibility of the Ministry of Transport. Other countries have used the Ministry of Trade or Economics Affairs. The priority is to have an individual within an organisation which can both mobilise the forwarding industry and gain official recognition at governmental level. Using Ministries also means that state funding may be provided in the form of a secretariat until members fees can provide independent funding.

It is not considered beneficial to develop an Association through one of the state forwarding or transport organisations, unless this is the only method available. This is because it is not independent and will be biased towards its own interests rather than that of its membership as a whole. In other countries use of this system has tended to result in the exclusion of private sector forwarders because of perceptions of lack of representation.

### *Membership*

It is necessary to identify all the freight forwarders with representation in the capital city. It is recommended that membership is only extended to other cities after an Association has been formed. This is purely for logistical and communication reasons. Any large forwarder outside the capital would normally be expected to have a representative office within the capital for administrative, if not trade reasons.

It is important that the Association is open to all forwarding organisations including the following:

- State Forwarding Organisations
- Private National Forwarding Companies
- International Freight Forwarding Companies

The state forwarding organisations are expected to remain a feature of the forwarding industry in the TRACECA region. This is partly due to the extensive use of the rail system and the dependence on a relatively small number of strategically important export crops, such as cotton. It is expected that Governments will retain an element of control over both rail and key export crops. The market penetration of state road companies would be expected to decline, particularly with regard to import movements where private and international companies can be as competitive. The presence of the state forwarders in an Association is important because of their market share and their governmental contacts.

They are often in a position to influence change and this could be used as a benefit to the industry as a whole.

The private sector is expected to grow significantly over the next ten years as the market is gradually liberalised. Many of the constraints which are holding back development of national forwarders are expected to either be removed or minimised. As indicated previously, freight forwarding tends to operate to its maximum efficiency in a deregulated market. The national companies are initially expected to be relatively small due to limited access to investment and working capital. An Association is particularly important because it is only on a collective basis that they have any influence or gain access to full information from government authorities. A minimum size of company would need to be agreed and it is important to check that they are actually international freight forwarders, rather than organisations who could forward if required, or their activities consist of non-standard forwarding by land, sea or air.

International forwarding companies should also be invited to join. Though this is a national Association, such companies provide work for nationals and bring finance into the local economy. More importantly, they bring an international dimension to the Association with their experience of situations in other countries. They can also provide assistance in resolving forwarding problems in other countries through their membership in national Associations in those countries. They may be able to provide training for national personnel either on an exchange basis or internally within their organisations. Without their presence, there is a danger that the Association will become inward looking and lack the ability to promote change based on international standards.

It is important that membership develops from the forwarding industry's own wish to come together to form an Association, rather than establishing it by decree. The membership should be voluntary with the benefits of participation being attractive enough to attract new members. It is considered that only through such voluntary commitment will the organisation be sustainable in the long term.

### *Inception Phase*

As indicated, the first task is for the potential sponsor to collect a list of all the freight forwarding organisations active in the capital city. It is recognised that this is not easy given the fragmentation of the industry. Initial discussions with forwarders revealed that they had limited knowledge as to who were their competitors. The use of corporate registrations is not reliable as most corporate declarations of scope of services are worded such that they can undertake a wide range of activities without resubmitting registration. There is also evidence of companies setting up to carry out freight forwarding but not actually starting. The priority is to identify a number of the key players, such as the state forwarding organisations, two or three national companies and one or two international companies.

Following identification, it is recommended that an invitation is issued to each of the companies to send a senior representative to a meeting to discuss the benefits of forming an Association and how it should be established. This may require some initial private

meetings with the key participants in order to ensure that there will be a general consensus in favour of an Association. At the meeting a Steering Committee should be formed tasked with setting up the Association. The committee should include the sponsor and representatives of the main organisations, though not be so large as to be difficult to convene.

The Inception Phase will progress the Association from its membership identification, through the discussion meeting to the presentation of the Articles of Association and corporate registration such that an entity exists to which members can join.

### *Legal Form*

The Freight Forwarders Association will need to have some legal form. This is for four main reasons:

- it will undertake financial transactions - collection of fees, payment of costs etc.
- it will have potential debt liability
- it will employ and pay a Secretariat
- it will be necessary in order to join FIATA

The form of the legal status will vary according to the particular legal requirements in each country. In Europe, for example, there are various types of incorporation or corporate registration. Each has the advantage that the liability of the members for the debts of the company is limited to the amount that they have agreed to subscribe. Thus, the members liability is "limited". Companies formed for trading purposes, i.e. - involved in financial transactions, can be either public or private limited companies. Public companies are quoted on the stock exchange and their shares can be bought and sold by the public. Private limited companies are not permitted to sell their shares to the public and are normally restricted to specific investors.

Private limited company status is particularly suited to non-profit making organisations such as trade associations. A special form of this type of company is known as company limited by guarantee. Such a company does not have a share capital and is unable to make any distribution of profits to members, unless the company is closed. The liability of the members is limited to the amount which they have guaranteed to subscribe and which is normally a nominal sum, such as \$100. This is the type of registration undertaken in the EU and used for Freight Forwarding Associations. A similar system is recommended for the countries in the TRACECA region in that the liability of the members is limited and that the funds cannot be distributed to members in the form of profit distribution, as it is intended to be a non-profit making rather than commercial organisation.

It is recommended that the Freight Forwarding Association has the following documents:

- Memorandum of Association
- Articles of Association
- Bye-laws

The first two are required by company law in Europe in respect of the formation of limited liability companies. It is anticipated that similar documents will be required to comply with the corporate law in each of the countries.

**The Memorandum of Association** indicates the purposes for which the company, or association, has been formed and states the limitation of the liability of its members. It is therefore similar to a “Terms of Reference”. It would normally be expected to contain the following:

- Name of the company(Association)
- Registered Office
- Objectives of the Association
- Details of the liability of members
- Details of subscribers

**The Articles of Association** indicate the more detailed regulations governing the internal organisation of the company (Association). It is therefore similar to a “set of rules”. They would normally be expected to contain the following:

- Details of annual and special meetings
- Voting powers
- Directors
- Proceedings at Board Meetings
- Accounting and Auditing

A more recent development has been to regulate only major matters in the Articles of Association and for the Articles to grant powers to the company’s, or association’s, controlling body to make rules for the detailed governance of the organisation in the form of bye-laws. This approach is much more flexible in that as changes are required to the organisational structure of the Freight Forwarders Association as it grows and develops, such changes can be achieved by a simple resolution of the governing body, rather than having to undertake the bureaucratic process of changing the Articles. Subject to the legal regulations in each country, it is recommended that a similar system is adopted in the formation of the Association in order to minimise the necessity to alter the legal documentation relating to its legal status as the association develops. The Bye-Laws are therefore similar to a set of “operational sub-rules” to the Articles of Association.

The above is a simplification of the legal requirements, indicating the situation in Europe. A model Memorandum of Association, Articles of Association and Bye-Laws based on the UK system were provided in the Progress Report November 1996 and are repeated, in

adjusted form, an Appendix 1, 2 and 3. However, it is recognised that individual countries will need to develop their own variants based on their national corporate law. It is recommended that legal assistance is supplied by the sponsor to develop the Articles of Association, as has been the case in Kazakhstan and Uzbekistan. Further advice will be available through the Legal Framework project which is better qualified to assist on legal issues. It is important the legal form complies with the requirements of FIATA, as international membership is one of the objectives. It is recommended that proposals are checked with FIATA to confirm acceptability.

### *Structure*

It is expected that the Association will be owned and run by its members on a non-profit making basis for the mutual benefit and protection of its members but that the day to day organisation be delegated to a permanent paid professional secretariat, headed by a Director General. No member of this permanent staff should be permitted to be a member of the Association, thus avoiding situations of conflict of interest or accusations of bias towards individual members interests. The Director General and other staff, as appropriate, should attend the meetings of the Association to provide information and advice but would not have voting rights.

The Director General would be responsible for the day to day administration of the Association. However, ultimate responsibility should remain with the members. This would normally be conducted through an Executive Board consisting of unpaid "Directors" who represent or may be members. Their responsibility would be ensure that the legal responsibilities were met, would monitor the accounts and appoint the Director General, and possibly other permanent staff. This could initially be undertaken by the sponsoring Ministry but should eventually become an independent internal function within the Association.

