



IMO

INTERNATIONAL MARITIME LAW INSTITUTE

Established under the auspices of the International Maritime Organization

A specialized agency of the United Nations



**An Act to implement the 2009 United Nations Convention on Contracts for the
International Carriage of Goods Wholly or Partly by Sea**

(The Rotterdam Rules)

**A Legislation Drafting Project submitted in partial fulfillment of the requirements for
the award of the Degree of Master of Laws (LL.M.) at the IMO International Maritime
Law Institute**

Submitted By: Ann Marie Bugeja
Malta

Supervisor: Ms. Elda Belja

Academic Year 2009/2010

To my Parents and John
For Their Continuous and Unconditional Support

Acknowledgments

I would like to thank Ms. Elda Belja LL.M. (IMLI) for her patience and support.

Her knowledge and friendship were indispensable to this project.

Look at everything as though you are seeing it for the first time,
with eyes of a child,
fresh with wonder.

Joseph Cornell

Table of Contents

	<u>Page</u>
<i>Dedication</i>	<i>i</i>
<i>Acknowledgements</i>	<i>ii</i>
<i>Quote</i>	<i>iii</i>
<i>Table of Contents</i>	<i>iv</i>
Explanatory Note	1
1. What are the Rotterdam Rules?	1
2. How the Rotterdam Rules came to be - its predecessors	2
2.1. The Hague Rules	2
2.2. The Hague –Visby Rules	3
2.3. The Hamburg Rules	5
2.4. The Rotterdam Rules	7
2.4.1. Volume Contracts	9
2.4.2. Electronic Documents	9
2.4.3. Jurisdiction and Arbitration Clause	10
2.4.4. Limitation of Carrier’s Liability	11
2.4.5. Deck Cargo	11
3. Overview of the Rotterdam Rules	12
3.1. Chapter 1 – General Provisions	12

3.2. Chapter 2 – Scope of the Application	13
3.3. Chapter 3 – Electronic Communication	13
3.4. Chapter 4 – Obligations of the Carrier	14
3.5. Chapter 5 – Liability of the Carrier for Loss, Damage or Delay	14
3.6. Chapter 6 – Additional Provisions Relating to Particular Stages of Carriage	15
3.7. Chapter 7 – Obligations of the shipper to the Carrier	15
3.8. Chapter 8 – Transport Documents and Electronic Transport Records	16
3.9. Chapter 9 – Delivery of the Goods	17
3.10. Chapter 10 – Rights of the Controlling Party	19
3.11. Chapter 11 – Transfer of Rights	19
3.12. Chapter 12 – Limits of Liability	19
3.13. Chapter 13 – Time for Suit	20
3.14. Chapter 14 – Jurisdiction and Chapter 15 – Arbitration	20
3.15. Chapter 16 – Validity of Contractual Terms	21
3.16. Chapter 17 – Matters not Governed by this Convention	22
4. What is Malta’s current position?	22
4.1. Europe’s Position	23
4.2. Implementation into Maltese Law	24
4.3. Immediate Need	27
5. Conclusion	28

Act I of 2010, The Merchant Shipping (Amendment) Act

Act II of 2010, The Carriage of Goods by Sea (Amendment) Act

Chapter 234 of the Laws of Malta, The Merchant Shipping Act – as amended

Chapter 140 of the Laws of Malta, The Carriage of Goods by Sea Act – as amended

Bibliography

**An Act to implement the 2009 United Nations Convention on Contracts for
the International Carriage of Goods Wholly or Partly by Sea.**

(The Rotterdam Rules)

Explanatory Note

Despite the impression that one might obtain from the reported decisions, most cargo arrives safely at its destination. It is nevertheless inevitable that some portion of the cargo transported in international trade will be lost or damaged en route. The role of the legal system in this context is to allocate financial responsibility for their losses. In the process, it influences the actions of shippers, carriers, and other participants in a transaction. A carrier's decision concerning its appropriate level of care during carriage will be based at least in part on its potential liability. Shippers will be similarly influenced in deciding how carefully goods should be prepared for shipment and the extent to which they will insure goods. Insurers must decide the terms on which coverage will be offered, potential buyers of the cargo must determine the terms on which coverage will be offered, [...] the protection they require, and bankers financing a transaction must know the extent to which they can depend on a security interest in the goods. And all of these decisions will be based in part on the liability regime that allocates the risk of loss. If the law is uniform, all participants will know that their liability (or recovery) will be the same whenever a dispute is resolved.¹

1. What are the Rotterdam Rules?

Professor Sturley states that the “single word that best describes the philosophy of the Rotterdam Rules could be ‘pragmatic’”.² The long process which involved many of the industry representatives helped make the Rules practical. The idea behind these Rules was to update the current transport law that was rather out of date, as neither of the previous Rules

¹ Transport law for the 21st Century: an Introduction to the preparation, philosophy, and potential impact of the Rotterdam Rules’, Page 480, Para 3.

² Ibid., Page 477, Para 4.

attempted to regulate the container revolution, the door-to-door multimodal transport systems and electronic commerce and to make it fit for the 21st Century.

2. How the Rotterdam Rules came to be - its predecessors

2.1. The Hague Rules

The drafting of a set of rules by the Maritime Law Committee of the International Law Association, came to be in 1921 in The Hague. These Rules were eventually incorporated in an International Convention which was signed in Brussels on the 28th of August, 1924 by the major trading nations. The most important aspect which gave rise to the Hague Rules is, what was the liability of the carrier.

One will appreciate that the starting position was those situations where the ship-owner was responsible for all the damages. The carrier's liability was strict: he was totally responsible for any damage which occurs to the goods during the trip or voyage. Thus, if during the voyage, the goods on board the vessel were damaged, the carrier was held liable for the full value of the goods. There were three exceptions to this strict liability of the ship-owner, being:

1. Act of God;
2. Act of public enemies;
3. Act of war.

Even if the cause of the loss or damage fell within one of the above three exceptions, the carrier would still be liable if it could be proved that the carrier was negligent, and that, that negligence was the cause for the goods' loss and/or damage.

Subsequently, the move was towards a position where the ship-owner excluded his responsibility in toto, even where he was negligent. Against this background, the Hague Rules tried to put the pendulum somewhere in the middle by establishing certain rules saying that the carrier was still liable for damages in certain situations, that a clause in a bill of

lading which excludes totally or attempts to exclude the responsibility of the carrier is null and void,³ and this is the most important aspect of the Hague Rules.

The Hague Rules followed many principles pioneered by the American Harter Act, 1893, such as it voided any clause which sought to relieve the carrier from negligence in “proper loading, stowage, custody, care or proper delivery” of the goods. It also voided any clause purporting to reduce the obligation of the owner to exercise due diligence in regard to seaworthiness.

The objective of the Convention and of the Rules was twofold, namely:

1. Seeking to unify certain rules relating to bills of lading;
2. Establishing a minimum degree of protection for the cargo-owner.

Importantly, the Hague Rules also sought to protect the carrier/the ship-owner by including a limitation of liability clause: this meaning that even when the carrier is liable, his liability cannot exceed “so much” per unit or package. The way for the cargo-owner to avoid this limitation of liability is by insisting that the value of the goods is included in the bill of lading. Therefore, if the value of the goods is included in the bill of lading then the limitation of liability does not apply.

2.2. The Hague-Visby Rules

Notwithstanding that the majority of the world’s shipping nations had eventually adopted the Hague Rules, time and changes in the passage of international trade clearly demanded a need for modification. Over the years there was an element of dissatisfaction with the Hague Rules. It was felt that the nature of the protection afforded by these Rules to the cargo-owners was rather limited. Secondly, it was felt that there was room for interpretation and application. As a result of this criticism of the Hague Rules, which are still considered to be biased towards the ship-owner/carrier rather than towards the cargo-owner, there was another

³ Article 8 of the Hague Rules which stipulates that, “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.”

conference held in Brussels in February 1968 and the document which developed from this meeting came to be known as the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading.

The Hague-Visby Rules did just that: revise the Hague Rules to the advantage of the cargo-owner. The Hague-Visby Rules were ratified and adopted by the United Kingdom in 1971 but have not been adopted by Malta and various other countries.

The most drastic change under the Hague-Visby Rules dealt with the limitation of liability. There was an increase in the package limit, the introduction of an alternative limit based on weight, and a specific provision tackling limitation of liability with regard to containers. The Rules also removed the limitation of liability where the carrier acted, “with intent to cause damage, or recklessly and with knowledge that damage would probably result”, a provision which was extended to servants and agents of the carrier. Moreover, servants or agents of the carrier were also expressly permitted to benefit from the defences and limitations of liability under the Hague-Visby Rules.

The Hague-Visby Rules were further amended by a protocol dated 21st December, 1979 called the SDR Protocol, whereby the monetary limits were expressed in terms of the special drawing rights rather than the gold franc formula originally adopted by the Hague-Visby Rules. Until November, 1999, 13 countries had adopted this SDR Protocol.⁴

A number of developing countries that were present at the United Nations stated that not even Hague-Visby Rules went far enough to consider and cover their interests. Therefore, this led to a movement within the United Nations – particularly within the United Nations’ Commission on International Trade Law (UNCITRAL) – that eventually developed The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading.⁵

⁴ ‘The rights and immunities of the carrier under the Carriage of Goods by Sea Act 1954 as amended till 1983 and proposals for reform’, page 6.

⁵ The Hamburg Rules came into force on the 1st of November, 1992, and thus, generally speaking, they are relatively more modern than the Hague Rules and its Visby Protocol.

2.3. The Hamburg Rules

Unlike the Hague and Hague-Visby Rules that had been produced by a private body known as the Comité Maritime International (CMI), the Hamburg Rules were the result of political pressure channelled through the UN, and in particular, the UN Conference on Trade and Development (UNCTAD). UNCITRAL was the founder of a set of Rules intended to replace the existing Hague and Hague-Visby Rules. The Rules were agreed at a Diplomatic Conference in Hamburg in 1978.

The idea behind the Rules was to go beyond the point of simply regulating contracts evidenced by bills of lading. They were intended to be a comprehensive coverage of carriage of goods by sea realm. The objectives of the Hamburg Rules were virtually the same as those of the Hague-Visby; they were drafted with the hope of improving what the Hague Rules had originally failed to do or rather had become unable to do. Although there is some continuity between the Hamburg Rules and its predecessors, in some aspects the Hamburg Rules brought about radical changes to the previously adopted regimes.

Nevertheless, these Rules have their own flaws. They are criticised primarily on the basis that it would require increased litigation in order for clarity throughout the Convention to be achieved. It is submitted, though, that one of the fundamental reasons why the Hamburg Rules have not, and probably never will, take over the maritime industry is due to the fact that the majority of the Hamburg Rule States are in Africa, most of which are not major trading nations, but rather States mostly concerned with the protection of their imports and exports.⁶

The Hamburg Rules, as opposed to the Hague and Hague-Visby Rules, cover the full period of the carrier's responsibility under the 'port to port' carriage rather than being limited to the 'tackle to tackle' period. They also apply to all contracts of carriage by sea with the exception of charterparties. This position is contradicted to the previous one which was just limited to bills of lading and other similar documents of title.⁷

Further, as Baughen notes:

⁶ 'The rights and immunities of the carrier under the Carriage of Goods by Sea Act 1954 as amended till 1983 and proposals for reform', Page 9.

⁷ Baughen, S., *Shipping Law*, Cavendish Publishing, 2001, Second Edition, Page 150, Para 4.

The imposition of liability on both the 'contracting carrier' and the 'actual carrier' reduced most of the problems associated with the identification of the single carrier under the Hague Rules.⁸

Live cargo and deck cargo are not excluded under the Hamburg Rules. If the loss or damage is caused because of an inherent risk of that cargo, and the carrier can prove that he complied with all the instructions, he will not be found liable unless it is shown that it was his fault or negligence or that of his agent. The burden of proof lies with the carrier or his agent who have to prove that there was no fault as such.⁹

The Hamburg Rules also dealt with the much controversial issue that arose from the Vita Food Gap. It may be recalled that the case related to litigation occurred in Nova Scotia on a shipment out of Newfoundland, which was a Hague - Visby country. The bill of lading stated that English law applied, which applies only to outward ships from England, therefore the Hague-Visby Rules were not applicable and the clause paramount was omitted from the bill of lading. As a result of this case, the "Vita Food Gap enabled the Rules, at any rate in theory, to "be evaded by a choice of law clause for a jurisdiction which either had not adopted the Rules at all or did not apply them to that voyage."¹⁰

The Hamburg Rules apply mandatorily to the carriage of the contracting State and not just the carriage from a contracting State. The Hamburg Rules contain specific provisions to deal with the jurisdiction and arbitration, as well as the relationship of the Hamburg Rules to other international conventions.¹¹

According to article 5 (4)¹² the carrier is liable. Unless he proves that all reasonable measures to avoid the matter and the consequences were taken. The omission of the nautical fault, what

⁸ Ibid., Page 150, Para 4.

