

**A Law to Amend the 1954 Maltese Carriage of Goods by Sea
Act**

**IMLI Legal drafting Project
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The Maltese law regulating carriage of goods by sea is a law which incorporates the Hague Rules,¹ which were adopted after the First World War, and which were drafted to cater for the needs of a maritime commerce which may be said to be substantially different to the requirements put forward by contemporary maritime trade.

Furthermore, Malta never became a party to the Brussels Convention, and only incorporated the text of the Convention into Maltese law, thereby giving it force of law.

The Hague Rules were eventually amended by two subsequent protocols: Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (“Visby Amendments”), which were sponsored by the Comité Maritime International in 1968 in Brussels and the Protocol Amending the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (SDR Protocol), which was also adopted in Brussels in 1979, and which eventually entered into force on the 14th of February 1984.

It is submitted that Malta is to consider the reasons behind these changes and take them into account thereby following suit.

Professor Reynolds² explains that since the inception of the enactment of carriage of goods by sea legislation (the U.S. Harter Act) and regulation, it is possible to discern a chasm between countries favouring cargo on the one hand and countries favouring carriers on the other. This division is said to be the reason why the regime of carriage of goods by sea has never found the uniformity which has been sought after by so many institutions and organisations including the CMI and more recently UNCITRAL. Reference has been made to an essay by professor Francis Reynolds, who explains therein that the relative uniformity in the regime of carriage of goods which was brought about by the Hague Rules is on the verge of breaking down, and that something is to be done imminently in order to safeguard the interests of all those involved in this ever growing trade.

¹ International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, adopted at Brussels August 25, 1924, and entered into force June 2, 1931.

² Reynolds Francis, The Rules Governing the Carriage of Goods by Sea, An Incipient Breakdown in Uniformity p 5.

It is due to this fragile state of affairs that it is submitted that Malta needs to revise its laws regulating carriage of goods by sea, and it is further pointed out that amending the present laws is a temporary measure. Temporary due to the reality that Malta has joined the European Union and this has significant legal implications. The E.U. commission has voiced its concern over the lack of a uniform regime governing carriage of goods into and within the E.U. and has made it clear that a road forward needs to be found in this regard. It has also recommended that one option could be the adoption of the UNCITRAL draft on carriage of goods. Whichever way the Commission decides, this shall determine the future of all Member States within the Union, and it is ultimately down to what type of instrument the Commission decides to adopt that shall determine how binding upon E.U. member States such a decision will be. Should the E.U. simply adopt a directive, then although Malta shall be bound to legislate in accordance with that Directive, every Member State shall have an amount of leeway within which to act, but should the E.U. adopt a Regulation then Member States shall have no option but to adopt such Regulation.

It is therefore submitted that Malta should presently amend, and therefore update its Legislation regulating carriage of goods by including the above mentioned Visby and SDR protocols.

The Visby protocol is to be 'read and interpreted together as one single instrument' with the Hague Rules, and served to introduce changes such as linking the package or unit limitation to the value of gold by means of the franc,³ and setting the limit of liability at either 10,000 francs per package or unit, or 30 francs per kilo of gross weight of the goods lost or damaged, whichever of these amounts is the higher. The SDR protocol in turn, replaced the above mentioned Poincaré Franc by the Special Drawing Right, as defined by the International Monetary Fund (IMF).⁴

More significantly, the Visby Protocol also importantly served to apply the package or unit limitation to containers by clarifying that unless the number of packages and units

³ Hague Visby Art 4 Para 5 a is to be read in conjunction with Para 5 d;

⁴ See www.internationalmonetaryfund.com

contained in the container are all specified in the bill of lading, then the whole container shall be considered as the package or unit.⁵

CHANGES EFFECTED TO MALTESE CARRIAGE OF GOODS BY SEA ACT IN LEGAL DRAFTING PROJECT:

The major change made in my dissertation project was to change the existing Schedule to the Carriage of Goods by Sea Act to incorporate the Visby and SDR protocols, so the Schedule now incorporates the amendments brought about by the said protocols.

This was seen as the cleanest and most straight forward way of presenting the changes to The Hague Rules without attempting to re invent the wheel. A wheel which has 'worked' notwithstanding the long standing carrier-cargo controversy, which it is opined shall continue to exist for a long number of years. Attempting to include an amendment Act which amends the Schedule to the Carriage of Goods Act was therefore ruled out, as it was deemed to be unnecessarily pedantic and confusing, hence the decision to replace the Schedule rather than an attempt to amend it.

It was necessary to eliminate from the protocols sections relating to 'parties to the convention' and 'contracting states' since they are not relevant to a schedule in a domestic law.

It was deemed necessary also to leave the reference to 'national currency' and not to change it to 'Maltese Lira' in virtue of the fact that in 2008 the national currency shall be changing to the Euro. The term national currency in a Maltese Law necessarily refers to the currency in use at the time. There shall be no need to revise the Act once the Euro enters into force.

It is further submitted that the conversion from the Special Drawing Right to the Maltese Lira is to be effected with reference to the daily rate as determined by the International Monetary Fund, and since Malta has been a member since the 11th of September 1968 there should be no equivocations as to such conversion and therefore it has not been deemed necessary to legislate accordingly.

⁵ Hague Visby Art 4 Para 5 (c)

It has been specified in the main legislation that “Court seized of the case” or any reference thereto in the Schedule is to be construed as a reference to the First Hall of the Civil Courts of Malta in its Contentious Jurisdiction.”, and it has also been specified that reference to laws are to be construed as references to the Laws of Malta.