The policy of the Association should be determined by a National Council. The members of this council would be elected by the membership and would include members of the Executive Board. It is important that the council contains a cross-section of interests. In larger Associations this is achieved by the formation of a number of "divisions" based on geographical areas. Each division has a committee who appoint an agreed number of its members to represent that committee on the National Council. An alternative, which may be more practical in the early stages, would be to form functional groups, representatives of which would serve on the National Council. For example, such groups might cover:

- Air freight forwarders
- Rail freight forwarders
- Maritime freight forwarders
- Road freight forwarders
- Multimodal freight forwarders
- Customs Agents
- International Members

It is recognised that at the formation stage the secretariat would be small and that the National Council could consist of all the members. However, as it develops there will be a need for “representation” to avoid the council becoming too unwieldy to agree policy. It is at that stage that care is required to ensure that the membership of the Council is representative of all of the interests of the membership, rather than of a few large operators. Without this, there is a danger that membership will be reduced as the smaller operators feel that their opinions are considered unimportant. The purpose of a Freight Forwarders Association remains to be that of the mutual benefit and protection of all of its members.

Some of the key issues for the National Council will be determining issues such as Trading Conditions and Liability Insurance relating to forwarder risks when acting as an international operator. Organisations such as FIATA can provide assistance on some of these technical international issues, whereas domestic policy would be expected to be determined locally.

### *Funding*

In the initial stages there are expected to be funding constraints. It has been recommended that Ministries provide initial sponsorship for the formation process and establishment of the secretariat. This would cover the Association to the point whereby it becomes self-sufficient based on its own income generation.

The normal method would be to collect annual subscriptions from the members based on the number of their employees. There are alternative systems based on a fixed membership fee or annual turnover etc. but many of these schemes present payment problems for the smaller organisations. It is important that membership is both representative and financially available to all. One of the main advantages to the smaller forwarder is that the association is providing him with influence by being part of a larger organisation. It is important, therefore, that the agreed fee structure attracts the smaller operators.

The representation and influence through the National Council should not be based on the amount of fees paid by individual members.

### *Representation*

For a Freight Forwarding Association to be an effective body on behalf of its members it must quickly establish representation with external organisations. This should be either in the form of individual contacts or membership of other Committees and Councils (or having observer status). Contacts should be established with the following Ministries:

- Ministry of Transport
- Ministry of Trade
- Ministry of Finance
- State Customs Authority
- Ministry of External and Foreign Relations

All these Ministries have interests in trade facilitation and can be of assistance to or have information which requires dissemination to freight forwarders.

Membership of the following trade organisations should also be encouraged, either as full members or with observer status:

- Chamber of Commerce
- International Road Transport Associations
- Customs Consultative Councils

It is recommended that all national Freight Forwarding Associations apply for full membership of FIATA to obtain international recognition and access to the benefits that that organisation can bring to national members. Encouragement should also be given by the national Freight Forwarding Association towards gaining associate membership of FIATA for its larger national members.

As part of an implementation programme, a programme of visits and seminars is being arranged with FIATA under this project. These will consist of meetings between forwarders, the Ministry of Transport, project experts and the President of FIATA.

### 3. CUSTOMS CONSULTATIVE COUNCILS

The present Customs systems have evolved from the old Soviet Customs systems, which were designed based on requirements of a command economy. Its primary roles were to generate income from imports and exports through collection of duties and to prohibit the import or export of restricted or prohibited goods. This is the standard role of most Customs organisations world-wide. However, much emphasis was placed on control and Customs were able to act in the authoritarian style to meet this demand. Though the overall role has not altered significantly, the environment within which they are required to perform and the operational emphasis has changed.

Within a market economy, there is a gradual change towards an environment where governmental organisations such as Customs are a “service provider”. They are still providing their traditional role to the Government but now also a new responsibility towards the importers/exporters or their agents to expedite and encourage trade. These traders or freight forwarders become “customers” and therefore Customs will be required to become more “customer-orientated”. In the western economies, there has already been a significant change of emphasis whereby Customs and traders/forwarders work in partnership on the basis of mutual trust and improvements in trade facilitation.

It is recognised that the acceptance of this new concept will be difficult to achieve in the TRACECA region, given the historical situation. The Customs are a relatively new organisation, less than 5 years, and unfortunately currently lack the public respect seen in western countries where national Customs have existed for many hundreds of years. Traders and forwarders are also treated with suspicion, especially by Customs, because of incidences of duty evasion and handling of prohibited goods and some lack of understanding as to their perspectives. There is therefore not a partnership situation. Methods need to be developed which will establish contact between the Customs and trade so as to be able to provide this trust, based on mutual and national interests. The Customs Consultative Councils are a mechanism for creating such an interface between the organisations involved in international trading.

#### 3.1 Benefits of Formation

The benefits that can be obtained from the formation of a Customs Consultative Council can apply to all those organisations who seek to be involved in the consultation process.

##### *Customs*

The Customs are operating in a changing environment where old attitudes and procedures are being exchanged for new modern ones, often based on western methods. Such changes can create an internal atmosphere of instability and uncertainty which can result in external inflexibility. However, it also offers the Customs a positive role in the development of national trade and how they undertake their work in the future.

Customs are still facing increasing pressure to change at a pace equal to that of the business environment. The demands for faster clearance at ports and airports, less border



controls and paperwork all of which must be balanced against the legal requirements and a range of responsibilities that fall upon the Customs administration and the resources available to it. These changes will require careful planning.

In order to plan effectively, it is important to understand not only one's own viewpoint but that of the recipient. In this case, the Customs have two recipients - the Government and the trade. The linkage between the Customs and the Government is well established and is based on the relevant Customs Codes. However, generally Customs have some degree of flexibility as to how they implement their statutory duties. This is where there are significant benefits in establishing a link with the other recipient, trade organisations such as importers/exporters or their freight forwarders. Through a consultation process Customs can have the benefit of the trade viewpoint to assist them in consideration of adoption of new documents and procedures prior to actual implementation. It is important to note that the Council only consults. It does not make decisions which force any of the participants to act. It is therefore, in essence, a pressure group towards efficient Customs services but has no power to force change. This will still remain the responsibility of Customs.

In addition to the benefits of prior consultation to change, thus answering the question of "what if?", the Council can also be used to advise on proposed changes "we intend to....what is your reaction?" or publication of alterations "we will...". This helps in avoiding situations where Customs have implemented new regulations or procedures which have proved unworkable and had to be retracted or modified because the full implications had not been assessed. Such situations result in a loss of confidence in the Customs service.

The Customs are often required to implement changes in response to dictates from other governmental departments, possibly to raise revenue or protect local industry. This often creates problems for Customs in knowing how to enforce the requirements and to which trade cannot respond immediately or has no notification of the proposed changes. Such issues can be discussed amongst the affected parties to agree a regime in advance of implementation.

### *Traders and Forwarders*

Importers/exporters and freight forwarders through their respective associations hope to influence decisions to the benefit of trade facilitation. These are the organisations responsible for the transportation of goods, not solely within the national boundaries, and who have practical experience of national trade facilitation problems. They often have more knowledge on the situations at individual borders than the central Customs organisations. This expertise can be used in a positive way to mutual benefit.

The traders and forwarders will naturally tend to use the consultation process to complain and promote an easing of restrictions and harmonisation and modernisation of documentation and procedures. Membership of the Council would be by trade association, rather than by individual companies. Thus, the consultation has the benefit of the "trade view" rather than potential complaints regarding individual cases. However, such pressure

should not be regarded as solely negative and it can be used positively to mutually develop changes which not only benefit the traders but those tasked with the responsibility for implementing the regulations.

### *Ministries*

The council can be a useful method by which Ministries can gain an appreciation of their national trade and trade facilitation environment. This is particularly difficult to achieve and discussions with Ministries of Trade often revealed a significant gap in knowledge between “trade administrators” and those actually undertaking the trading or conveyance of international traffic. More active participation by Ministries can lead to improved understanding through consultation to benefit national trading interests.

The benefits of consultation are therefore two fold. They allow the trade to voice its opinion as to forward plans of the Customs, as well as having a direct say in the overall objective of projected policy actions and in operational difficulties experienced. Equally the Customs will not be seen as acting in isolation. Consultation allows progress to be made in the application of policy in a spirit of co-operation, thereby assisting in obtaining compliance with the regulations revenue and protecting borders.