⁹ Article 5 (5) of the Hamburg Rules.

¹⁰ Reynolds, F., 'The Hague Rules, the Hague-Visby Rules, and the Hamburg Rules', Page 20, Para 4

¹¹ Shipping Law , Page 150, Para 4.

¹² 5 (4) (a) The carrier is liable; (i) for loss of or damage to the goods or delay in delivery caused by fire, if the claimant proves that the fire arose from fault or neglect on the part of the carrier, his servants or agents (ii) for such loss, damage or delay in delivery which is proved by the claimant to have resulted from the fault or neglect of the carrier, his servants or agents in taking all measures that could reasonably be required to put out the fire and avoid or mitigate its consequences.

was considered by the cargo owners as indigenous to have such a provision, reflects a major change of the new regime. The carrier has to take care of the goods according to article 4 and he will not be considered liable if he can prove that he took all the reasonable measure to take care of the cargo. This is one of the reasons why the Hamburg Rules were never adopted by major nations.

The Hamburg Rules have shifted the burden of proof from the carrier to the person making the claim.¹³

The Hamburg Rules have been adopted by developing countries; but not by the major trading nations. In fact, the Hamburg Rules have only been adopted by a minuscule portion of the world's foreign trade, with no major commercial power having adopted them. It is only when, and if, the Hamburg Rules are adopted by some major maritime nation such as the United States or the United Kingdom that there will be the possibility for such Rules gaining widespread international acceptance. The result is that the Hague and the Hague-Visby Rules have remained very popular.

2.4. The Rotterdam Rules

The need was felt to replace the Hague, Hague-Visby and Hamburg Rules since many felt they were inconsistent in certain aspects and not all States had adhered to them. Indeed, the idea behind The Rotterdam Rules was to create uniformity.

With the Hague and the Hague-Visby being pro carrier and the Hamburg being pro shipper, the CMI intended in its drafting to consult its Members Association and Consulting Members as well as sectors of industries involved in international carriage of goods by sea or who are otherwise affected by this instrument, in order to reach a compromise and to prevent drafting an

(b) In case of fire on board the ship affecting the goods, if the claimant or the carrier so desires, a survey in accordance with shipping practices must be held into the cause and circumstances of the fire, and a copy of the surveyors report shall be made available on demand to the carrier and the claimant.

¹³ 'Transport law for the 21st Century: an Introduction to the preparation, philosophy, and potential impact of the Rotterdam Rules', Page 468, Para 2.

international convention in favor of one party to the detriment of another as occurred both in Hague and Hamburg.¹⁴

The Rotterdam Rules cover the multi-modal carriage which involves sea carriage. It is, however, an issue on how the Convention will interact with other existing international instruments.

The project is ambitious in that it is not confined to the familiar territory of the sea carrier's responsibility for cargo. It also tackles important associated issues that have, hitherto, been left exclusively to national law, such as: the cargo owner's title to sue and its liability under negotiable transport documents, as bills of lading are referred to in the Convention; the obligations of the consignee in respect of delivery of the cargo; and the cargo owner's right of control over the cargo during the voyage – particularly its right to vary the discharge port. The Convention has been drafted so as to allow electronic documentation to be covered in the same way as conventional paper documentation. It also covers multimodal carriage involving sea carriage, which raises difficult issues of how the new Convention will interact with existing carriage conventions such as CMR. The Convention also contains optional chapters on jurisdiction and arbitration.¹⁵

This Convention applies to all contracts of carriage which provide for carriage by sea or partly by sea and not just to bills of lading and similar documents of title. Here, one can already visualise the 'door to door' element of this Convention: this is transport between different States, one of which is a contracting State, from one door to another door. In addition, this Convention makes a difference between liner trades¹⁶ and bulk trades (non liner).¹⁷

The following are some changes that the Rotterdam Rules brought about:

¹⁴ The rights and immunities of the carrier under the Carriage of Goods by Sea Act 1924 as amended till 1983 and proposals for reform, Page 15.

¹⁵ Shipping Law, Page 151, Para 2.

¹⁶ Will not apply to charterparties, but it does apply to bills of lading and way bills.

¹⁷ Will not apply to charterparties but it does apply to bills of lading issued under a charterparty.

2.4.1. Volume Contracts

Volume contracts have been defined in article 1(2) of the Convention as “a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.”

There is a special regime for volume contracts which is the carriage of a specified quantity of goods in a series of shipments. Volume contracts may derogate¹⁸ from the Convention and they are binding only when:

- (a) The volume contract contains a prominent statement that it derogates from this Convention;
- (b) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;
- (c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Convention without any derogation under this article; and
- (d) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.¹⁹

A volume contract can bind a third party when it gives its express consent to be bound.

2.4.2. Electronic Documents

This Convention is the first International Convention on the Carriage of Goods by Sea to make specific provision for Electronic Communication.

¹⁸ Contract contrary from its terms.

¹⁹ Article 80 (2) of the Rotterdam Rules.

Electronic Communication is defined as “information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.”

Electronic transport record is information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information:

- i. That is logically associated with the electronic transport record by attachment or otherwise linked to the electronic transport record so as to become part of the electronic transport record;
- ii. That evidences the carrier’s receipt of the goods under a contract of carriage;
- iii. That evidences or contains a contract of carriage.²⁰

The Convention also provides for the definition of a negotiable electronic transport record and a non - negotiable electronic transport record.

The Convention seeks to create the electronic equivalent of the paper bill of lading and the conventional sea waybill.

A holder, other than the shipper, which exercises any right under the contract of carriage, assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the electronic transport document. The use of a negotiable electronic record shall be subject to rules of procedure agreed between shipper and carrier. The rules shall be referred to in the contract particulars, and shall be readily ascertainable.²¹

2.4.3. Jurisdiction and Arbitration Clause

The provisions on Jurisdiction and Arbitration will only be binding on Contracting States, if they ‘opt-in’ to them on signature or accession.

²⁰ Article 1(18) of the Rotterdam Rules.

²¹ Martin-Clark IMLI lecture notes, January 2010.

2.4.4. Limitation of the Carrier's Responsibility

The network system of responsibility gives the operators the space to operate in the field of mixed carriage. This also means working with other conventions, such as the Montreal Convention for damage with regard to air transport. This is different from the previous uniform system which had proved to be difficult and also not being able to avoid conflict. The present network system of responsibility places the burden of proof to be on the claimant. The liability is fault based, but fault is presumed, unless the carrier can provide otherwise.

The Rotterdam Rules introduce new words such as 'receive' and 'deliver', emphasising the introduction of the 'door to door' transportation. Another new concept is the obligation of due diligence throughout the voyage, also meaning that the liability has increased. This emerges from the words 'and keep', meaning that it is a continuing obligation.

Regarding breaches of such obligation there has been an increase in the amount both by weight and by package. The principle of limitation 'in packages' 'in containers' has been preserved but, when there is delay, the limit is 2.5 multiplied the freight excluding what has been paid for the goods.

The limits applicable in non - contractual terms have been preserved.²²

2.4.5. Deck Cargo

Deck cargo under the Rotterdam Rules is treated as a normal circumstance in the following cases:

1. When it is required by law to be carried on deck;
2. When the ship is carrying containers;
3. The contract states that the cargo shall be carried on deck.

Amongst other things, the European Shippers' Council has taken a position with regard to the carriage of cargo on deck. It states that

²² Martin-Clark IMLI lecture notes, January 2010.

When goods are carried on deck by law or under the very vague notion of “trade usage”, the carrier is not liable for all “special risks involved in their carriage, such as washing overboard, entry of seawater and damage in heavy seas. When non – hazardous goods are carried in containers on a container ship, the carrier seems to remain liable in the normal way, but the shipper will no longer be entitled to any notice that the goods are to be carried on deck.²³

3. Overview of the Rotterdam Rules

3.1. Chapter 1 – General Provisions

‘Contract of carriage’ is defined as a contract where the ‘carrier undertakes to carry goods from one place to another against the payment of freight.’ Due to the fact that freight is mentioned, this will prove to be a problem for a ‘freight pre paid’ bill of lading²⁴, as this bill would not fall under this definition and, thus, would fall out of the scope of the Convention. Another similar problem is that relating to the ‘performing party’. The definition brings within its scope any independent contractor engaged by the carrier to perform any of the carrier’s responsibilities under its contract of carriage, to the extent that such a party actually performs such services. This means that a ‘performing party’ will only fall within the scope of the Convention if it is a maritime performing party.

This first chapter is already very different from that of the previous Rules. The provisions for example are much wider than those found in article IV bis of the Hague-Visby Rules, in a way that they extend the scope of the Convention to non- contractual suits against the shipper and his sub-contractors, agents and employees. The Rotterdam Rules also make redundant the ‘Himalaya’²⁵ clauses and actions in bailment, due to the fact that it includes coverage to non – contractual suits against maritime contracting parties.

²³ European Shippers’ Council Position Paper, April 2007.

²⁴ The original bill of lading shipper has not undertaken to pay freight.

²⁵ A clause purporting to extend liability limitations which benefit the carrier, to others who act as agents for the carrier such as stevedores or longshoremen.

3.2. Chapter 2 – Scope of the application

For this Convention to be applicable there must be sea carriage. If there was supposed to be sea carriage but for some reason or another, this carriage was not taken up, the Convention would not apply. The full name of the Rotterdam Rules is the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea. For the first time the UN has included partly by sea, meaning that if the contract of carriage includes road, rail or air for part of the journey and sea for another part, as long as there is the element of sea carriage the Rotterdam Rules would apply.

Article 6 provides for specific exclusions:

- (1). This Convention does not apply to the following contracts in liner transportation:
 - (a) Charter parties; and
 - (b) Other contracts for the use of a ship or of any space thereon.
2. This Convention does not apply to contracts of carriage in non-liner transportation except when:
 - (a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and
 - (b) A transport document or an electronic transport record is issued.

3.3. Chapter 3 – Electronic Communication

For the first time in a carriage of goods convention, electronic means is mentioned. Article 8 states that such means ‘may’ be used, thus without making impositions. This article provides for the functional equivalent of the transport documents recorded by using electronic means.

3.4. Chapter 4 – Obligations of the Carrier

Delivery under the Rotterdam Rules is considered as an obligation of the carrier - this is a contradiction to the previous position as under the Hague-Visby Rules. The Rules also provide that the carrier's responsibility extends from when the goods are received till their time of delivery²⁶ - this is a development from the 'tackle to tackle' period under the Hague-Visby Rules. Another difference is that the carrier's obligation of seaworthiness now extends throughout the voyage²⁷ and is also "expressly extended to containers that are supplies by the carrier"²⁸.

3.5. Chapter 5 – Liability of the carrier for loss, damage or delay

Boughen states that:

A notable omission from the list is the exception of neglect or default in the navigation or management of the vessel, which is found in article IV(2)(a) of the Hague Rules. The 'catch-all' defence in article IV 2(q) has also been removed.²⁹

Here the author is discussing the list of situations when the carrier may be relieved from liability. It is useful to point out that there were additional clauses to this article and also re wording.

Sub-articles (f) and (k) of article 17 (3) have been expanded. Sub-article (f) 'Fire on the ship' reads "Fire, unless caused by the actual fault or privity of the carrier"; while "Insufficiency of packing" was expanded to (k) "Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier".

The following are the new additions to the Rules:

²⁶ Article 12 of the Rotterdam Rules.

²⁷ Article 14 of the Rotterdam Rules.

²⁸ Shipping Law, Page 156, Para 2.

²⁹ Ibid., Page 157, Para 2.

- (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
- (n) Reasonable measures to avoid or attempt to avoid damage to the environment;
- (o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.

3.6. Chapter 6 – Additional Provisions Relating to Particular Stages of Carriage

Another evident change is found in Article 25 that permits deck cargo in three situations:

- (a) Such carriage is required by law;
- (b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or
- (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

This is in contrast to the Hague-Visby Rules that exclude from the definition of goods the cargo which is stated on the contract to be carried on deck and is so carried. The Hague-Visby Rules are silent as to whether or not it is permissible to carry goods on deck.