The previous rule relating to the applicability of The Rules has been amended since it was deemed to be unnecessarily complicated, and therefore it has been simplified to state that the rules do not apply to carriage within the limits of Malta.

Ultimately it has been deemed necessary to delete the Articles in the Principal Act which operated to exonerate the carrier from the obligation to warrant seaworthiness and the previous section modifying the application of the rules in relation to bulk cargo. This has been done in order to avoid equivocation between the Act and the Schedule, and in order to avoid breaking down further the uniformity in the rules adopted by different countries with regards to carriage of goods by sea. Looking only at the amount of different regimes existing in those countries adopting The Hague Rules and their variations was one of the main reason for deleting the above mentioned Section 4 and Section 6 of the Principal Act. It is important to keep in mind, that of the countries who had adopted the Hague Rules, some of those adopted the Visby protocol, and some have not, and furthermore, of those that adopted the Visby protocol, some have adopted the SDR protocol and some have not which already gives us three different regimes taking only into consideration those countries governed by a variation of the Hague Rules. Further variations were brought about by countries such as Malta and until recently Greece, which created problems of conflict of law by enacting local laws reflecting The Hague Rules but not becoming parties to the convention. There is yet an other variation, where the Hague rules were neither ratified, nor enacted in local legislation, but they recognise a specific incorporation of the Hague Rules into bills of lading.

It is due to the above, that it is deemed important not to add to this varied and far from uniform state of affairs by varying or removing operative parts of the Hague Rules as amended by the Visby and SDR protocols, and to present a new law which is straightforward and easy to apply, even in a court of law.

A Bill Entitled

AN ACT to amend the Carriage of Goods by Sea Act, Act 140

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. (1) The short title of this Act is the Carriage of Goods by Sea (Amendment) Act, 2006, and this Act shall be read and construed as one with the Carriage of Goods by Sea Act, hereinafter referred to as “the principal Act”.

(2) The Act shall come into force on the 1st of April 2006, after having been duly published in the Government Gazette.

Amendment of
Article 2 of the
principal Act.

2. Article 2 of the principal Act shall be amended as follows:

a) there shall be inserted the following new Paragraph (a)

“a) In this Act "the Rules" means the rules relating to bills of lading, set out in the Schedule to this Act.”

b) Immediately following paragraph (a), there shall be inserted the following new Paragraph (b)

“b) In the Schedule to the Act, “Court seized of the case” or any

reference thereto shall mean the First Hall of the Civil Courts of Malta in its Contentious Jurisdiction.”

c) “c) In the Schedule “law of the Court seized of the case” shall mean the Laws of Malta.

3. Article 3 of the principal Act shall be substituted by the following:

“Notwithstanding any provisions to the contrary contained in the Commercial Code, the Rules shall not have effect, in relation to and in connection with the carriage of goods by sea from any port in Malta to any other port within the limits of Malta.”

Article 4 deleted.

4. Article 4 of the principal Act shall be deleted.

Article 6 deleted

5. Article 6 of the principal Act shall be deleted.

6. Article 5 of the principal Act shall be re-numbered as Article 4

7. Article 7 of the principal Act shall be re-numbered as Article 5

8. Article 8 of the principal Act shall be substituted by the following:

“The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before the 1st April 2006, nor to any bill of lading or similar document of title issued, whether before or after that day, in pursuance of any such contract as aforesaid.”

Replacement of
schedule of
principal Act

7. The schedule to the principal Act is to be deleted and replaced by the following schedule:

Schedule

Article I

In these Rules the following words are employed, with the meanings set out below:

(a) 'Carrier' includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) 'Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) 'Goods' includes goods, wares, merchandise, and articles of every kind whatsoever except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) 'Ship' means any vessel used for the carriage of goods by sea.

(e) 'Carriage of goods' covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

Article III

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

(a) Make the ship seaworthy;

(b) Properly man, equip and supply the ship;

(c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things:

(a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

(b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper.

(c) The apparent order and condition of the goods.

Provided that no carrier, master or agent of the carrier shall be bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b) and (c). However,

proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 7 the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period, may however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for

indemnity has settled the claim or has been served with process in the action against himself.

8. After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands be a 'shipped' bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, if it shows the particulars mentioned in paragraph 3 of Article III, shall for the purpose of this article be deemed to constitute a 'shipped' bill of lading.

9. Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect. A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship.

(b) Fire, unless caused by the actual fault or privity of the carrier.

(c) Perils, dangers and accidents of the sea or other navigable waters.

(d) Act of God.

(e) Act of war.

(f) Act of public enemies.

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process.

(h) Quarantine restrictions.

(i) Act or omission of the shipper or owner of the goods, his agent or representative.

(j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.

(k) Riots and civil commotions.

(l) Saving or attempting to save life or property at sea.

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.

(n) Insufficiency of packing.

(o) Insufficiency or inadequacy of marks.

(p) Latent defects not discoverable by due diligence.

(q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting there from.

5 (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged.

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into the national currency on the basis of the value of that currency on a date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-paragraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier has not consented with knowledge of their nature and character, may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article IV bis

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
2. If such an action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, a servant or agent of the carrier shall not be entitled to avail himself of the provisions of this article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article V

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under these Rules, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper. The provisions of these Rules shall not be applicable to charter parties, but if bills of lading are issued in the case of a ship under a charter party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any

agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

An agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement.

Article VII

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

Article VIII

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.