## **3.2 Current situation in the Region**

There are no Customs Consultative Councils in existence in any of the countries, nor any evidence of plans to establish them. It is clear that the changes towards a new environment based on mutual trust and consultation are slow to develop and be recognised. This is not surprising given the historical background and the relatively early stage of development of both national Customs and the forwarding industry.

However as part of the project, discussions were held with senior executives within the Customs organisations to obtain their reaction to the concept of consultation and a Consultative Council. In general, there was a positive response to the idea. The fact that such a Council would be led by Customs appeared to satisfy concerns that the organisation was there to force change on them. None of the Customs interviewed were totally against the proposal.

Discussions with the trade and forwarding agents were also cautious. They were concerned as to whether organisations such as Customs would be prepared to engage in a consultation process given their authoritarian role. Despite this, they were in favour of such Councils if they could be formed and the participants approached it in a positive manner.

The research confirmed that there is a need for such Consultative Councils and that, with an understanding of the role, both Customs and the trade would be prepared to participate but that actual formation would be expected to be difficult to achieve. This would suggest that they are unlikely to be widely established in the short term but will gradually evolve from the changes towards a market economy.

### 3.3 Formation of an Association

This section provides guidelines to establishing a Customs Consultative Council through to its full formation:

#### *Sponsorship*

It is desirable to have a sponsor who will assist in the initial stages of development and promotion. This should be the Customs, as their role and active participation is critical to the success of the consultation process. It will be difficult to attract the other organisations to participate unless the invitations are provided by them.

An alternative would be the Ministry of Trade because of their interest in trade facilitation, but without Customs support their chances of forming a Council will be impossible.

#### *Membership*

Membership should be open to any organisation with specific interests in trade facilitation and the work of the Customs. This should be restricted to Ministries and Trade Associations and not include corporate membership. Potential members would be as follows:

- Ministry of Trade
- Ministry of Transport
- Ministry of the Economy
- Chamber of Commerce
- Freight Forwarders Association
- International Road Transport Association
- other major trade association

An example of the membership criteria in Europe relating to trade associations is as follows:

A trade body must be a national organisation with a primary interest in Customs control over the import and export of goods.

- have no other available and effective channel of consultation and
- represent a wide range of members within its sector

Where more than one body can legitimately claim to represent a particular sector then the Council expects bodies concerned to make arrangements for single representations which are acceptable to them all.

### *Inception Phase*

The first task is to reach agreement within the Customs Authority as to the potential benefits of consultation in terms of their work and promoting international trade. Assuming that such agreement is reached, a letter of invitation should be issued to potential members to meet to discuss the formation of a Council.

This meeting needs to discuss and agree a Memorandum of Association and the formation of a small Steering Committee, who will arrange periodic meetings and circulate information to members.

### *Legal Form*

A Customs Consultative Council does not:

- undertake financial transactions
- have a debt liability
- employ personnel

It is recommended that the Council has a Memorandum of Association which indicates the purposes for which the Council has been formed, a "Terms of Reference". This provides a focus and can be used later to avoid being drawn into consultation on non-related issues.

The Memorandum can be relatively short and does not require to be prepared in legal format. For example, the Terms of Reference for the Council in the United Kingdom are as follows:

- "to exchange views about Customs procedures and documentation relating to the entry and clearance of goods, in particular about general changes which Customs propose to make in such procedures documentation: and
- to consider and discuss representations by the member organisations relating to the entry and clearance of goods.

Customs policy is to support the liberalisation of trade to improve the countries international competitiveness, consistent with maintaining effective oversight of frontier goods."

### *Proceedings*

It is recommended that the Council meet on a quarterly basis. This should be on a formalised basis with a Chairman, preferably the Head of Customs or his deputy, and a secretary to record the proceedings. This can be supplemented with the use of small sub-groups for the in-depth technical issues, consisting of members with a genuine interest on the subject set up on an ad-hoc basis (non formal) and disbanded when their objective has been achieved.

The Council could also form a voluntary panel to check new public notices before they are issued.

Members should be advised of developments through Council Information Papers consisting of Minutes of Meetings and ad-hoc circulars. This enables members who were unable to attend meetings to receive copies of papers and minutes, thereby being able to comment.

# *Appendix*

# *1*

## *Model Memorandum of Association for a Freight Forwarders Trade Association*

1. The name of the Company (hereinafter referred to as “the Association”) is **[insert name of the association]**.
2. The registered office of the Association will be situated in **[insert name of country]**.
3. The objects for which the Association is established are:
  - a) To watch over and protect the general interests of persons, firms or bodies corporate or unincorporate, engaged, concerned or interested in the businesses of freight forwarding or customs agency or in the international transport of goods or freight by road, rail, sea, air, or any other means, and to provide the consideration and discussion of all questions affecting such interests.
  - b) To advise, assist and inform Members in respect of any questions of difficulties which may arise concerning freight forwarding, customs agency or the international transport of goods or freight and to give members advice, assistance and information in negotiation and dealing with any such matters generally and in particular those which fall within the jurisdiction of any International, National or Local Government body or departments on behalf of Members individually or collectively.
  - c) To monitor all present and proposed legislation, regulations, rules and agreements in the Republic of xxx and present and proposed international legislation, regulations, rules and agreements, affecting Members and others or affecting the handling, carriage, transport, distribution, warehousing, docking and other treatment of merchandise in the interests of Members and others, and to consider, originate and promote improvements in the laws and other regulations affecting Members, and to consider alterations thereto and to oppose or support the same to effect improvements in administration and practice and for the purposes aforesaid to take such steps and proceedings as may be deemed expedient to give information, advice and assistance to Members in connection with the aforesaid objects.
  - d) To consider, originate and promote measures for the protection of Members. To give information, advice and so far as allowed by law, assistance to or to become a member of or to subscribe to and generally to co-operate with any other lawful association whether incorporated or not whose objects are all together or in part similar to those of this Association and to procure from and to communicate to any such association such information as may be likely to forward the objects of it and of this Association.
  - e) To prepare, edit, print, publish, issue, acquire and circulate books, papers, periodicals, gazettes, circulars, reports and all other documents relating to the objects of the Association.

- f) To examine, audit and report upon Members' accounts with public, national or other freight forwarding, customs agency or transport companies.
- g) To raise the standard of technical and general knowledge of Members and their employees and with a view thereto to assist technical and other schools and to provide for the delivery of lectures and the holding of classes, training courses, conferences and seminars, and to test by examination or otherwise the competence of such persons and to award certificates, diplomas and distinctions and to institute and establish scholarships, grants, rewards and other benefactions.
- h) To foster good industrial relations and in particular to negotiate on all matters relating to Members interests at a national or local level with the Trades Unions or Associations to which employees of Members belong and to promote the settlement of disputes by conciliation or arbitration and to assist in the formation, development and maintenance of boards or conciliation or arbitration.
- i) To provide for Members technical, financial, management and other services, advice and assistance of any description.
- j) To encourage the discovery of and to investigate and make known the nature and merits of inventions which may seem advantageous in the construction and use of vehicles, aircraft, ships or other means or transport, and to acquire any patents or licences relating to any of such inventions and to spend money in conducting research work, experiments and tests which may seem beneficial or otherwise conducive to the objects of the Association.
- k) To establish, subsidise, promote, amalgamate, co-operate or affiliate with, receive into union, become a member of, act as or appoint trustees, agents or delegates for control, manage, superintend, afford monetary assistance to or assist in any other manner any bodies, associations and institutions whether corporate or unincorporate with objects altogether or in part similar to those of the Association.
- l) To establish, undertake, superintend, administer and contribute to any charitable or benevolent institution or fund whose objects are to assist deserving persons who may be or have been engaged in the freight forwarding, customs agency or international transport industry or the dependants of such persons and to contribute towards or otherwise assist any other charitable or benevolent institutions or undertakings.
- m) To undertake and execute any charitable actions concept of trusts not known in civil law which may seem to the Association conducive to any of its objects and to collect, receive and hold funds and other property, voluntary contributions, subscriptions, gifts and legacies for the objects of the Association or any of them as the donors may direct.