3.7. Chapter 7 – Obligations of the shipper

Article 31 of the Rotterdam Rules states that information must be given in a timely manner. This, according to Boughen, is a development of Article III (5) of the Hague-Visby Rules. “The information must be provided in a timely manner and its accuracy at the time of receipt

by the carrier is guaranteed by the shipper, who is required to indemnify the carrier against loss or damage resulting from the inaccuracy of such information.³⁰”

There is also an extension on the notion of the carriage of dangerous goods. The Rotterdam Rules use the term ‘danger’³¹ as opposed to ‘goods of an inflammable, explosive or dangerous nature’ under the Hague-Visby regime. This broadens the meaning to goods which are not necessarily dangerous in nature but become dangerous in certain situations. It should also be noted that Article 32 also includes danger to the environment.

3.8. Chapter 8 – Transport documents and electronic transport documents

The documents which the shipper is entitled to receive are the same as those under the Hague and the Hague-Visby Rules: that is, appropriate negotiable or non – negotiable documents be it electronic or otherwise³².

This chapter evolves on the concept in the previous Conventions and requires more information from the carrier to be stated in the transport document. The list consists of:

1. “A description of the goods as appropriate for the transport;
2. The leading marks necessary for identification of the goods;
3. The number of packages or pieces, or the quantity of goods; and
4. The weight of the goods, if furnished by the shipper.”³³
5. “A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
6. The name and address of the carrier;
7. The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and

³⁰ Shipping Law, Page 162, Para 3.

³¹ Article 32 of the Rotterdam Rules.

³² Electronic Transport Documents were introduced for the first time in this Convention.

³³ Article 36 (1) of the Rotterdam Rules.

8. If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.”³⁴
9. “The name and address of the consignee, if named by the shipper;
10. The name of a ship, if specified in the contract of carriage;
11. The place of receipt and, if known to the carrier, the place of delivery; and
12. The port of loading and the port of discharge, if specified in the contract of carriage.”³⁵

Article 37 “seems to resolve the issue of identification of the contractual carrier under transport documents,”³⁶ and this seems to be in conformity with English Law.

3.9. Chapter 9 – Delivery of Goods

Boughen³⁷ and Debattista³⁸ both agree that this chapter is greatly influenced by English Law. Boughen states that it “codifies the existing English law on the topic,”³⁹ while Debattista points out the similarities between the Rotterdam Rules and the COGSA.⁴⁰

The consignee is always entitled not to demand delivery of the goods, the practical value of Article 43⁴¹ seems rather limited. Nevertheless, it is considered useful because it might avoid or reduce endless delays in collection of the goods in ports of discharge, which sometimes is one of the causes of port congestion.⁴²

³⁴ Article 36 (2) of the Rotterdam Rules.

³⁵ Article 36 (3) of the Rotterdam Rules.

³⁶ Baataz, Debattista, Lorenzon, Serdy, Stainland, Tsimplis, *The Rotterdam Rules: A Practical Annotation*, Informa London, 2009, First Edition, Page 109, Para 3.

³⁷ Shipping Law.

³⁸ *The Rotterdam Rules: A Practical Annotation*.

³⁹ Shipping Law, Page 167, Para 2.

⁴⁰ COGSA 1971 and COGSA 1992.

⁴¹ Obligation to accept delivery.

⁴² Gert Jan van der Ziel, Chapter 9 of the Rotterdam Rules: Delivery of the Goods, Page 5, Para 2.

Debattista argues further by stating that the obligation to accept delivery is not clearly stated in English law and the obligation to acknowledge receipt, is the same as Article III Rule 6 of the Hague-Visby Rules.

Articles 45–47 deal with the identity of the consignee to whom delivery must take place. These articles make distinction between the types of transport documents that have been issued. Article 45 applies to all carriages except when a negotiable transport document or a non-negotiable transport document that must be surrendered in order to obtain delivery of the goods has been issued.⁴³

Professor Gert Jan van der Ziel points out that, as a consequence, Article 45 not only applies in situations in which a non-negotiable document has been issued, but also when *no document at all* is used. He subsequently states that Article 45 provides for the main rule and Articles 46 and 47 deal with special rules.⁴⁴

Debattista agrees with Baugen and states that this is in conflict with English law. He states that the consequences of goods remaining undelivered cannot be found under COGSA.

He further adds that it is not entirely clear in whose favour the proceeds would be and continues by saying that:

given that the Rotterdam Rules are concerned with the contract of carriage and with delivery rights under that contract, the proceeds of the sale would be held for the benefit of the person entitled to delivery of the goods under that contract rather than for the benefit of the person entitled to property in the goods, which right will depend not on the contract of carriage but on the contract of sale.⁴⁵

⁴³ Chapter 9 of the Rotterdam Rules: Delivery of the Goods, Page 6, Para 3.

⁴⁴ Ibid., Page 6, Para 4.

⁴⁵ The Rotterdam Rules: A Practical Annotation, Page 150, Para 2.

3.10. Chapter 10 – Rights of the Controlling Party

Just like under chapter 9, this chapter codifies English law and highlights who is the party in control in the transactions. This chapter provides additional information and instructions and also highlights variations.

3.11. Chapter 11 – Transfer of Rights

The holder of a negotiable transport document may transfer such rights:

Where the document is an order document, the transfer is through an indorsement to another person, or in blank. Transfer by indorsement is not required where the document is a bearer document or a blank indorsed document, or the document is made out to the order of a named person and the transfer is between the first holder and the named person.⁴⁶

This chapter is limited in a way as it does not deal with rights and liabilities under non – negotiable instruments. These will continue to be dealt with under national laws.⁴⁷

3.12. Chapter 12 – Limits of Liability

The limitation of liability is different from that under the Hague-Visby Rules. “Under the Hague-Visby the limits are 666.67 SDR per package or 2 SDR per kilogram.” Instead there is an increase under the Rotterdam Rules: 31 % with regard to the package/ unit limit and 50 % with regard to the weight limit.⁴⁸

The Rotterdam Rules, as opposed to the Hague-Visby, are not limited only to the damage to the goods, but give a broader meaning. In article 59 (2) of the Rotterdam Rules one would

⁴⁶ Shipping Law, Page 171, Para 3.

⁴⁷ Ibid., Page 172, Para 1.

⁴⁸ The Rotterdam Rules: A Practical Annotation, Page 184, Para 2.

find a reference to “vehicle”, emphasising the multimodal transport introduced by this Convention.

3.13. Chapter 13 – Time for Suit

Boughen⁴⁹ states that notwithstanding the two year time bar under the Convention “one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.”⁵⁰ A cargo claim that would have been time barred could be set – off against the carrier’s claim for freight.

3.14. Chapter 14 – Jurisdiction and Chapter 15 – Arbitration

Both these chapters are applicable only if the contracting parties have specifically opted to be bound by them, in virtue of article 91 of the Convention.

The agreement to submit disputes to arbitration is enforceable but venue is at the option of the person asserting claim against the carrier – either place named in arbitration agreement or one of the places where jurisdiction can be founded under. The designated place of arbitration is binding on the parties to the agreement if it is contained in a volume contract and the names and addresses of the parties are ‘clearly stated’ and it is ‘individually negotiated’ or it contains a ‘prominent statement that there is an arbitration agreement’ and it specifies the sections of the contract containing the agreement.⁵¹

A Third party is bound by the place of arbitration designated in the volume contracts only if the place of arbitration is one of those listed as venues for jurisdiction under Article 66 and the arbitration agreement is contained in the transport document and the person to be bound is given ‘timely and adequate notice of

⁴⁹ Shipping Law, Page 173, Para 3.

⁵⁰ Article 62 (3) of the Rotterdam Rules.

⁵¹ Martin – Clark IMLI Lecture Notes, January 2010.

the place of arbitration' and 'applicable law' permits that person to be bound by the arbitration agreement.⁵²

It should be noted that the Hague and the Hague-Visby do not contain provisions for jurisdiction and arbitration. Admittedly the Hamburg Rules have jurisdiction and arbitration clauses, without however, these Rules having achieved the international recognition which one expected. The clauses that deal with jurisdiction and arbitration under the Rotterdam Rules were in fact modelled on the Hamburg Rules, although one notes certain differences. Exclusive jurisdiction has been introduced under the Rotterdam Rules, and also there is a special provision for jurisdiction for volume contracts.⁵³

3.15. Chapter 16 – Validity of Contractual Terms

Lorenzon states that

Article 79 is divided into two parts: Article 79.1 refers to the obligations and liabilities of the carrier and, as such, is the true evolution of Article III rules 8 of the Hague – Visby Rule; Article 79.2 on the other hand, refers to obligations and liabilities of the shipper, consignee, controlling party, holder or documentary shipper and as such finds no equivalent in the current regime.⁵⁴

Article 79 (2) provides restriction to the freedom of contract as it states that;

Unless otherwise provided in this Convention, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes, limits or increases the obligations under this Convention of the shipper, consignee, controlling party, holder or documentary shipper; or

(b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or

⁵² Ibid.

⁵³ Article 80 of the Rotterdam Rules.

⁵⁴ The Rotterdam Rules: A Practical Annotation, Page 244, Para 2.

documentary shipper for breach of any of its obligations under this Convention.

Under article 80, the Rotterdam Rules again provide for special rules for volume contracts. This again differs from the previous regimes as that only dealt with bills of lading or other similar documents of title.

3.16. Chapter 17 – Matters not Governed by this Convention

The Rotterdam Rules do not “affect the application of any of the following International Conventions in force at the time this Convention enters into force”⁵⁵ with regard to:

1. The global limitation of liability for vessel owners;
2. The contract of carriage or adjustment for general average.

The Convention does not apply to the contract of carriage for passengers and their luggage.

4. What is Malta’s current position?

Malta is a Hague Rules’ country. Its legislation dating to 18th December 1954 incorporated the Hague Rules. This Maltese Act⁵⁶ is essentially a reproduction of the United Kingdom 1924 legislation.⁵⁷ Malta however was not a signatory to the Hague Rules. It acceded to the Rules, through the UK Carriage of Goods by Sea which was passed by the British Parliament in 1924 when Malta was still a colony, resulting in that Act becoming law in Malta in 1954, when the Maltese Parliament promulgated what is today the Carriage of Goods by Sea Act, an Act which reproduced almost verbatim the Hague Rules of 1924.

⁵⁵ Article 82 of the Rotterdam Rules.

⁵⁶ The Carriage of Goods by Sea Act.

⁵⁷ The Carriage of Goods Act 1924.

It is important to realise that the Maltese Carriage of Goods by Sea Act applies solely to outward carriage and consequently inward carriage is not covered by this Act. To this effect, Article 3 of the Maltese Act states that,

... the Rules shall have effect, subject to the provisions of this Act, in relation to and in connection with the carriage of goods by sea in any vessel used for that purpose and carrying goods from Malta to any other port, but not if such vessel is carrying goods within the limits of Malta, that is from one island to the other or from one part of an island to another part of the same island.”

As a corollary, the Act applies mainly to bills of lading issued in Malta and not to bills of lading issued in another country.

4.1. Europe’s Position

The Rotterdam Rules were signed by the following European States on the 23 September 2009 at the UN ceremony in Rotterdam: France, Spain, Denmark, Norway, Greece and Holland.

The European Union has not taken a formal stand in favour or against The Rotterdam Rules. However, the general opinion is that the Rules are not in conformity with the EU’s wider policy objectives. The Rotterdam Rules have indeed, been severely criticised by the European Shippers’ Council (ESC) and Clecat, which represent Europe’s freight forwarders. The ESC, for instance has taken the view that the Rotterdam Rules ...

conflict with other conventions; present unequal obligations and liabilities between shippers and carriers, present a risk that carriers’ may reduce significantly their own limits of liability and obligations under so-called volume contracts, make proving fault harder for the shipper, make it increasingly difficult for shippers to successfully make a claim for damages, make shipper obligations far more onerous and may deter shippers from integrating shortsea shipping into their door-to-door logistics due to obligations and limits of liability being worse than under individual modal conventions.⁵⁸

⁵⁸ Hailey, R., Rotterdam Rules rebels intent on rocking the boat.

Roger Hailey wrote in June 2009 that ‘Brussels to draft own equivalent to divisive Rotterdam Rules’.⁵⁹ Despite this general feeling, as mentioned above, some European Member States have already signed the Rotterdam Rules in September 2009 including France, that is a major trading partner with Malta.

Naturally harmonisation of maritime transport will not be solely achieved with the 20 States which have, up to date, signed the Convention. It is essential that other main trading States come on board. Amongst these one would find Singapore, China, Japan, the Latin American countries and Australia. European nations such as the United Kingdom, Italy, Spain and Germany acceding to the Convention would also contribute to the Rules’ acceptance.

4.2. Implementation into Maltese Law

Article 3 of the ‘Ratifications of Treaties Act’⁶⁰ states as follows:

- (1) Where a treaty to which Malta becomes party after the coming into force of this Act is one which affects or concerns -
 - (a) the status of Malta under international law or the maintenance or support of such status, or
 - (b) the security of Malta, its sovereignty, independence, unity or territorial integrity, or
 - (c) the relationship of Malta with any multinational organization, agency, association or similar body, such treaty shall not enter into force with respect to Malta unless it has been ratified or its ratification has been authorised or approved in accordance with the provisions of this Act.
- (2) A treaty to which subsection (1) of this section applies shall be ratified or shall have its ratification authorised or approved as follows:
 - (a) where such treaty concerns a matter referred to in paragraph (a) or (b) of subsection (1) of this section or concerns any provision which is to become, or to be enforceable as, part of the law of Malta, by Act of Parliament;

⁵⁹ <http://www.rotterdamrules.com/pdf/Brussels-to-draft-own-equivalent-to-divisive-Rotterdam-Rules.pdf> as seen January 2010.

⁶⁰ Chapter 304 of the Laws of Malta.

(b) in any other case, by Resolution of the House of Representatives.

Accordingly Malta's 'Ratification of Treaties Act' regulates the ratification of an international convention. Despite the fact that there still has to be the approval of the Cabinet of Ministers, article 3 (4) it provides that:

The instrument of ratification shall be issued under the signature of the Minister responsible for foreign affairs.

Malta's legislative requirements are dualist in nature. A separate legal instrument enacted by Parliament is required to give effect to International Conventions. Without such domestic instrument, international agreements apply only at the international level and not within the domestic context.

When a Government adheres to a treaty which falls under the definition of article 2⁶¹ of the Ratification of Treaties Act, the State is then bound by this treaty. Consequently since the Rotterdam Rules fall within the said definition it shall be bound by it.

For the Rotterdam Rules to become part of the Laws of Malta, two steps have to be taken: the first will be that outlined in Article 89 of the said Rules that requires, the Schedule to Chapter 140 to be repealed. In fact Article 89:

requires states that accept, approve or accede to the Convention to denounce existing maritime conventions to which they are a party, namely, the Hague Rules, the Visby Protocol and its 1979 amending Protocol, and the Hamburg Rules.⁶²

The second step would be that an Act of Parliament needs to be enacted in line with Article 3. (3) of the Ratification of Treaties Act:

No provision of a treaty shall become, or be enforceable as, part of the law of Malta except by or under an Act of Parliament.

⁶¹ "'treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation; and any reference to the ratification of a treaty shall include a reference to accession to such treaty and to any other act or manner in which such treaty may be brought into force."

⁶² Shipping Law, Page 178, Para 4.

The instrument would be signed by the Minister of Foreign Affairs and then the said Act would be promulgated by means of a Bill.

The Bill presented by the relevant department of the Government to the House of Representatives will be read and discussed in parliament. This procedure normally takes place in distinct three stages and each stage requires the assent of the House for the Bill to pass.

1. In the First reading the Bill is presented and proposed to the House.
2. The Second reading is the most important stage; it is the point at which the Bill is discussed thoroughly. A Committee Stage may follow, whereby the provisions are discussed and reviewed in more depth and any amendments are debated.
3. In the Third Reading, the House declares that the Bill has passed. Once the Bill has been given the go – ahead by Parliament it is then subject to the assent of the President of Malta, following it being published in the Government Gazette. The Act cannot come into operation until it has been so published.

Once the international convention has been ratified and transposed into domestic law by an Act of Parliament, this Act would then be published in the Government Gazette and it would have force of law, as stated in 72 (4) of the Constitution of Malta:

When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

The procedure outlines above will witness the Rotterdam Rules becoming a schedule to Chapter 140, a journey that began with a bill to a proposed Act and later an Act of Parliament. The Carriage of Goods by Sea (Amendment) Act also provides for the amendment of the principal Act and not only the schedule to bring it in line with the new regime of the Rotterdam Rules.

It is important to note that in order to amend the current laws on the Carriage of Goods by Sea, one has also to amend article 375 of the Merchant Shipping Act that provides for the Ratification of certain Treaties. In virtue of this article the Government of Malta is

empowered to ratify or accede to the treaties or conventions dealing with merchant shipping. The list found in article 375 (2), needs to be amended to also incorporate the Rotterdam Rules, thereby giving the Minister the power to make regulations giving effect to the provisions thereof.

As a result articles 1- 8 of the Carriage of Goods by Sea Act would become an introduction to the schedule, the schedule being the Rotterdam Rules.

4.3. Immediate Need

One of the major limitations of the Maltese Carriage of Goods by Sea Act is that it applies only to outward carriage. Malta, being an island where imports far out weights exports, should be more concerned with inward carriage as opposed to outward. A case in point is oil that needs to be imported for the everyday running of the country. The strategic geographical position of the country also makes it an essential in transit shipments in the Mediterranean since many container vessels come to Malta in transit. In recent years Malta is also gaining ground in the bunkering sector.

The position which Malta is in at the moment is that only bills of lading issued in Malta are valid under our domestic legislation. Accordingly any other transport document which has not been issued in Malta is not regulated under Maltese law. Thus, in the event of an incident or claim involving a bill of lading of other transport document not issued in Malta there would not be any method of redress under Maltese Law.

It should be stated that in this respect the Rotterdam Rules are comprehensive and thus addresses the lacuna (outlined above) that exists in the current Maltese law. Interestingly enough however, this fact has also been seen in a negative light by some authors. Such as D. Rhidian Thomas who states that:

The Convention does not confine itself, as does its predecessors, to the contract of carriage of goods and immediately associated matters. It reaches out to deal with related topics, such as 'Rights of the Controlling Party', 'Transfer of Rights', and 'Jurisdiction' and 'Arbitration'. Some other topics are addressed with surprisingly and possibly a dangerous degree of detail; this is particularly true of the chapter dealing with 'Delivery of Goods'. There is also introduced a new and puzzling concept,

the ‘volume contract’, which for some mysterious reason of policy is allowed, subject to conditions, to operate outside the regulatory framework of the Convention.⁶³

5. Conclusion

The current Maltese legislation regulating the carriage of goods by sea is somewhat outdated. The Rotterdam Rules, despite the criticism, have proved to be exhaustive and comprehensive and in the final analysis it is felt that they will be a welcomed addition to our domestic legislation. Malta’s strategic geographical position highlights the significance of these Rules to our trade and economy.

⁶³ And then there were the Rotterdam Rules.

The Merchant Shipping
(Amendment) Act

Cap 234

The Merchant Shipping (Amendment) Act

I assent
GEORGE ABELA
President

1st January 2010

ACT No. I of 2010

AN ACT to amend the Merchant Shipping Act,
CAP. 234

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:

1. (1) This Act may be cited as the Merchant Shipping (Amendment) Act, 2010, and it shall be read and construed as one with the Merchant Shipping Act, hereinafter referred to as “the principle act”.

Short Title and
Commencement.

Cap. 234.

(2) This Act shall come into force on such date as the Minister responsible for shipping may, by notice in the Gazette, appoint.

2. Article 375 of the principle Act shall be amended as follows:

Amendment of
article 375 of the
principle Act.

(1) For the purposes of the Ratification of Treaties Act, the Government of Malta is hereby empowered to ratify, or accede to the treaties or conventions (including protocols, annexes and appendices thereto) referring to merchant shipping listed in subarticle (2), and the Minister may upon the ratification or accession of any of the said treaties or conventions make regulations giving effect to the provisions thereof, and such power shall include the power to provide

that any provision of this Act inconsistent with the provisions of any such treaty or convention shall no longer apply.

(2) The treaties and conventions to which subarticle (1) refers are the following:

(a) Convention on Limitation of Liability for Maritime Claims signed in London on the 19th November, 1976;

(b) Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 signed in London on the 2nd May, 1996;

(c) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea signed in Athens on the 13th December, 1974;

(d) Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 signed in London on the 19th November, 1976;

(e) Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 signed in London on the 29th March, 1990;

(f) International Convention on Salvage signed in London on the 28th April, 1989;

(g) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation signed in Rome on the 10th March, 1988;

(h) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on the 10th March, 1988;

(i) International Convention on Maritime Search and Rescue

signed in Hamburg on the 27th April, 1979;

(j) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea signed in London on the 3rd May, 1996;

(k) International Convention for Safe Containers signed in Geneva on the 2nd December, 1972;

(l) Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 signed in Torremolinos on the 2nd April, 1993;

(m) International Convention on Maritime Liens and Mortgages signed in Geneva on the 6th May, 1993;

(n) International Convention on Arrest of Ships, 1999 signed in Geneva on the 12th March, 1999;

(o) Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) signed in Geneva on the 13th October, 1976;

(p) Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 signed in Geneva on the 22nd October, 1996;

(q) Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) signed in Geneva on the 13th October, 1970;

(r) Accommodation of Crews Convention (Revised), 1949 (No. 92) signed in Geneva on the 8th June, 1949;

(s) Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) signed in Geneva on the 14th October, 1970;

(t) Repatriation of Seamen Convention, 1926 (No. 23) signed in Geneva on the 7th June, 1926;

(u) Repatriation of Seafarers Convention (Revised), 1987 (No. 166) signed in Geneva on the 24th September, 1987;

(v) Food and Catering (Ships' Crews) Convention, 1946 (No. 68) signed in Seattle on the 6th June, 1946;

(w) Labour Inspection (Seafarers) Convention, 1996 (No. 178) signed in Geneva on the 22nd October, 1996;

(x) Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) signed in Geneva on the 22nd October, 1996;

(y) Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) signed in Geneva on the 6th October, 1936;

(z) Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164) signed in Geneva on the 24th September, 1987.

(aa) United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea signed in Rotterdam on the 23rd September, 2009.

(3) The Minister shall upon the ratification or accession of any treaty or convention to which this article refers publish a notice in the Gazette stating the date on which such treaty or convention shall come into force with regard to Malta.

(4) The House of Representatives may by resolution add to the list of treaties or conventions in subarticle (2).

(5) Any reference in this article to a treaty or a convention or

a protocol shall include reference to any amendment to such treaty or convention or protocol ratified, acceded to or accepted by the Government of Malta.

The Carriage of Goods by Sea
(Amendment) Act

Cap 140

The Carriage of Goods by Sea (Amendment) Act

I assent
GEORGE ABELA
President

1st January 2010

ACT No. II of 2010

AN ACT to amend the Carriage of Goods by Sea Act,
CAP. 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:

1. This Act may be cited as the Carriage of Goods by Sea (Amendment) Act, 2010, and it shall be read and construed as one with the Carriage of Goods by Sea Act, hereinafter referred to as “the principle Act”.

Short Title and Commencement.
Cap. 140.

(2) This Act shall come into force on such date as the Minister responsible for shipping may, by notice in the Gazette, appoint.

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

Amendment of article 2 of the principle Act.

In this Act "the Rules" means the rules relating to documents of transport, set out in the Schedule to this Act.

3. Article 3 of the principle Act shall be amended as follows:

Amendment of article 3 of the principle Act.

Notwithstanding any provisions to the contrary contained in the Commercial Code, the Rules shall have effect, subject to the provisions of this Act, in relation to and in connection with the carriage of goods by sea in any vessel used for that purpose and carrying goods to or from Malta from or to a port in any country, but

not if such vessel is carrying goods within the limits of Malta, that is from one island to the other or from one part of an island to another part of the same island.

4. Article 4 of the principle Act shall be repealed.

Article 4 of principle Act repealed.

5. Article 5 of the principle Act shall be amended as follows:

Amendment of article 5 of the principle Act.

Every transport document, which contains or is evidence of a contract of carriage to which the Rules apply, shall be subject to the provisions of the said Rules as applied by this Act.

6. Article 6 of the principle Act shall be repealed.

Article 4 of principle Act repealed.

7. Article 8 of the principle Act shall be amended as follows:

Amendment of article 8 of the principle Act.

The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before the entry into force of this Act, nor to any transport document issued, whether before or after that day, in pursuance of any such contract as aforesaid.

8. Immediately after article 7 of the principal Act, there shall be inserted the following new article 8, of the principal Act:

New article 8 of the principal Act

The Courts of Malta shall be bound by the provisions of Chapters 14 and 15 of the schedule.

9. The schedule to the principle Act shall be replaced with the following:

Amendment of the schedule of the principle Act.

Chapter 1 General provisions

1. For the purposes of this Act:

Definitions

(1) "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one

place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.

(2)“Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.

(3)“Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.

(4)“Non-liner transportation” means any transportation that is not liner transportation.

(5)“Carrier” means a person that enters into a contract of carriage with a shipper.

(6)(a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

(b) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

(7)“Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party

only if it performs or undertakes to perform its services exclusively within a port area.

(8)“Shipper” means a person that enters into a contract of carriage with a carrier.

(9)“Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.