- n) To establish, form and maintain a library and collection of models, designs, drawings and other articles of interest in connection with the development and improvement of all forms of freight forwarding, customs agency or transport agency or transport used for commercial purposes.
  - o) To provide facilities for social intercourse between the Members of the Association and their friends.
  - p) To purchase, take on lease or in exchange, hire or otherwise acquire any real and personal property and any rights or privileges necessary or convenient of the purposes of the Association and to construct, alter and maintain any buildings required for the purposes of the Association.
  - q) To collect and receive entrance fees and subscriptions and contributions of and to borrow or raise any money that may be required for the purposes of the Association and to secure the payment of money borrowed on such terms and on such security as may be deemed advisable.
  - r) To sell, improve, manage, develop, lease, mortgage, dispose of, turn to account, or otherwise deal with all or any part of the property of the Association.
  - s) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments.
  - t) To invest the moneys of the Association not immediately required for the purposes of the Association in or upon such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) and such consents (if any) as may for the time being be imposed or required by law and subject also as hereafter provided.
  - u) To do all such other lawful things as are incidental or conducive to the attainment of the above objects or any of them.
4. The income and property to the Association whencesoever derived shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association; and no portions thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, howsoever by way of profit, to the Members of the Association except upon the winding-up or dissolution of the Association. Provided that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Association, or to any Member of the Association, in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding six per cent per annum on money lent or reasonable and proper rent for premises demised or let by any Member to the Association, but so that no Member of the National Council or other Governing Body of the Association shall be appointed to any salaried office of the

Association, or any office of the Association paid by fees, and that no remuneration or other benefit in money or money of money's worth shall be given by the Association to any Member of such Council or Governing Body except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and property rent for premises demised or let to the Association; provided that the provision last aforesaid shall not apply to any payment to any company of which a Member of the National Council or other Governing Body may be a member or any other company in which such Member shall not hold more than one hundredth part of the capital, and such Member shall not be bound to account for any share of profits he may receive in respect of any such payment.

5. The liability of the Members is limited.
6. Every Member undertakes to contribute to the assets of the Association in the event of its being wound up while he is a Member or within one year afterwards for payment of the debts and liabilities of the Association contracted before he ceases to be a Member, and of the costs, charges and expenses of winding-up and for the adjustment of the rights of the contributions amongst themselves, such amount as may be required, not exceeding [state nominal sum].

We, the several persons, whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

#### **NAMES, ADDRESSES AND DESCRIPTION OF SUBSCRIBERS**

---

Dated the [insert date]

Witness to the above signatures:

**[Insert name and address of witness - probably a solicitor]**

# *Appendix*

# 2

## *Model Articles of Association for a Freight Forwarding Trade Association*

## PRELIMINARY

1. These Articles shall be construed with reference to the provisions of the **[quote legislation referring to the legal form of the association current in the country where the association is to be established]**, and terms in these Articles shall be taken as having the same respective meanings as they have when used in those Acts.

2. In these Articles, unless there is something in the subject or context inconsistent therewith:

“the Act” means the **[quote relevant companies etc legislation]**

“the Articles” means these Articles of Association or any other articles of association of the Association from time to time in force;

“the Association” means the above-named Association;

“the Bye-laws” means the Bye-laws of the National Council for the time being in force;

“the Director General” means the Director General of the Association for the time being holding office pursuant to Article 23;

“Committee” means any committee constituted pursuant to the Bye-laws which represents a section of the Participants determined, inter alia, according to their geographical location (excluding any committee which represents Participants nationally);

“the Office” means the registered office for the time being of the Association;

“the President” means the President of the Association for the time being holding office pursuant to Article 28;

“the Secretary” means the Secretary of the Association for the time being holding office pursuant to Article 66;

“the Seal” means the common seal of the Association;

“in Writing” and “written” include printing, lithography, typewriting and any other modes of representing or reproducing words in a visible form.

Words importing the singular number only include the plural number and vice versa.

Words importing persons include corporations.

3. The Association is established for the purposes expressed in the Memorandum of Association.

4. The Office shall be at such place in [insert time of country] as the National Executive Board shall from time to time appoint.

## MEMBERS

5. The number of members of the Association is declared to be unlimited.
6. Membership of the Association shall be open to any company, firm or person who or which operates as freight forwarder as a customs agent or which operates commercial road transport internationally or uses any form of transport for freight internationally and shall entitle the member to all services of the Association and to receive notes of and to attend and vote at General Meetings of the Association.
7. In addition the National Council shall have power to admit to certain of the privileges of the Association additional classes of members whose rights shall be prescribed by By-laws made by the National Council. Save as determined as aforesaid from time to time by the National Council such other classes of members shall not be entitled to any of the rights or privileges or subject to any of the obligations or liabilities of membership and the expression "Member" used in these Articles shall save where the context so requires exclude such other classes of members. The expression "Participant" used in these Articles shall include all the Members and all such other classes of members for the time being.
8.
  - (a) Any body corporate, which is a Member, may from time to time appoint one or more of its directors or persons in its permanent employ at the time of such appointment and engaged in the management or in assisting in the management of its business or any branch thereof to act as its representative and may from time to time remove any such representative. Any such appointment or removal shall be in writing sent to the Office of the Association and shall take effect as from the time of the receipt thereof. Every such representative may as between himself and the Association exercise the rights and privileges of the Member appointing him (including the right of voting at General Meetings of the Association and appointing proxies but not to receive notices which shall continue to be given to the Member in accordance with the Articles) so long as he shall continue to represent such Member as aforesaid. Provided that only one representative of any Member shall be entitled to attend and vote on behalf of such Member at any one time and that if a vote shall be tendered or sought to be tendered on behalf of a corporation by some proxy or representative as well as by a representative appointed under this Article or (on a poll) by a proxy appointed by a representative appointed under this Article the vote of such latter mentioned representative or proxy shall be accepted to the exclusion of any other vote.
  - b) A body unincorporate including partners qualified to be admitted to membership shall nominate an individual who shall be admitted to membership on its behalf and as representing it. Such nominee shall at the request in writing of the nominating body be removed from membership and another nominee appointed in his place.

All voting powers under these Articles shall be exercisable by the nominee so from time to time be that of the nominating body. Save as aforesaid the nominating body shall be reckoned as a Member for the purposes of these Articles where the context admits.

9. The accidental omission to give notice to or the non-receipt of such notice by any Participant shall not be invalidate any resolution passed or any proceeding at any General Meeting.
10. The National Executive Board may, if he thinks fit, require the payment of an entrance fee from any person becoming a Participant (including any such person registering a branch of the Association in accordance with Bye-laws) and may in its discretion from time to time discontinue or reimpose such entrance fees, and any such entrance fees shall be of such amounts as the National Executive Board shall from time fix, and may be of varying amounts at the discretion of the National Executive Board and shall be payable on the day on which the applicant becomes a Participant.
11. Every Participant shall pay such periodical subscription to the Association as may be determined from time to time by time by the National Executive Board. Subject to Article each Participant's first subscription and each subsequent subscription shall be paid on such dates as the National Executive Board shall require. The National Executive Board may be in its discretion reduce or remit the subscription or the arrears of the subscription of any Participant.
12. Any person, firm or corporation who desires to be admitted as a Participant of the Association must sign and deliver or cause to be signed and delivered to the Association an application for admission framed in such terms as the National Executive Board shall require. The National Executive Board shall have full discretion to admit or on assigning a reason to refuse to admit any candidates for membership.
13. The rights of any Participant shall not (except as provided by Article 8(b)) be transferable and shall cease:
  - a) on the death of such Participant, or in the case of a body corporate under an effective resolution being passed or order made for liquidation or upon its ceasing without any liquidation to have a legal existence, or in the case of a body unincorporate upon its winding up or dissolution;
  - b) on the resignation of such Participant as provided in Article 14;
  - c) on notice in writing given at any time by the Association (following consultation where appropriate Committee), requiring such Participant to withdraw from the Association, pursuant to a resolution of the National Executive Board who shall be at liberty to pass such resolution and to cause such notice to be given to any Participant (following such consultation as aforesaid). Any such resolution shall be final and binding;

- d) if the Participant's subscription shall be in arrear and unpaid for three months after the same shall have become due and a resolution for the removal of such Participant shall have been passed by a Committee representing the geographical area in which such Participant has a registered address or its principal place of business. Any participant in respect of whom any such resolution is passed shall *ipso facto* and immediately cease to be a Participant and shall not be entitled to claim a return of any money paid by such Participant to the Association by way of subscription, call or donation.
14. a) Any Participant wishing to resign shall give notice thereof in writing to the Secretary by sending the same by pre-paid post to any office of the Association at least one month prior to the date of renewal of subscription.
- b) In the absence of proper notice under 14(a) above, the subscription for the ensuing year shall be payable in full.
15. Every participant shall advise the Secretary in writing of such details as the National Executive Board may reasonably require and shall, if required by the National Executive Board, adduce such evidence as it may reasonably require of the correctness or accuracy of such details.