(10)“Holder” means:

(a)A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order document or bearer document, is the bearer thereof; or

(b)The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

(11) “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

(12)“Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.

(13)“Controlling party” means the person that pursuant to article 51 is entitled to exercise the right of control.

(14)“Transport document” means a document issued under a contract of carriage by the carrier that:

a. Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and

b. Evidences or contains a contract of carriage.

(15)“Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or

other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.

(16)“Non-negotiable transport document” means a transport document that is not a negotiable transport document.

(17)“Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

(18)“Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

- a. Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
- b. Evidences or contains a contract of carriage.

(19)“Negotiable electronic transport record” means an electronic transport record:

- a. That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
- b. The use of which meets the requirements of article 9, paragraph 1.

(20)“Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic

transport record.

(21)The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

(22)The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.

(23)“Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

(24)“Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

(25)“Ship” means any vessel used to carry goods by sea.

(26)“Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

(27)“Vehicle” means a road or railroad cargo vehicle.

(28)“Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

(29)“Domicile” means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, whichever is applicable, (ii) central administration or (iii) principal place of business, and (b) the habitual residence of a natural person.

(30)“Competent court” means a 1st Hall Civil Court and it may exercise jurisdiction over the dispute.

2. In the interpretation of this Act, regard is to be had to its

Interpretation of
this Act

international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

3. The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 74, paragraph 4; and 78, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

Form requirements

4. (1). Any provision of this Act that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Act against:

Applicability of defences and limits of liability

- (a) The carrier or a maritime performing party;
- (b) The master, crew or any other person that performs services on board the ship; or
- (c) Employees of the carrier or a maritime performing party.

(2). Any provision of this Act that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.

Chapter 2 Scope of application

5. (1). Subject to article 6, this Act applies to contracts of

General scope of application

carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in Malta:

- (a) The place of receipt;
- (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.

(2). This Act applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.

6. (1). This Act does not apply to the following contracts in liner transportation:

- (a) Charter parties; and
- (b) Other contracts for the use of a ship or of any space thereon.

(2). This Act does not apply to contracts of carriage in non-liner transportation except when:

- (a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and
- (b) A transport document or an electronic transport record is issued.

7. Notwithstanding article 6, this Act applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Act. However, this Act does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

Specific
exclusions

Chapter 3 Electronic transport records

8. Subject to the requirements set out in this Act:

Application to certain parties

(a) Anything that is to be in or on a transport document under this Act may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

(b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

9. (1). The use of a negotiable electronic transport record shall be subject to procedures that provide for:

Use and effect of electronic transport records

(a) The method for the issuance and the transfer of that record to an intended holder;

(b) An assurance that the negotiable electronic transport record retains its integrity;

(c) The manner in which the holder is able to demonstrate that it is the holder; and

(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.

(2). The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

10. (1). If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

Procedures for use of negotiable electronic transport records

(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(b) The carrier shall issue to the holder a negotiable electronic

transport record that includes a statement that it replaces the negotiable transport document; and

(c) The negotiable transport document ceases thereafter to have any effect or validity.

(2). If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4 Obligations of the carrier

11. The carrier shall, subject to this Act and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Carriage and delivery of the goods

12. (1). The period of responsibility of the carrier for the goods under this Act begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

Period of responsibility of the carrier

(2). (a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of

responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

(3). For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or

(b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

13. (1). The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

Specific obligations

(2). Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

14. The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

Specific obligations applicable to the voyage by sea

(a) Make and keep the ship seaworthy;

(b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and

(c) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

15. Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

Goods that may become a danger

16. Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Sacrifice of the goods during the voyage by sea

Chapter 5 Liability of the carrier for loss, damage or delay

17. (1). The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4.

Basis of liability

(2). The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.

(3). The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

(a) Act of God;

- (b) Perils, dangers, and accidents of the sea or other navigable waters;
 - (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
 - (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
 - (e) Strikes, lockouts, stoppages, or restraints of labour;
 - (f) Fire on the ship;
 - (g) Latent defects not discoverable by due diligence;
 - (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;
 - (i) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
 - (j) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
 - (k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
 - (l) Saving or attempting to save life at sea;
 - (m) Reasonable measures to save or attempt to save property at sea;
 - (n) Reasonable measures to avoid or attempt to avoid damage to the environment; or
 - (o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.
- (4). Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:
- (a) If the claimant proves that the fault of the carrier or of a person

referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or

(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

(5). The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

(6). When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

18. The carrier is liable for the breach of its obligations under this Act caused by the acts or omissions of:

Liability of the carrier for other persons

(a) Any performing party;

(b) The master or crew of the ship;

(c) Employees of the carrier or a performing party; or

(d) Any other person that performs or undertakes to perform any of

the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

19. (1). A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Act and is entitled to the carrier's defences and limits of liability as provided for in this Act if:

Liability of
maritime
performing parties

(a) The maritime performing party received the goods for carriage in Malta, or delivered them in Malta, or performed its activities with respect to the goods in a port in Malta; and

(b) The occurrence that caused the loss, damage or delay took place:
(i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) while the maritime performing party had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

(2). If the carrier agrees to assume obligations other than those imposed on the carrier under this Act, or agrees that the limits of its liability are higher than the limits specified under this Act, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

(3). A maritime performing party is liable for the breach of its obligations under this Act caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.

(4). Nothing in this Act imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

20. (1). If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Act. Joint and several liability

(2). Without prejudice to article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Act.

21. Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed. Delay

22. (1). Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with article 43. Calculation of compensation

(2). The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

(3). In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

23. (1). The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was Notice in case of loss, damage or delay

given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

(2). Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Act, nor shall it affect the allocation of the burden of proof set out in article 17.

(3). The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

(4). No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

(5). When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

(6). In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

Chapter 6 Additional provisions relating to particular stages of carriage

24. When pursuant to applicable law a deviation constitutes a Deviation breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or

limitation of this Act, except to the extent provided in article 61.

25. (1). Goods may be carried on the deck of a ship only if:

Deck cargo on
ships

(a) Such carriage is required by law;

(b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or

(c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

(2). The provisions of this Act relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1 (a) or (c) of this article.

(3). If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.

(4). The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

(5). If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

26. When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Act do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:
- Carriage preceding or subsequent to sea carriage
- (a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
 - (b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and
 - (c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

Chapter 7 Obligations of the shipper to the carrier

27. (1). Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.
- Delivery for carriage
- (2). The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.
 - (3). When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a

way that they will not cause harm to persons or property.

28. The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Cooperation of the shipper and the carrier in providing information and instructions

29. (1). The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

Shipper's obligation to provide information, instructions and documents

(a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

(2). Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

30. 1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Act.

Basis of shipper's liability to the carrier

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault

or to the fault of any person referred to in article 34.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

31. (1). The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

Information for compilation of contract particulars

(2). The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

32. When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

Special rules on dangerous goods

(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and
(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities

that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

33. (1). A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

Assumption of shipper's rights and obligations by the documentary shipper

(2). Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

34. The shipper is liable for the breach of its obligations under this Act caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

Liability of the shipper for other persons

Chapter 8 Transport documents and electronic transport records

35. Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:

Issuance of the transport document or the electronic transport record

- (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record,

unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

36. (1). The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper: Contract particulars

- (a) A description of the goods as appropriate for the transport;
- (b) The leading marks necessary for identification of the goods;
- (c) The number of packages or pieces, or the quantity of goods; and
- (d) The weight of the goods, if furnished by the shipper.

(2). The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:

- (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
- (b) The name and address of the carrier;
- (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
- (d) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.

(3). The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include:

- (a) The name and address of the consignee, if named by the shipper;
- (b) The name of a ship, if specified in the contract of carriage;
- (c) The place of receipt and, if known to the carrier, the place of delivery; and
- (d) The port of loading and the port of discharge, if specified in the contract of carriage.

(4). For the purposes of this article, the phrase “apparent order and condition of the goods” in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:

(a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and

(b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

37. 1. If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification. Identity of the carrier

2. If no person is identified in the contract particulars as the carrier as required pursuant to article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.

38. (1). A transport document shall be signed by the carrier or a person acting on its behalf. Signature

(2). An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

39. (1). The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

Deficiencies in the contract particulars

(2). If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or

(b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

(3). If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

40. (1). The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

Information for compilation of contract particulars

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or

misleading; or

(b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

(2). Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

(3). When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

(a) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

(4). When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(a) Article 36, subparagraphs 1 (a), (b), or (c), if:

(i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and

(ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and

(b) Article 36, subparagraph 1 (d), if:

- (i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or
- (ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

41. Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40:

Evidentiary effect
of the contract
particulars

(a) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;

(b) Proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when such contract particulars are included in:

(i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or

(ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;

(c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:

(i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;

(ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and

(iii) The contract particulars referred to in article 36, paragraph 2.

42. If the contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

Chapter 9 Delivery of the goods

43. When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

44. On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

45. When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

(a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

(b) If the name and address of the consignee are not referred to in

the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(c) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

46. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

Delivery when a non-negotiable transport document that requires surrender is issued

(a) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the

person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(b) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

47. (1). When a negotiable transport document or a negotiable electronic transport record has been issued:

(a) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in

Delivery when a negotiable transport document or negotiable electronic transport record is issued

which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10

(a) (i), upon the holder properly identifying itself; or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(b) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met;

(c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

(2). Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(a) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (a) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request

delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(b) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder;

(c) The person giving instructions under subparagraph 2 (a) of this article shall indemnify the carrier against loss arising from its being held liable to the holder under subparagraph 2 (e) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request;

(d) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;

(e) Notwithstanding subparagraphs 2 (b) and 2 (d) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of

arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

48. (1). For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

Goods remaining undelivered

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43;

(b) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;

(d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(e) The goods are otherwise undeliverable by the carrier.

(2). Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(a) To store the goods at any suitable place;

(b) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and

(c) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

(3). The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

(4). If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

(5). The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

49. Nothing in this Act affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due. Retention of goods

Chapter 10 Rights of the controlling party

50. (1). The right of control may be exercised only by the controlling party and is limited to: Exercise and extent of right of control

(a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(b) The right to obtain delivery of the goods at a scheduled port of

call or, in respect of inland carriage, any place en route; and

(c) The right to replace the consignee by any other person including the controlling party.

(2). The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

51. (1). Except in the cases referred to in paragraphs 2, 3 and 4 of this article:

Identity of the controlling party and transfer of the right of control

(a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(c) The controlling party shall properly identify itself when it exercises the right of control.

(2). When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and

(b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

(3). When a negotiable transport document is issued:

(a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and

(c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 10 (a) (i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

(4). When a negotiable electronic transport record is issued:

(a) The holder is the controlling party;

(b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and

(c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

52. (1). Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 50 if:

Carrier's execution of instructions

(a) The person giving such instructions is entitled to exercise the right of control;

(b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and

(c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

(2). In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

(3). The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.

(4). The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 59 to 61.

53. Goods that are delivered pursuant to an instruction in accordance with article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods. Deemed delivery

54. (1). The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c). Variations to the contract of carriage

(2). Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable

electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

55. (1). The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

Providing additional information, instructions or documents to carrier

(2). If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

56. The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b).

Variation by agreement

Chapter 11 Transfer of rights

57. (1). When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

When a negotiable transport document or negotiable electronic transport record is issued

(a) Duly endorsed either to such other person or in blank, if an order document; or

(b) Without endorsement, if: (i) a bearer document or a blank

endorsed document; or (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

(2). When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

58. (1). Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder. Liability of holder

(2). A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

(3). For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(b) It transfers its rights pursuant to article 57.

Chapter 12 Limits of liability

59. (1). Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Act is limited to 875 units of account per package or other shipping unit, or 3 units of Limits of liability

account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper.

(2). When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

(3). The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into Euro according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of Euro, in terms of the Special Drawing Right, is to 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.

60. Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.

Limits of liability
for loss caused by
delay

61. (1). Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Act was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Loss of the benefit of limitation of liability

(2). Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

Chapter 13 Time for suit

62. (1). No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Act may be instituted after the expiration of a period of two years.

Period of time for suit

(2). The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

(3). Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

63. The period provided in article 62 shall not be subject to

Extension of time for suit

suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations.

64. An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of:

Action for indemnity

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

65. An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

Actions against the person identified as the carrier

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

Chapter 14 Jurisdiction

66. Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Act against the carrier:

Actions against the carrier

(a) In a competent court within the jurisdiction of which is situated one of the following places:

- (i) The domicile of the carrier;
- (ii) The place of receipt agreed in the contract of carriage;
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Act.

67. (1). The jurisdiction of a court chosen in accordance with article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

Choice of court agreements

(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and

(b) Clearly designates the courts of Malta.

(2). A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if:

(a) The court is in one of the places designated in article 66, subparagraph (a);

(b) That agreement is contained in the transport document or electronic transport record;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

68. The plaintiff has the right to institute judicial proceedings under this Act against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

Actions against the maritime performing party

(a) The domicile of the maritime performing party; or

(b) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

69. Subject to articles 71 and 72, no judicial proceedings under this Act against the carrier or a maritime performing party may be instituted in a court not designated pursuant to article 66 or 68.

No additional bases of jurisdiction

70. Nothing in this Act affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

Arrest and provisional or protective measures

(a) The requirements of this chapter are fulfilled; or

(b) An international Act that applies in that State so provides.

71. (1). Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 66 and article 68. If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b), if

Consolidation and removal of actions

there is such a court.

(2). Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

72. (1). After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

(2). A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

73. (1). A decision made in another Contracting State by a court having jurisdiction under this Act shall be recognized and enforced in Malta in accordance with the law of Malta when both States have made a declaration in accordance with article 8 of the principal Act.

Recognition and enforcement

(2). A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.

(3). This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Act, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Act.

Chapter 15 Arbitration

74. (1). Subject to this chapter, parties may agree that any

Arbitration agreements

dispute that may arise relating to the carriage of goods under this Act shall be referred to arbitration.

(2). The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:

(a) Any place designated for that purpose in the arbitration agreement; or

(b) Any other place situated in a State where any of the following places is located:

(i) The domicile of the carrier;

(ii) The place of receipt agreed in the contract of carriage;

(iii) The place of delivery agreed in the contract of carriage; or

(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.

(3). The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either:

(a) Is individually negotiated; or

(b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

(4). When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

(a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (b) of this article;

(b) The agreement is contained in the transport document or electronic transport record;

(c) The person to be bound is given timely and adequate notice of the place of arbitration; and

(d) Applicable law permits that person to be bound by the arbitration agreement.

(5). The provisions of paragraphs 1, 2, 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent therewith is void.

75. (1). Nothing in this Act affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Act or the provisions of this Act apply by reason of:

Arbitration agreement in non-liner transportation

- (a) The application of article 7; or
- (b) The parties' voluntary incorporation of this Act in a contract of carriage that would not otherwise be subject to this Act.

(2). Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to which this Act applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

- (a) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Act by reason of the application of article 6; and
- (b) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

76. Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

Agreement to arbitrate after a dispute has arisen

Chapter 16 Validity of contractual terms

77. (1). Unless otherwise provided in this Act, any term in a contract of carriage is void to the extent that it: General provisions

(a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Act;

(b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Act; or

(c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18.

(2). Unless otherwise provided in this Act, any term in a contract of carriage is void to the extent that it:

(a) Directly or indirectly excludes, limits or increases the obligations under this of the shipper, consignee, controlling party, holder or documentary shipper; or

(b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Act.

78. (1). Notwithstanding article 77, as between the carrier and the shipper, a volume contract to which this Act applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Act. Special rules for volume contracts

(2). A derogation pursuant to paragraph 1 of this article is binding only when:

(a) The volume contract contains a prominent statement that it derogates from this Act;

(b) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;

(c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Act without any derogation under this article; and

(d) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.

(3). A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.

(4). Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.

(5). The terms of the volume contract that derogate from this Act, if the volume contract satisfies the requirements of paragraph 2 of this article, apply between the carrier and any person other than the shipper provided that:

(a) Such person received information that prominently states that the volume contract derogates from this Act and gave its express consent to be bound by such derogations; and

(b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

(6). The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

79. Notwithstanding article 77 and without prejudice to article

Special rules for live animals and

78, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if: certain other goods

(a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Chapter 17 Matters not governed by this Act

80. No provision in this Act affects the application of any convention governing the carriage of goods by air or road to the extent that such convention according to its provisions applies to any part of the contract of carriage in force at the time this Act enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods.

International conventions governing the carriage of goods by other modes of transport

81. Nothing in this Act affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.

Global limitation of liability

82. Nothing in this Act affects the application of terms in the

General average

contract of carriage or provisions of national law regarding the adjustment of general average.

83. This Act does not apply to a contract of carriage for passengers and their luggage. Passengers and luggage

84. No liability arises under this Act for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage: Damage caused by nuclear incident

(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

The Merchant Shipping Act
Cap 234 - as amended

The Merchant Shipping Act**CHAPTER 234**

To regulate merchant shipping.

6th April, 1973;
1st June, 1973;
13th August, 1974;
16th December, 1974;
8th November, 1986

ACT XI of 1973, as amended by Legal Notice No. 148 of 1975 and Acts: XI of 1977, XXXI of 1981, XIII of 1983, XXIV of 1986 and XXXVII of 1988; Legal Notices Nos. 37 of 1989 and 152 of 1989; Acts VIII and XXXVII of 1990, and XVII of 1991; Legal Notices Nos. 86 of 1993 and 125 of 1995; Acts XXIV of 1995 and XXII of 2000; and Legal Notices 278 and 340 of 2002; and 361 of 2003; Acts XIII of 2004 and XIV of 2006; Legal Notices 181 of 2006, and 411 and 439 of 2007; by Resolution of the House of Representatives No. 329 of the 9th January, 2008; and Act XV of 2009; and Act I of 2010

Ratification, etc.,
of certain treaties,
etc., relating to
merchant shipping.
Cap. 304.
Added by:
XXII. 2000.99.

375. (1) For the purposes of the Ratification of Treaties Act, the Government of Malta is hereby empowered to ratify, or accede to the treaties or conventions (including protocols, annexes and appendices thereto) referring to merchant shipping listed in subarticle (2), and the Minister may upon the ratification or accession of any of the said treaties or conventions make regulations giving effect to the provisions thereof, and such power shall include the power to provide that any provision of this Act inconsistent with the provisions of any such treaty or convention shall no longer apply.

(2) The treaties and conventions to which subarticle (1) refers are the following:

(a) Convention on Limitation of Liability for Maritime Claims signed in London on the 19th November, 1976;

(b) Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 signed in London on the 2nd May, 1996;

- (c) Athens Convention relating to the Carriage of Passengers and their Luggage by Sea signed in Athens on the 13th December, 1974;
- (d) Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 signed in London on the 19th November, 1976;
- (e) Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 signed in London on the 29th March, 1990;
- (f) International Convention on Salvage signed in London on the 28th April, 1989;
- (g) Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation signed in Rome on the 10th March, 1988;
- (h) Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on the 10th March, 1988;
- (i) International Convention on Maritime Search and Rescue signed in Hamburg on the 27th April, 1979;
- (j) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea signed in London on the 3rd May, 1996;
- (k) International Convention for Safe Containers signed in Geneva on the 2nd December, 1972;
- (l) Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 signed in Torremolinos on the 2nd April, 1993;
- (m) International Convention on Maritime Liens and Mortgages

signed in Geneva on the 6th May, 1993;

(n) International Convention on Arrest of Ships, 1999 signed in Geneva on the 12th March, 1999;

(o) Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) signed in Geneva on the 13th October, 1976;

(p) Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976 signed in Geneva on the 22nd October, 1996;

(q) Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) signed in Geneva on the 13th October, 1970;

(r) Accommodation of Crews Convention (Revised), 1949 (No. 92) signed in Geneva on the 8th June, 1949;

(s) Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) signed in Geneva on the 14th October, 1970;

(t) Repatriation of Seamen Convention, 1926 (No. 23) signed in Geneva on the 7th June, 1926;

(u) Repatriation of Seafarers Convention (Revised), 1987 (No. 166) signed in Geneva on the 24th September, 1987;

(v) Food and Catering (Ships' Crews) Convention, 1946 (No. 68) signed in Seattle on the 6th June, 1946;

(w) Labour Inspection (Seafarers) Convention, 1996 (No. 178) signed in Geneva on the 22nd October, 1996;

(x) Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) signed in Geneva on the 22nd October, 1996;

(y) Shipowners' Liability (Sick and Injured Seamen) Convention,

1936 (No. 55) signed in Geneva on the 6th October, 1936;

(z) Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164) signed in Geneva on the 24th September, 1987.

(aa) United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea signed in Rotterdam on the 23rd September, 2009.

(3) The Minister shall upon the ratification or accession of any treaty or convention to which this article refers publish a notice in the Gazette stating the date on which such treaty or convention shall come into force with regard to Malta.

(4) The House of Representatives may by resolution add to the list of treaties or conventions in subarticle (2).

(5) Any reference in this article to a treaty or a convention or a protocol shall include reference to any amendment to such treaty or convention or protocol ratified, acceded to or accepted by the Government of Malta.

The Carriage of Goods by Sea Act

Cap 140 - as amended

The Carriage of Goods by Sea Act

CHAPTER 140

To make provision in respect of the Carriage of Goods by Sea.

(17th December, 1954)*

Enacted by ACT XI of 1954 as amended by Acts XI of 1973 and XIII of 1983; and
Legal Notice 409 of 2007 and Legal Notice II of 2010

1. This Act may be cited as the Carriage of Goods by Sea Act. Short title.
2. In this Act "the Rules" means the rules relating to documents of transport, set out in the Schedule to this Act. Interpretation.
3. Notwithstanding any provisions to the contrary contained in the Commercial Code, the Rules shall have effect, subject to the provisions of this Act, in relation to and in connection with the carriage of goods by sea in any vessel used for that purpose and carrying goods to or from Malta from or to a port in any country, but not if such vessel is carrying goods within the limits of Malta, that is from one island to the other or from one part of an island to another part of the same island. Application of the Rules. Cap. 13.
4. Repealed by Act II of 2010 No implied warranty of seaworthiness.
5. Every transport document, which contains or is evidence of a contract of carriage to which the Rules apply, shall be subject to the provisions of the said Rules as applied by this Act. Statement as to applicability of the Rules to be included in bills of lading.
6. Repealed by Act II of 2010. Substitutes Regulation 5 of the

- | | |
|--|---|
| <p>7. Nothing in this Act shall affect the operation of sections 286 to 291, both included, and of Part IX of the Merchant Shipping Act, or the operation of any other enactment, for the time being in force, limiting the liability of shipowners.</p> | <p>principal regulations.
Saving clause.
<i>Substituted by: XI. 1973.377.</i>
Cap. 234.</p> |
| <p>8. The Courts of Malta shall be bound by the provisions of Chapters 14 and 15 of the schedule of this Act.</p> | <p>Jurisdiction and Arbitration</p> |
| <p>9. The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before the entry into force of this Act, nor to any transport document issued, whether before or after that day, in pursuance of any such contract as aforesaid.</p> | <p>Operation of the Rules.</p> |

Chapter 1 General provisions

- | | |
|---|--------------------|
| <p>1. For the purposes of this Act:</p> <p>(1) “Contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.</p> <p>(2) “Volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.</p> <p>(3) “Liner transportation” means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.</p> | <p>Definitions</p> |
|---|--------------------|

(4)“Non-liner transportation” means any transportation that is not liner transportation.

(5)“Carrier” means a person that enters into a contract of carriage with a shipper.

(6)(a) “Performing party” means a person other than the carrier that performs or undertakes to perform any of the carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier’s request or under the carrier’s supervision or control.

(b) “Performing party” does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.

(7)“Maritime performing party” means a performing party to the extent that it performs or undertakes to perform any of the carrier’s obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship. An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

(8)“Shipper” means a person that enters into a contract of carriage with a carrier.

(9)“Documentary shipper” means a person, other than the shipper, that accepts to be named as “shipper” in the transport document or electronic transport record.

(10)“Holder” means:

(a)A person that is in possession of a negotiable transport document; and (i) if the document is an order document, is identified in it as the shipper or the consignee, or is the person to which the document is duly endorsed; or (ii) if the document is a blank endorsed order

document or bearer document, is the bearer thereof; or

(b)The person to which a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in article 9, paragraph 1.

(11) “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.

(12)“Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with chapter 10.

(13)“Controlling party” means the person that pursuant to article 51 is entitled to exercise the right of control.

(14)“Transport document” means a document issued under a contract of carriage by the carrier that:

- a. Evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage; and
- b. Evidences or contains a contract of carriage.

(15)“Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.

(16)“Non-negotiable transport document” means a transport document that is not a negotiable transport document.

(17)“Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.

(18)“Electronic transport record” means information in one or more

messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:

- a. Evidences the carrier's or a performing party's receipt of goods under a contract of carriage; and
- b. Evidences or contains a contract of carriage.

(19)“Negotiable electronic transport record” means an electronic transport record:

- a. That indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
- b. The use of which meets the requirements of article 9, paragraph 1.

(20)“Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.

(21)The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.

(22)The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.

(23)“Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.

(24)“Goods” means the wares, merchandise, and articles of every

kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.

(25)“Ship” means any vessel used to carry goods by sea.