## NATIONAL COUNCIL

16. The National Council shall have power to determine the policy of the Association and the areas and aspects of the Association's objects in which the Association shall from time to time operate and shall in addition to the exercise of the powers and functions specifically conferred upon it by these Articles and the Bye-laws supervise in a consultative capacity only the operation of the National Executive Board provided that the day to day management and administration of the Association shall be carried out by the National Executive Board.
17. The National Council may at any time or times as its discretion appoint to its body persons of eminence (in these Articles called "additional Members") who need not be Members of the Association and who by their knowledge or capabilities should, in the opinion of the National Council, be able to make valuable contributions to the work and objects of the Association, but any such person so appointed shall have no voting power and may at any time be removed from membership of the National Council.
18. Every Member of the National Council other than a Member appointed under Article 17 must be a Member of the Association or a representative or nominee (duly appointed under Article 8(a) or Article 8(b) respectively) of a Member of the Association.
19. Without prejudice to its general powers, the National Council may by resolution ("Bye-law Resolution") from time to time, and its shall be its duty as circumstances shall require to, make, vary and repeal Bye-laws relating to the matters provided by these Articles to be dealt with by Bye-laws and such other affairs of the Association, its officers and servants

and the National Council's own structure, composition and manner of conducting business which can conveniently and appropriately be dealt with in such manner, provided that any such Bye-law Resolution shall have been passed by a majority of the Members present and voting at a meeting of the National Council in respect of which seven days' notice shall have been given of the intention to propose by the Bye-law Resolution to all Members of the National Council entitled to attend and vote, and PROVIDED ALWAYS that the Bye-laws shall not in any affect, vary or alter the provisions of these Articles and if there is any inconsistency between the provisions of the Bye-laws and the provisions of these Articles, the provisions of these Articles shall prevail.

### **THE NATIONAL EXECUTIVE BOARD**

20. Subject to the provisions of the Act, the Association's Memorandum of Association, these Articles and the Bye-laws and to any direction given by special resolution of the Association in General Meeting, the general management of the affairs of the Association shall be entrusted to the National Executive Board. No alteration of the Memorandum or of these Articles or of the Bye-laws and no direction as aforesaid shall invalidate any prior act of the National Executive Board which would have been valid if that alteration had not been made or that direction had not been given.
21. Every Member of the National Executive Board must be a Member of the Association or a representative or nominee (duly appointed under Article 8(a) or Article 8(b) respectively) of a Member of the Association.
22. The National Council shall have the power to make Bye-laws under which it may (subject to Article 21) directly appoint Members of the National Executive Board and/or otherwise regulate the appointment of Members of the National Executive Board and, in addition, regulate the number of such Members (subject to there being a minimum of 4 members of the National Executive Board), the term of membership that may be served by Members of the National Executive Board and their eligibility for re-election upon the expiry of such term. In addition, and without prejudice to the right of Members to remove a director pursuant to the provisions of the Act, the National Council shall have the power to pass Bye-laws governing the removal of Members of the National Executive Board.
23. The National Executive Board shall make arrangements for the conduct of the executive, secretarial and other administrative acts and work of the Association as it shall from time to time consider desirable. The National Executive Board shall appoint a Director General and such officers as it may think fit to act under the direction of the National Executive Board and such Boards and Committees to whom the National Board may from time to time delegate any of its powers. The National Executive Board or the appropriate Board or Committee thereof shall assign to each officer so appointed such duties as may deem proper, and may from time to time divide or sub-divide the duties of any officer or conjoin or combine the duties of two or more officers in such manner as it may consider desirable.



## DISQUALIFICATION AND REMOVAL OF MEMBERS OF THE NATIONAL COUNCIL OR THE NATIONAL EXECUTIVE BOARD

24. A member of the National Council or of the National Executive Board shall *ipso facto* vacate office:
- a) if by notice in writing to the National Executive Board he resigns his office;
  - b) if being a representative of a body corporate appointed under Article 8(a), or a nominee of a body unincorporate appointed under Article 8(b), he ceases to be such a representative or nominee (as the case may be) and is not, within one month after so ceasing admitted as a Member of the Association or a representative or nominee of another Member duly appointed under Article 8(a) or Article 8(b) respectively;
  - c) if he becomes bankrupt or makes any arrangement or composition with his creditors;
  - d) if he be found or becomes of unsound mind;
  - e) if he or the body corporate which he represents under Article 8(a) or the body unincorporate in respect of which he is a nominee under Article 8(b) ceases to have the rights of the Association;
  - f) if he is requested to resign by a resolution passed by a majority of not less than three-fourths of those present and voting at a meeting of the National Council;
  - g) if he ceases to hold office by reason of any disqualification order made under any appropriate legislation.
25. The Association may by ordinary resolution remove from office any Member of the National Executive Board or National Council before the expiration of his period of office.
26. Any Member of the National Council or National Executive Board ceasing to hold office by virtue of any provision of either of the last two preceding Articles (other than Sub-clauses (a) and (b) of the first of those Articles) shall not thereafter be eligible for office as a Member of the National Council or National Executive Board unless his appointment or nomination is approved or confirmed by the National Council.

## PROCEEDING OF NATIONAL EXECUTIVE BOARD AND THE NATIONAL COUNCIL

27. Except as provided by these Articles or the Bye-laws, the National Executive Board or the National Council as the case may be (in Articles 31, 33 and 34 called the “the body concerned”) may meet for the dispatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. Until otherwise determined one-fourth of the total members of the National Executive Board shall be a quorum. Except as otherwise provided in these Articles questions arising at any meeting of the National Executive Board shall be determined by a majority of votes and voting shall be a show of hands. Each member present at a meeting of the National Executive Board shall on a show of hands have one vote.
28. a) At its last meeting before the Annual General Meeting in every year the National Executive Board shall in accordance with the Bye-laws elect from amongst individuals who are to serve as its Members immediately following that Annual General Meeting a President of the Association (unless the last President shall still be serving his term as President in accordance with this Article 28) who shall also be Chairman of the National Executive Board and such other office holders as National Council shall by Bye-law determine.
- b) The president so elected shall hold office until the conclusion of the third Annual General Meeting following his election, subject to his remaining a Member of the National Executive Board for that period. The persons so elected to any other office referred to in paragraph (a) hereof shall hold office until the conclusion of the second Annual General Meeting next following their election subject, in each case, to their remaining Members of the National Executive Board. The President and such other persons as aforesaid shall be eligible for re-election at the end of their respective terms of office.
- c) In the event of any person who shall have been duly elected to one of the offices mentioned in paragraph (a) hereof ceasing for any reason to hold such office, the National Executive Board shall have power to elect at any time any one of its Members not (subject as hereinafter provided) already holding one of such offices to hold the office which has so fallen vacant, and such Member shall thereupon hold such office until he shall retire at the same time as the person so ceasing to hold such office as aforesaid would otherwise have retired in accordance with paragraph (b) hereof.
29. a) The President for the time being shall be Chairman of the National Council.
- b) The Chairman at a meeting of the National Executive Board shall have a second or casting vote.
30. The Chairman of the National Executive Board or in his absence a Vice-Chairman if any shall take the Chair at every meeting of the National Executive Board. If at any meeting

neither the Chairman nor any Vice-Chairman shall be present within fifteen minutes after the time appointed for holding the same, the Members of the National Executive Board present shall choose one of their number of be Chairman of the meeting.

31. A meeting of the Members of the body concerned for the time being at which a quorum is present shall be competent to exercise all the authorities powers and discretions by or under the regulations of the Association for the time being vested in the body concerned generally.
32. The National Executive Board may delegate any of its powers to such Committee or Committee or Committees consisting of such Members of the National Executive Board and other Members of the Association as it thinks fit. Every Committee so formed shall in the exercise of the powers delegated to be governed by any regulations that may from time to time be made by the National Executive Board and it may (subject to any terms and conditions on which any such Committee is formed) dissolve or vary the constitution of any such Committee as it may think it.
33. The meetings and proceedings of every Committee of the body concerned shall be governed by the provisions of these Articles for regulating the meetings and proceedings of the body concerned so far as the same are applicable thereto and are not superseded by any regulations made by the National Executive Board under the last preceding Article.
34. All acts bona fide done by any meeting of the Members of the body concerned or of any Committee of the body concerned or by any person acting as a Member of the body concerned shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of any such member or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be and was a Member of the body concerned.

## **LOCAL ORGANISATION**

35. National Council shall make Bye-laws for the regulation of the local organisation of the Association.

## **UNION WITH OTHER ASSOCIATIONS**

36. The National Council may arrange for the union alliance or incorporation with the Association of any organisation with objects similar to any of the objects of the Association.

## **GENERAL MEETINGS**

37. A General Meeting of the Association shall be held every year and such meetings shall be called "Annual General Meetings". All other General Meetings of the Association shall be called "Extraordinary General Meetings".
38. Any Member wishing to bring forward any motion dealing with special business at an Annual General Meeting shall give to the Secretary at least sixty days' notice in writing of his intention so to do and such notice must be accompanied by a notice or notices in writing signed by not less than 5 other Members and indicating their intention to support the motion.
39. The National Council may whenever it thinks fit convene an Extraordinary General Meeting and an Extraordinary General Meeting shall also be convened on the requisition of not less than 10 Members of the Association stating the objects of the meeting and deposited at the Office of the Association.
40. Subject to the Provisions of the Act relating to Special Resolutions, twenty-one days notice at the least of an Annual General Meeting and fourteen days notice at the least of an Extraordinary General Meeting (exclusive in either case of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given) specifying the place, day and hour of meeting, and in the case of special business the general nature of such business shall be given in manner in Articles 73-77 to such persons as are under these Articles entitled to receive such notices from the Association.
41. The accidental omission to give any notice of a meeting to or the non-receipt of notice of a meeting by up to 5% of members entitled to receive such notice shall not invalidate any resolution passed at any such meeting.

## PROCEEDINGS AT GENERAL MEETINGS

42. All business shall be deemed special that is transacted at an Extraordinary Meeting and all that is transacted at an Annual General Meeting shall also be deemed special with the exception of the consideration of the accounts and of the Auditor, and the election of an Auditor and the fixing of his remuneration.
43. No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business; save as in these Articles otherwise provided [**insert appropriate number**] Members of whom [**insert appropriate number**] are present in person and the remainder either in person or by proxy shall be quorum.
44. The President or in his absence a Vice-Chairman if any shall take the chair at every General Meeting. If neither the President nor a Vice-Chairman be present within fifteen minutes after the time appointed for holding the meeting or if present, be unwilling to act, then the Members of the National Council present shall choose one of their number as Chairman of the meeting, and if no Member of the National Council be present or, if

present be unwilling to act, then the Members present shall choose one of their number to be Chairman of the meeting.

45. If within one half-hour from the time appointed for the holding of the General Meeting a quorum is not present, the meeting if convened upon a requisition of Members shall be dissolved and in any other case shall stand adjourned to the same day in the next week at the same time and place or such other place as the Chairman shall determine and if at such adjourned meeting a quorum is not present those Members who are present shall be a quorum and may transact the business for which the meeting was called.
46. The Chairman of a General Meeting at which a quorum is present may, with the consent of that meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. It shall not be necessary to give to Members notice of any adjourned meeting.
47. At all General Meetings a resolution put to the vote of the meeting shall be decided by a show of hands unless before or upon the declaration of the result of the show of hands a poll is demanded by the Chairman or by not less than [insert appropriate number] Members present in person and entitled to vote or by not less than one tenth of the Members present in person and entitled to vote, whichever shall impose the greater requirement, and unless a poll be so demanded a declaration by the Chairman that a resolution has been carried or carried by a particular majority, or lost, or not carried by a particular majority, shall be conclusive and an entry to that effect in the Minute Book of the Association shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.
48. If a poll is demanded as aforesaid it shall be taken in such manner and at such time and place as the Chairman of the meeting directs, and either at once or after an interval or adjournment or otherwise, and the result of such poll shall be deemed to be the resolution of the meeting. Provided that a poll demanded on the election of a Chairman of a meeting or on any question of adjournment shall be taken at the meeting and without adjournment.
49. The Chairman of the meeting shall on a show of hands or on a poll be entitled to a second or casting vote.
50. The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

## VOTES OF MEMBERS AT GENERAL MEETINGS

51. Subject to the provisions of these Articles on a show of hands and a poll at General Meetings every Member shall have one vote.

52. On a show of hands votes must be given personally, save that a corporation may vote by its representative appointed under Article 8(a) or by its representative duly authorised under the Act.
53. On a poll votes may be given either personally or by proxy.
54. The instrument appointing a proxy shall be in writing under the hand of an appointer of his attorney, or if the appointor is a corporation under the hand of its Secretary or some other officer duly authorised in that behalf or under its common seal. No person shall be appointed a proxy who is not a Member, but a representative of a Member appointed in accordance with Article 8(a) may be appointed a proxy.
55. The instrument appointing a proxy and the power of attorney (if any) under which it is signed shall be deposited at the Office not less than 48 hours before the time for holding the meeting as the case may be at which the person named in such instrument proposes to vote.
56. A vote given in accordance with the terms of any instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or revocation of the proxy or of the authority under which the proxy was executed provided that no intimation in writing of such death, insanity or revocation shall have been received at the Office before the commencement of the meeting or adjourned meeting at which the proxy is used.
57. An instrument appointing a proxy may be in the usual common form or any other form which the National Executive Board shall approve.

## MINUTES AND RETURNS

58. The National Council and the National Executive Board shall cause minutes to be duly entered in books provided for the purpose:
  - a) of all appointments of offices and Members of the National Council or the National Executive Board as the case may be;
  - b) of all orders and Bye-laws made by the National Council or the National Executive Board as the case may be or any Committee appointed by either firm;
  - c) of all resolutions and proceedings of General Meetings of the Association and of the National Council or the National Executive Board as the case may be and of every such Committee as aforesaid.
59. Any such minutes of any such meeting as aforesaid, if purported to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting of the same body shall be conclusive evidence without further proof of the matters stated in such matters.

60. The National Executive Board shall cause a proper register to be kept in accordance with the Act of all the Members of the Association.
61. The National Executive Board shall cause a proper register to be kept in accordance with the Act of all mortgages and charges specifically affecting property of the Association.
62. The National Executive Board shall cause to be kept at the Office a register containing the names, addresses and occupations of the members of the National Executive Board.

## THE SEAL

63. The National Executive Board shall provide for the safe custody of the Common Seal of the Association which shall be used only with the authority of the National Executive Board or of a Committee of the National Executive Board having power under the terms of its appointment to authorise the affixing of the seal.
64. Every instrument to which the Common Seal of the Association is affixed shall be signed by a Member of the National Board and counter-signed by the Secretary or by some other person appointed for the purpose by the National Executive Board.
65. Where the Act so permits, any instrument signed, with the authority of a resolution of the National Executive Board or of a committee of the National Executive Board, by one member of the National Executive Board and the Secretary or by two members of the National Executive Board and expressed to be executed by the Association as a deed shall have the same effect as if executed under the Common Seal, provided that no instrument which makes it clear on its face that it is intended by the persons making it to have effect as a deed shall be signed without the authority of the National Executive Board.

## SECRETARY

66. There shall be a Secretary of the Association who shall be appointed by the National Executive Board for such time, for such remuneration and upon such conditions as they may think fit, and any Secretary so appointed may be removed by them at any time. The National Executive Board may from time to time by resolution appoint an assistant Secretary, and any person so appointed may act in place of the Secretary if there be no Secretary or no Secretary capable of acting.

## FINANCE AND ACCOUNTS

67. The National Executive Board shall at all times cause to be kept proper books of accounts, showing:
  - a) all sums of money received and expended by the Association and the matters in respect of which receipt and expenditure takes place;
  - b) the assets and liabilities of the Association.

Proper books shall not be deemed to be kept if there are not kept such books of account as are necessary to give a true and fair view of the state of the Association's affairs and to explain its transactions.

The financial year of the association shall end on the [insert date] in each year, and at each Annual General Meeting the National Executive Board shall lay before the Members



an income and expenditure account for the last financial year together with a balance sheet made up as at the close of such financial year. Every such balance sheet shall be accompanied by a report of the National Executive Board as to the state of the affairs of the Association and a report of the Auditor and a copy of such balance sheet and reports shall be sent with the notice of the Annual General Meeting to all persons entitled to receive notices of General Meetings in the manner in which notices are hereinafter directed to be served.