(26)“Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.

(27)“Vehicle” means a road or railroad cargo vehicle.

(28)“Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.

(29)“Domicile” means (a) a place where a company or other legal person or association of natural or legal persons has its (i) statutory seat or place of incorporation or central registered office, whichever is applicable, (ii) central administration or (iii) principal place of business, and (b) the habitual residence of a natural person.

(30)“Competent court” means a 1st Hall Civil Court and it may exercise jurisdiction over the dispute.

2. In the interpretation of this Act, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

Interpretation of this Act

3. The notices, confirmation, consent, agreement, declaration and other communications referred to in articles 19, paragraph 2; 23, paragraphs 1 to 4; 36, subparagraphs 1 (b), (c) and (d); 40, subparagraph 4 (b); 44; 48, paragraph 3; 51, subparagraph 1 (b); 59, paragraph 1; 63; 66; 67, paragraph 2; 74, paragraph 4; and 78, paragraphs 2 and 5, shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

Form requirements

4. (1). Any provision of this Act that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this Act against:
- (a) The carrier or a maritime performing party;
- (b) The master, crew or any other person that performs services on board the ship; or
- (c) Employees of the carrier or a maritime performing party.
- (2). Any provision of this Act that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding, whether founded in contract, in tort, or otherwise, that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.
- Applicability of defences and limits of liability

Chapter 2 Scope of application

5. (1). Subject to article 6, this Act applies to contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in Malta:
- (a) The place of receipt;
- (b) The port of loading;
- (c) The place of delivery; or
- (d) The port of discharge.
- (2). This Act applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee, or any other interested parties.
- General scope of application

6. (1). This Act does not apply to the following contracts in liner transportation:

(a) Charter parties; and

(b) Other contracts for the use of a ship or of any space thereon.

(2). This Act does not apply to contracts of carriage in non-liner transportation except when:

(a) There is no charter party or other contract between the parties for the use of a ship or of any space thereon; and

(b) A transport document or an electronic transport record is issued.

7. Notwithstanding article 6, this Act applies as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this Act. However, this Act does not apply as between the original parties to a contract of carriage excluded pursuant to article 6.

Specific
exclusions

Chapter 3 Electronic transport records

8. Subject to the requirements set out in this Act:

Application to
certain parties

(a) Anything that is to be in or on a transport document under this Act may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper; and

(b) The issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

9. (1). The use of a negotiable electronic transport record shall be subject to procedures that provide for:

Use and effect of
electronic transport
records

(a) The method for the issuance and the transfer of that record to an

intended holder;

(b) An assurance that the negotiable electronic transport record retains its integrity;

(c) The manner in which the holder is able to demonstrate that it is the holder; and

(d) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to articles 10, paragraph 2, or 47, subparagraphs 1 (a) (ii) and (c), the electronic transport record has ceased to have any effect or validity.

(2). The procedures in paragraph 1 of this article shall be referred to in the contract particulars and be readily ascertainable.

10. (1). If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

Procedures for use of negotiable electronic transport records

(a) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;

(b) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and

(c) The negotiable transport document ceases thereafter to have any effect or validity.

(2). If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

(a) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) The electronic transport record ceases thereafter to have any effect or validity.

Chapter 4 Obligations of the carrier

11. The carrier shall, subject to this Act and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee. Carriage and delivery of the goods

12. (1). The period of responsibility of the carrier for the goods under this Act begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered. Period of responsibility of the carrier

(2). (a) If the law or regulations of the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(b) If the law or regulations of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

(3). For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that:

(a) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or

(b) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

13. (1). The carrier shall during the period of its responsibility as defined in article 12, and subject to article 26, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver Specific obligations

the goods.

(2). Notwithstanding paragraph 1 of this article, and without prejudice to the other provisions in chapter 4 and to chapters 5 to 7, the carrier and the shipper may agree that the loading, handling, stowing or unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

14. The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

Specific obligations applicable to the voyage by sea

(a) Make and keep the ship seaworthy;

(b) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and

(c) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

15. Notwithstanding articles 11 and 13, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

Goods that may become a danger

16. Notwithstanding articles 11, 13, and 14, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

Sacrifice of the goods during the voyage by sea

Chapter 5 Liability of the carrier for loss, damage or delay

- 17.** (1). The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in chapter 4. Basis of liability
- (2). The carrier is relieved of all or part of its liability pursuant to paragraph 1 of this article if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in article 18.
- (3). The carrier is also relieved of all or part of its liability pursuant to paragraph 1 of this article if, alternatively to proving the absence of fault as provided in paragraph 2 of this article, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:
- (a) Act of God;
 - (b) Perils, dangers, and accidents of the sea or other navigable waters;
 - (c) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
 - (d) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in article 18;
 - (e) Strikes, lockouts, stoppages, or restraints of labour;
 - (f) Fire on the ship;
 - (g) Latent defects not discoverable by due diligence;
 - (h) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to article 33 or 34;
 - (i) Loading, handling, stowing, or unloading of the goods performed

pursuant to an agreement in accordance with article 13, paragraph 2, unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;

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

(k) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;

(l) Saving or attempting to save life at sea;

(m) Reasonable measures to save or attempt to save property at sea;

(n) Reasonable measures to avoid or attempt to avoid damage to the environment; or

(o) Acts of the carrier in pursuance of the powers conferred by articles 15 and 16.

(4). Notwithstanding paragraph 3 of this article, the carrier is liable for all or part of the loss, damage, or delay:

(a) If the claimant proves that the fault of the carrier or of a person referred to in article 18 caused or contributed to the event or circumstance on which the carrier relies; or

(b) If the claimant proves that an event or circumstance not listed in paragraph 3 of this article contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in article 18.

(5). The carrier is also liable, notwithstanding paragraph 3 of this article, for all or part of the loss, damage, or delay if:

(a) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by (i) the unseaworthiness of the ship; (ii) the improper crewing, equipping, and supplying of the ship; or (iii) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for

reception, carriage, and preservation of the goods; and

(b) The carrier is unable to prove either that: (i) none of the events or circumstances referred to in subparagraph 5 (a) of this article caused the loss, damage, or delay; or (ii) it complied with its obligation to exercise due diligence pursuant to article 14.

(6). When the carrier is relieved of part of its liability pursuant to this article, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this article.

18. The carrier is liable for the breach of its obligations under this Act caused by the acts or omissions of:

Liability of the carrier for other persons

(a) Any performing party;

(b) The master or crew of the ship;

(c) Employees of the carrier or a performing party; or

(d) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

19. (1). A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this Act and is entitled to the carrier's defences and limits of liability as provided for in this Act if:

Liability of maritime performing parties

(a) The maritime performing party received the goods for carriage in Malta, or delivered them in Malta, or performed its activities with respect to the goods in a port in Malta; and

(b) The occurrence that caused the loss, damage or delay took place:

(i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) while the maritime performing party had custody

of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

(2). If the carrier agrees to assume obligations other than those imposed on the carrier under this Act, or agrees that the limits of its liability are higher than the limits specified under this Act, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits.

(3). A maritime performing party is liable for the breach of its obligations under this Act caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in paragraph 1 of this article.

(4). Nothing in this Act imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

20. (1). If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this Act.

Joint and several liability

(2). Without prejudice to article 61, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Act.

21. Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

Delay

22. (1). Subject to article 59, the compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery

Calculation of compensation

established in accordance with article 43.

(2). The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

(3). In case of loss of or damage to the goods, the carrier is not liable for payment of any compensation beyond what is provided for in paragraphs 1 and 2 of this article except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of chapter 16.

23. (1). The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

Notice in case of
loss, damage or
delay

(2). Failure to provide the notice referred to in this article to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Act, nor shall it affect the allocation of the burden of proof set out in article 17.

(3). The notice referred to in this article is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

(4). No compensation in respect of delay is payable unless notice of

loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

(5). When the notice referred to in this article is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

(6). In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

Chapter 6 Additional provisions relating to particular stages of carriage

24. When pursuant to applicable law a deviation constitutes a breach of the carrier’s obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this Act, except to the extent provided in article 61. Deviation

25. (1). Goods may be carried on the deck of a ship only if: Deck cargo on ships

- (a) Such carriage is required by law;
- (b) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or
- (c) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

(2). The provisions of this Act relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to paragraph 1 of this article, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subparagraphs 1

(a) or (c) of this article.

(3). If the goods have been carried on deck in cases other than those permitted pursuant to paragraph 1 of this article, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in article 17.

(4). The carrier is not entitled to invoke subparagraph 1 (c) of this article against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

(5). If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.

26. When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this Act do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

Carriage preceding or subsequent to sea carriage

(a) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;

(b) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and

(c) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

Chapter 7 Obligations of the shipper to the carrier

27. (1). Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

Delivery for carriage

(2). The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to article 13, paragraph 2.

(3). When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

28. The carrier and the shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of the goods if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Cooperation of the shipper and the carrier in providing information and instructions

29. (1). The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

Shipper's obligation to provide information, instructions and documents

(a) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

(b) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

(2). Nothing in this article affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

30. 1. The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this Act.

Basis of shipper's liability to the carrier

2. Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to articles 31, paragraph 2, and 32, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in article 34.

3. When the shipper is relieved of part of its liability pursuant to this article, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in article 34.

31. (1). The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in article 36, paragraph 1; the name of the party to be identified as the shipper in the contract particulars; the name of the consignee, if any; and the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

Information for compilation of contract particulars

(2). The shipper is deemed to have guaranteed the accuracy at the

time of receipt by the carrier of the information that is provided according to paragraph 1 of this article. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

32. When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment:

Special rules on dangerous goods

(a) The shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform; and

(b) The shipper shall mark or label dangerous goods in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

33. (1). A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to this chapter and pursuant to article 55, and is entitled to the shipper's rights and defences provided by this chapter and by chapter 13.

Assumption of shipper's rights and obligations by the documentary shipper

(2). Paragraph 1 of this article does not affect the obligations, liabilities, rights or defences of the shipper.

34. The shipper is liable for the breach of its obligations under this Act caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable for

Liability of the shipper for other persons

acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

Chapter 8 Transport documents and electronic transport records

35. Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper’s option:

Issuance of the transport document or the electronic transport record

- (a) A non-negotiable transport document or, subject to article 8, subparagraph (a), a non-negotiable electronic transport record; or
- (b) An appropriate negotiable transport document or, subject to article 8, subparagraph (a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

36. (1). The contract particulars in the transport document or electronic transport record referred to in article 35 shall include the following information, as furnished by the shipper:

Contract particulars

- (a) A description of the goods as appropriate for the transport;
 - (b) The leading marks necessary for identification of the goods;
 - (c) The number of packages or pieces, or the quantity of goods; and
 - (d) The weight of the goods, if furnished by the shipper.
- (2). The contract particulars in the transport document or electronic transport record referred to in article 35 shall also include:
- (a) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;

- (b) The name and address of the carrier;
 - (c) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
 - (d) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.
- (3). The contract particulars in the transport document or electronic transport record referred to in article 35 shall further include:
- (a) The name and address of the consignee, if named by the shipper;
 - (b) The name of a ship, if specified in the contract of carriage;
 - (c) The place of receipt and, if known to the carrier, the place of delivery; and
 - (d) The port of loading and the port of discharge, if specified in the contract of carriage.
- (4). For the purposes of this article, the phrase “apparent order and condition of the goods” in subparagraph 2 (a) of this article refers to the order and condition of the goods based on:
- (a) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
 - (b) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

- 37.** 1. If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.
2. If no person is identified in the contract particulars as the carrier

Identity of the carrier

as required pursuant to article 36, subparagraph 2 (b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

3. Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to paragraph 2 of this article is the carrier.

38. (1). A transport document shall be signed by the carrier or a person acting on its behalf. Signature

(2). An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

39. (1). The absence or inaccuracy of one or more of the contract particulars referred to in article 36, paragraphs 1, 2 or 3, does not of itself affect the legal character or validity of the transport document or of the electronic transport record. Deficiencies in the contract particulars

(2). If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

(a) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been

loaded on board a ship; or

(b) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

(3). If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

40. (1). The carrier shall qualify the information referred to in article 36, paragraph 1, to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

Information for
compilation of
contract particulars

(a) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or

(b) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

(2). Without prejudice to paragraph 1 of this article, the carrier may qualify the information referred to in article 36, paragraph 1, in the circumstances and in the manner set out in paragraphs 3 and 4 of this article to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

(3). When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in article 36, paragraph 1, if:

(a) The carrier had no physically practicable or commercially

reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or

(b) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

(4). When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in:

(a) Article 36, subparagraphs 1 (a), (b), or (c), if:

(i) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and

(ii) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record; and

(b) Article 36, subparagraph 1 (d), if:

(i) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or

(ii) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

41. Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in article 40:

Evidentiary effect
of the contract
particulars

(a) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;

(b) Proof to the contrary by the carrier in respect of any contract

particulars shall not be admissible, when such contract particulars are included in:

- (i) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or
- (ii) A non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods and is transferred to the consignee acting in good faith;
- (c) Proof to the contrary by the carrier shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:
 - (i) The contract particulars referred to in article 36, paragraph 1, when such contract particulars are furnished by the carrier;
 - (ii) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and
 - (iii) The contract particulars referred to in article 36, paragraph 2.