68. It shall be the duty of the Secretary subject to the directions of the National Executive Board, to receive and give effectual discharges for all sums of money which may be due and payable to the Association, and to disburse all sums of money which may be due from or payable by the Association, and he shall be responsible to the National Executive Board for the proper keeping of the accounts.
69. The books of accounts shall be kept at the Office or at such other place or places as the National Executive Board think fit.

## AUDIT

70. Once at least in every year the accounts of the Association shall be examined and correctness of the income and expenditure account and balance sheet ascertained by one or more appropriately qualified accounts as the National Executive Board may from time to time determined.
71. Auditors shall be appointed and their duties regulated in accordance with the Act, the National Executive Board being treated as the Directors mentioned in the Act.
72. Every account of the National Executive Board when audited and approved by a General Meeting shall be conclusive except as regards any error discovered therein within three months next after the approval thereof. Whenever any such error shall be discovered within that period the account shall forthwith be corrected and thenceforth shall be conclusive.

## NOTICES

73. A notice given by the Association to any Participant either personally or by sending it through the post in a prepaid envelope or wrapper addressed to such Participant at his registered address or by advertisement.
74. Every Participant whose registered address is not in **[insert name of country]** but who shall from time to time notify in writing to the Association an address in **[insert name of country]** at which notices may be served upon him shall be entitled to have notices served upon him at such address but, save as aforesaid no Participant other than a Participant whose registered address is in **[insert name of country]** shall be entitled to receive any notice from the Association.

75. Any notice sent by post shall be deemed to have been served on the second day following that on which the envelope or wrapper containing the same is put into the post, and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put into the post office as a prepaid letter.
76. Any notice required to be given by the Association to the Participants, or any of them, and not expressly provided for by these Articles, shall be sufficiently given if given by advertisement.
77. Any notice required to be or which may be given by advertisement, shall be deemed to have been validly given if it is advertised once in the Association's journal.

## LEGAL PROCEEDINGS

78. In furtherance of the objects of the Association the National Executive Board may from time to time make such general arrangements as it may think fit for the provision of assistance, whether by providing monetary assistance or defraying legal expenses or otherwise, in enforcing or resisting any claim or action or proceedings, civil or criminal, or licensing or otherwise, for its Members, their officers, servants and agents or any section or group or class thereof. No legal proceedings by or against any Member shall be adopted by the Association unless approved by the National Council and then only on such conditions and subject to such guarantee as the National Council may think desirable.

## INDEMNITY

79. Subject to the provisions of the Act, every Member of the National Executive Board and every officer or servant of the Association shall be indemnified by the Association against, and it shall be the duty of the National Executive Board, out of the funds of the Association, to pay all costs, losses and expenses which any such Member of the National Executive Board, officer or servant may be authorised to incur or become liable to by reason of any contract entered into or act or thing done by him as such Member of the National Executive Board, officer or servant aforesaid, or in any way in the discharge of his duties including all necessary and reasonable travelling expenses.
80. Subject to the provisions of the Act, no Member of the National Executive Board, or officer of the Association, shall be liable for the acts, receipts neglects or defaults of any other Member of the National Executive Board, or officer, or for joining in any receipt or other act for conformity, or for any loss or expense happening to the Association through the insufficiency or deficiency of title to any property acquired by order of the National Executive Board for or on behalf of the Association, or for the insufficiency or deficiency of any security in or upon which any of the moneys of the Association shall be invested or for any loss or damage arising from the bankruptcy, insolvency or tortuous act of any person with whom any moneys, securities or effects shall be deposited or for any loss occasioned by any error of judgement or for any other loss, damage or misfortune

whatsoever which shall happen in the execution of or in relation to his duties unless the same shall happen through his own dishonesty or misconduct.

## WINDING UP

81. If the company is wound up, the liquidator may, with the sanction of an extraordinary resolution of the Company and any other sanction required by the **[quote name of relevant insolvency law]**, divide among the Participants in specie the whole or any part of the assets of the Company and shall, for that purpose, value any assets and determine how the division shall be carried out as between the Participants on a fair and equitable basis.

# *Appendix*

# 3

## *Model Byelaws for a Freight Forwarding Trade Association*

These Bye-laws were duly made by the National Council of the [insert first name of association] on [insert date] pursuant to the Articles of Association of the [insert name of association].

## 1. INTERPRETATION

- 1.1 These Bye-laws are in substitution for all and any previous Bye-laws of the Association which are hereby revoked.
- 1.2 Words and expressions defined in the Articles shall, unless the context otherwise requires, have the same respective meanings in these Bye-laws.
- 1.3 In these Bye-laws, unless the context otherwise requires:

“Annual General Meeting” means an annual general meeting of the Association held in accordance with the Act;

the “Articles” means the Articles of Association of the [insert name of Association], as adopted by special resolution passed on [insert date];

“Division” means a division of the membership of the Association as prescribed by these Bye-laws;

“Divisional Committee” means a committee representing a Division as constituted by these Bye-laws;

“Divisional Member” means a member of a Division;

“Year” means a period commencing upon the conclusion of an Annual General Meeting of the Association and terminating upon the conclusion of the next following Annual General Meeting of the Association;

- 1.4 These Bye-laws shall be read in conjunction with the Articles and, in the case of any inconsistency, the provisions of the Articles shall prevail.
- 1.5 References to numbered “Articles” are to be taken as references to those numbered Articles in the Articles.

## 2. DIVISIONAL COMMITTEES

- 2.1 Membership of the Association is divided into Divisions covering the geographical areas and bearing the names shown in Appendix 1.
- 2.2 Every Participant shall *ipso facto* be a member of the Division within which such Participant has a registered address or its principal place of business.
- 2.3 There are hereby constituted for the purpose of dealing with sectional and local matters for each Division, a Divisional Committee, such Divisional Committee to have the terms of reference set out in Appendix 2 and being made up of individuals in the manner provided below.

- 2.4 Every member of a Divisional Committee in respect of a particular Division must be an individual who is either a Divisional Member in respect of that Division in his own right, or a representative or nominee of a Divisional Member in respect of that Division duly appointed under Article 8(a) or Article 8(b) respectively.
- 2.5 Subject to Bye-law 2.4, an individual who is minuted as having joined a Divisional Committee at the commencement of the first meeting of that Divisional Committee in any Year shall be counted as a member of that Divisional Committee with effect from such commencement and shall remain as counted until the commencement of the first meeting of that Divisional Committee in the next following year (whether or not he attends any subsequent meeting of that Divisional Committee during the Year in which he joins that Divisional Committee), subject to the Articles and Bye-law 2.9.
- 2.6 Subject to Bye-law 2.4, an individual who is not minuted as having joined a Divisional Committee at its first meeting in any Year, but who is minuted as having joined at the commencement of any subsequent meeting of that Divisional Committee during that Year, shall be counted as a member of that Divisional Committee with effect from the commencement of that subsequent meeting and shall remain so counted until the commencement of the first meeting of the Divisional Committee in the next following Year (whether or not he attends any other subsequent meetings of the Divisional Committee during the Year in which he joins that Divisional Committee), subject to the Articles and Bye-law 2.9.
- 2.7 At each Divisional Committee meeting, the first item on the agenda of the meeting shall be the noting of the name of each individual present for the first time in that Year and the capacity in which he is attending the meeting.
- 2.8 Each Divisional Committee shall cause minutes to be kept, recording the members of the Divisional Committee present at each of its meetings, and recording all resolutions and proceedings of such meetings. Any such minutes, if purported to be signed by the Chairman of such meeting, or by the Chairman of the next meeting of the same Divisional Committee, shall be conclusive evidence without further proof of the matters stated in such minutes.
- 2.9 A member of a Divisional Committee shall *ipso facto* vacate office:
- 2.9.1 if by notice in writing to the Chairman of the committee he resigns the office;
  - 2.9.2 if, being a representative or nominee of a Member duly appointed under Article 8(a) or Article 8(b) respectively, he ceases to be such representative or nominee (as the case may be) and does not, within 1 month after so ceasing, become a Member of the Association or a representative or nominee duly appointed as aforesaid by another Member;
  - 2.9.3 if he becomes bankrupt or makes any arrangement or composition with his creditors;
  - 2.9.4 if he is found to be, or becomes, of unsound mind;
  - 2.9.5 if the Member whom he represents or in respect of whom he is a nominee under Article 8(a) or Article 8(b) respectively ceases to have the rights of a Member;
  - 2.9.6 if he accepts an appointment as a paid official of the Association.

- 2.10 In the event of any dispute arising as to the eligibility pursuant to these Bye-laws of any individual to sit on a Divisional Committee, the decision of the National Executive Board shall be final and conclusive.
- 2.11 Subject to the terms of reference set out in Appendix 2, each Divisional Committee shall be permitted the fullest measure of autonomy in local matters consistent with the maintenance of a national policy.
- 2.12 Each Divisional Committee shall elect annually from amongst its members a Chairman and not more than 2 Vice-Chairmen who shall hold office concurrently with the Divisional Committee and shall be eligible for re-election each year. The Chairman shall have a second or casting vote.
- 2.13 It shall be the duty of each Divisional Committee at its last meeting in each Year to elect such number of its members to membership of the National Council with effect from the first meeting of the National Council in the next following Year as are permitted by Bye-law 3.2. If an individual so nominated ceases to be eligible to sit on the National Council during the Year, it shall be the duty of the Divisional Committee which nominated him to nominate another individual to take his place at its next meeting (if any) during that Year.
- 2.14 Any Member wishing to bring forward a motion for consideration by the Divisional Committee of which he is a Member shall submit the motion, in writing, in the first instance to the Chairman of the committee.
- 2.15 Subject to the Articles and these Bye-laws, each Divisional Committee shall have power to make regulations for the conduct of its proceedings as it sees fit.

### 3. NATIONAL COUNCIL

- 3.1 The National Council shall have up to [insert maximum number] members:
- 3.1.1 [insert number] of whom shall be members of Divisional Committees nominated by Divisional Committees as provided in Bye-law 3.2; and
- 3.1.2 the members of the National Executive Board ex officio.

The members of the National Council in any given Year shall retire at the commencement of the first meeting of the National Council in the next following Year, but shall be eligible for re-appointment in accordance with these Bye-laws.

- 3.2 Each of the Divisional Committees shall be allocated a right to nominate such number of its members to serve as members of the National Council as is set out opposite its name in Appendix 3. Each Divisional Committee shall exercise its right(s) of nomination at its first meeting in each Year and if any individual so nominated ceases to be eligible to serve as a member of the National Council, the Divisional Committee which nominated him shall have the right to nominate another individual in his place.
- 3.3 Each Divisional Committee shall be permitted to nominate one or two (but not more) individuals who is/are member(s) of that Divisional Committee to attend any meeting of the National Council as deputies in the absence of, respectively, one or two (but not more) individuals nominated by such Divisional Committee to serve as members of the National Council pursuant to Bye-law 3.2.

Written notice of any such nomination specifying the full name, address and description of the individual(s) so nominated shall be given to the individual acting as secretary to the National Council as soon as practicable prior to the relevant meeting. Any individual attending a meeting of the National Council as a deputy as aforesaid shall exercise and discharge the duties, powers and functions of the member of the National Council for whom he shall be acting as deputy, and he shall, while so acting, be subject to all the obligations and disabilities to which a person acting as a member of the National Council is subject.

- 3.4 Subject to the Articles and these Bye-Laws, the National Council may meet for the despatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.
- 3.5 One-quarter of the total Members of the National Council shall constitute a quorum.
- 3.6 Except as otherwise provided in these Bye-laws, questions arising at any Meeting of the National Council shall be determined by a majority of votes and voting shall be conducted in such manner and by such means as the President shall determine.
- 3.7 On a resolution being proposed at a Meeting of the National Council, members of the National Council shall each have one vote but the president shall have a second or casting vote.
- 3.8 The President for the time being shall be Chairman of the National Council.
- 3.9 The Secretary shall, upon the request of the President, or of not less than one-tenth of the members of the National Council, convene a Meeting of the National Council by notice to the members of the National Council.
- 3.10 The Chairman of the National Council, or in his absence, a Vice-Chairman shall take the chair at every Meeting of the National Council. If, at any such Meeting, neither the Chairman nor any Vice-Chairman shall be present within 15 minutes after the time appointed for holding the same, the members of the National Council shall choose one of their number to be Chairman of such Meeting.
- 3.11 The National Council shall cause minutes to be kept of all resolutions and proceedings of the Meetings (including the making of any Bye-laws). Any such minutes, if purported to be signed by the Chairman of such Meeting, or by the Chairman of such Meeting, or by the Chairman of the next succeeding Meeting, shall be conclusive evidence without further proof of the matters stated in such minutes.

#### **4. NATIONAL EXECUTIVE BOARD**

- 4.1 The National Executive Board at any one time shall consist of not more than [enter number] individuals, each of whom shall either have been:
  - 4.1.1 elected by the National Council or
  - 4.1.2 co-opted by the National executive Board
- 4.2 The National Council shall at its last Meeting before the Annual General Meeting in each Year elect [enter number] individuals to serve as Members of the National Executive Board with effect from the conclusion of that Annual General Meeting. Subject to the Articles and these Bye-laws,



- such individuals shall remain in office until the conclusion of the second Annual General Meeting following their election.
- 4.3 The National Executive Board shall at its last meeting before the Annual General Meeting in each Year:
- 4.3.1 co-opt up to [insert number] individuals to serve as Members of the National Executive Board with effect from the conclusion of that Annual General Meeting. Subject to the Articles and these Bye-laws, such individuals shall remain in office until the conclusion of the second Annual General Meeting following their co-option; and
- 4.3.2 elect from amongst the individuals elected and co-opted to serve as Members of the National Executive Board for the next succeeding Year 2 Vice-Chairman and a Treasurer in addition to the President, as provided in Article 28.
- 4.4 The elected Members of the National Executive Board shall not normally serve for a term exceeding four consecutive years.
- 4.5 The National Executive Board for the time being shall be entitled at any time and from time to time during its term of office to co-opt individuals to membership of the National Executive Board to fill casual vacancies or otherwise provided that the total number of Members of the National Executive Board holding office at any one time by virtue of being elected or co-opted pursuant to these Bye-laws shall not exceed [insert number], and provided further that the Members of the National Executive Board (if any) co-opted under this Bye-law 4.5 shall automatically cease to hold such office upon completion of the Annual General Meeting next following their appointment.

## 5. ADDITIONAL CLASSES OF MEMBERS

- 5.1 The following additional classes of member of the Association are hereby prescribed.
- 5.1.1 NON-VOTING MEMBERS, which may be drawing from such categories of corporations, companies, firms, associations (whether incorporated or not), bodies and persons as the National Council may from time to time decide, and shall be entitled to such services of the Association as the National Council from time to time decides. Non-voting members shall have the right to receive notices of an to attend general meetings of the Association, but shall not be entitled to any vote thereat;
- 5.1.2 NATIONAL HONORARY MEMBERS, that is, persons who in the opinion of the National council, are eligible for that position. Honorary Members shall have the right to receive notices of and to attend general meetings of the Association, but shall not be entitled to any vote thereat;
- 5.1.3 DIVISIONAL HONORARY MEMBERS, that is persons who, in the opinion of a Divisional Committee, have given long and exceptional service to the Association at local level and who have subsequently retired from office. Divisional Honorary Members shall have the right to receive notices of an to attend local meetings within their Division, but not meetings of local Divisional Committees.

## 6. GENERAL

6.1 Members and other participants may advertise their participation in the work of the Association in the following manner:

6.1.1 A Member may reproduce on its stationery and letterheads the Association logo together with the words “Member of the [insert name of the association]”

6.1.2 Any other class of member may reproduce on its stationery and letterheads the Association logo together with the words “Associate of the [insert name of the association]”

The National Executive Board shall have power to withdraw the right to use the [insert name of association] name and logo as provided for in this Bye-law from any Participant where, in its opinion, continued uses by that Participant would be likely to reflect adversely on the Association for whatever reason.

Any member who knowingly contravenes this Bye-law may, on the recommendation of the appropriate Divisional Committee, be required to withdraw from membership of the Association pursuant to Article 13.

<b>Appendix 1</b>	List of divisions
<b>Appendix 2</b>	Terms of reference for Divisional Committee
<b>Appendix 3</b>	List setting out maximum number of representatives from Divisional Committees that may be nominated to serve on National Council.