42. If the contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper. “Freight prepaid”

Chapter 9 Delivery of the goods

43. When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of

Obligation to accept delivery

the trade and the circumstances of the carriage, delivery could reasonably be expected.

44. On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt.

Obligation to acknowledge receipt

45. When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

Delivery when no negotiable transport document or negotiable electronic transport record is issued

(a) The carrier shall deliver the goods to the consignee at the time and location referred to in article 43. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;

(b) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address;

(c) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in

respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(d) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to subparagraph (c) of this article is discharged from its obligations to deliver the goods under the contract of carriage.

46. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

Delivery when a non-negotiable transport document that requires surrender is issued

(a) The carrier shall deliver the goods at the time and location referred to in article 43 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the non-negotiable document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the non-negotiable document is not surrendered. If more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;

(b) Without prejudice to article 48, paragraph 1, if the goods are not deliverable because (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions, the carrier may

so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(c) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to subparagraph (b) of this article is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered to it.

47. (1). When a negotiable transport document or a negotiable electronic transport record has been issued:

Delivery when a negotiable transport document or negotiable electronic transport record is issued

(a) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods at the time and location referred to in article 43 to the holder:

(i) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in article 1, subparagraph 10

(a) (i), upon the holder properly identifying itself; or

(ii) Upon demonstration by the holder, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder of the negotiable electronic transport record;

(b) The carrier shall refuse delivery if the requirements of subparagraph (a) (i) or (a) (ii) of this paragraph are not met;

(c) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport

record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by article 9, paragraph 1.

(2). Without prejudice to article 48, paragraph 1, if the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:

(a) If the goods are not deliverable because (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in article 43, claim delivery of the goods from the carrier after their arrival at the place of destination, (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in article 1, subparagraph 10 (a) (i), or (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

(b) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subparagraph 2 (a) of this article is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder;

(c) The person giving instructions under subparagraph 2 (a) of this article shall indemnify the carrier against loss arising from its being

held liable to the holder under subparagraph 2 (e) of this article. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request;

(d) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subparagraph 2 (b) of this article, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods;

(e) Notwithstanding subparagraphs 2 (b) and 2 (d) of this article, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

48. (1). For the purposes of this article, goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

Goods remaining undelivered

(a) The consignee does not accept delivery of the goods pursuant to this chapter at the time and location referred to in article 43;

(b) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to articles 45, 46 and 47;

(c) The carrier is entitled or required to refuse delivery pursuant to articles 44, 45, 46 and 47;

(d) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or

(e) The goods are otherwise undeliverable by the carrier.

(2). Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

(a) To store the goods at any suitable place;

(b) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and

(c) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

(3). The carrier may exercise the rights under paragraph 2 of this article only after it has given reasonable notice of the intended action under paragraph 2 of this article to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper.

(4). If the goods are sold pursuant to subparagraph 2 (c) of this article, the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

(5). The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this article unless the claimant proves that such loss or damage resulted

from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

49. Nothing in this Act affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due. Retention of goods

Chapter 10 Rights of the controlling party

50. (1). The right of control may be exercised only by the controlling party and is limited to: Exercise and extent of right of control

(a) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;

(b) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and

(c) The right to replace the consignee by any other person including the controlling party.

(2). The right of control exists during the entire period of responsibility of the carrier, as provided in article 12, and ceases when that period expires.

51. (1). Except in the cases referred to in paragraphs 2, 3 and 4 of this article: Identity of the controlling party and transfer of the right of control

(a) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;

(b) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and

(c) The controlling party shall properly identify itself when it exercises the right of control.

(2). When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods:

(a) The shipper is the controlling party and may transfer the right of control to the consignee named in the transport document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and

(b) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

(3). When a negotiable transport document is issued:

(a) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;

(b) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with article 57. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and

(c) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in article 1, subparagraph 10 (a) (i), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

(4). When a negotiable electronic transport record is issued:

- (a) The holder is the controlling party;
- (b) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in article 9, paragraph 1; and
- (c) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in article 9, paragraph 1, that it is the holder.

52. (1). Subject to paragraphs 2 and 3 of this article, the carrier shall execute the instructions referred to in article 50 if:

Carrier's execution of instructions

- (a) The person giving such instructions is entitled to exercise the right of control;
 - (b) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and
 - (c) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.
- (2). In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this article, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.
- (3). The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this article. The carrier may refuse to carry out the instructions if no such security is provided.
- (4). The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation

pursuant to paragraph 1 of this article shall be subject to articles 17 to 23, and the amount of the compensation payable by the carrier shall be subject to articles 59 to 61.

53. Goods that are delivered pursuant to an instruction in accordance with article 52, paragraph 1, are deemed to be delivered at the place of destination, and the provisions of chapter 9 relating to such delivery apply to such goods. Deemed delivery

54. (1). The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in article 50, subparagraphs 1 (b) and (c). Variations to the contract of carriage

(2). Variations to the contract of carriage, including those referred to in article 50, subparagraphs 1 (b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires surrender, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If so stated or incorporated, such variations shall be signed in accordance with article 38.

55. (1). The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage. Providing additional information, instructions or documents to carrier

(2). If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the

shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

56. The parties to the contract of carriage may vary the effect of articles 50, subparagraphs 1 (b) and (c), 50, paragraph 2, and 52. The parties may also restrict or exclude the transferability of the right of control referred to in article 51, subparagraph 1 (b). Variation by agreement

Chapter 11 Transfer of rights

57. (1). When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person: When a negotiable transport document or negotiable electronic transport record is issued

(a) Duly endorsed either to such other person or in blank, if an order document; or

(b) Without endorsement, if: (i) a bearer document or a blank endorsed document; or (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

(2). When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in article 9, paragraph 1.

58. (1). Without prejudice to article 55, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder. Liability of holder

(2). A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it

under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

(3). For the purposes of paragraphs 1 and 2 of this article, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

(a) It agrees with the carrier, pursuant to article 10, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or

(b) It transfers its rights pursuant to article 57.

Chapter 12 Limits of liability

59. (1). Subject to articles 60 and 61, paragraph 1, the carrier's liability for breaches of its obligations under this Act is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability set out in this article has been agreed upon between the carrier and the shipper. Limits of liability

(2). When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit.

(3). The unit of account referred to in this article is the Special Drawing Right as defined by the International Monetary Fund. The amounts referred to in this article are to be converted into Euro

according to the value of such currency at the date of judgement or award or the date agreed upon by the parties. The value of Euro, in terms of the Special Drawing Right, is to 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.

60. Subject to article 61, paragraph 2, compensation for loss of or damage to the goods due to delay shall be calculated in accordance with article 22 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this article and article 59, paragraph 1, may not exceed the limit that would be established pursuant to article 59, paragraph 1, in respect of the total loss of the goods concerned.

Limits of liability for loss caused by delay

61. (1). Neither the carrier nor any of the persons referred to in article 18 is entitled to the benefit of the limitation of liability as provided in article 59, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this Act was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

Loss of the benefit of limitation of liability

(2). Neither the carrier nor any of the persons mentioned in article 18 is entitled to the benefit of the limitation of liability as provided in article 60 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

Chapter 13 Time for suit

62. (1). No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Act may be instituted after the expiration of a period of two years. Period of time for suit

(2). The period referred to in paragraph 1 of this article commences on the day on which the carrier has delivered the goods or, in cases in which no goods have been delivered or only part of the goods have been delivered, on the last day on which the goods should have been delivered. The day on which the period commences is not included in the period.

(3). Notwithstanding the expiration of the period set out in paragraph 1 of this article, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

63. The period provided in article 62 shall not be subject to suspension or interruption, but the person against which a claim is made may at any time during the running of the period extend that period by a declaration to the claimant. This period may be further extended by another declaration or declarations. Extension of time for suit

64. An action for indemnity by a person held liable may be instituted after the expiration of the period provided in article 62 if the indemnity action is instituted within the later of: Action for indemnity

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

65. An action against the bareboat charterer or the person identified as the carrier pursuant to article 37, paragraph 2, may be instituted after the expiration of the period provided in article 62 if the action is instituted within the later of:

Actions against the person identified as the carrier

(a) The time allowed by the applicable law in the jurisdiction where proceedings are instituted; or

(b) Ninety days commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to article 37, paragraph 2.

Chapter 14 Jurisdiction

66. Unless the contract of carriage contains an exclusive choice of court agreement that complies with article 67 or 72, the plaintiff has the right to institute judicial proceedings under this Act against the carrier:

Actions against the carrier

(a) In a competent court within the jurisdiction of which is situated one of the following places:

(i) The domicile of the carrier;

(ii) The place of receipt agreed in the contract of carriage;

(iii) The place of delivery agreed in the contract of carriage; or

(iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship; or

(b) In a competent court or courts designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Act.

67. (1). The jurisdiction of a court chosen in accordance with article 66, subparagraph (b), is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction:

Choice of court agreements

(a) Is contained in a volume contract that clearly states the names and addresses of the parties and either (i) is individually negotiated or (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and

(b) Clearly designates the courts of Malta.

(2). A person that is not a party to the volume contract is bound by an exclusive choice of court agreement concluded in accordance with paragraph 1 of this article only if:

(a) The court is in one of the places designated in article 66, subparagraph (a);

(b) That agreement is contained in the transport document or electronic transport record;

(c) That person is given timely and adequate notice of the court where the action shall be brought and that the jurisdiction of that court is exclusive; and

(d) The law of the court seized recognizes that that person may be bound by the exclusive choice of court agreement.

68. The plaintiff has the right to institute judicial proceedings under this Act against the maritime performing party in a competent court within the jurisdiction of which is situated one of the following places:

Actions against the maritime performing party

(a) The domicile of the maritime performing party; or

(b) The port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

69. Subject to articles 71 and 72, no judicial proceedings under this Act against the carrier or a maritime performing party may be

No additional bases of jurisdiction

instituted in a court not designated pursuant to article 66 or 68.

70. Nothing in this Act affects jurisdiction with regard to provisional or protective measures, including arrest. A court in a State in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless:

- (a) The requirements of this chapter are fulfilled; or
- (b) An international Act that applies in that State so provides.

Arrest and provisional or protective measures

71. (1). Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both article 66 and article 68. If there is no such court, such action may be instituted in a court designated pursuant to article 68, subparagraph (b), if there is such a court.

Consolidation and removal of actions

(2). Except when there is an exclusive choice of court agreement that is binding pursuant to article 67 or 72, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of its right to select the forum pursuant to article 66 or 68 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated pursuant to article 66 or 68, whichever is applicable, where the action may be recommenced.

72. (1). After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

(2). A competent court before which a defendant appears, without contesting jurisdiction in accordance with the rules of that court, has jurisdiction.

Agreement after a dispute has arisen and jurisdiction when the defendant has entered an appearance

- 73.** (1). A decision made in another Contracting State by a court having jurisdiction under this Act shall be recognized and enforced in Malta in accordance with the law of Malta when both States have made a declaration in accordance with article 8 of the principal Act..
- (2). A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available pursuant to its law.
- (3). This chapter shall not affect the application of the rules of a regional economic integration organization that is a party to this Act, as concerns the recognition or enforcement of judgements as between member States of the regional economic integration organization, whether adopted before or after this Act.

Recognition and enforcement

Chapter 15 Arbitration

- 74.** (1). Subject to this chapter, parties may agree that any dispute that may arise relating to the carriage of goods under this Act shall be referred to arbitration.
- (2). The arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at:
- (a) Any place designated for that purpose in the arbitration agreement; or
- (b) Any other place situated in a State where any of the following places is located:
- (i) The domicile of the carrier;
- (ii) The place of receipt agreed in the contract of carriage;
- (iii) The place of delivery agreed in the contract of carriage; or
- (iv) The port where the goods are initially loaded on a ship or the port where the goods are finally discharged from a ship.
- (3). The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the

Arbitration agreements

names and addresses of the parties and either:

- (a) Is individually negotiated; or
- (b) Contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

(4). When an arbitration agreement has been concluded in accordance with paragraph 3 of this article, a person that is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if:

- (a) The place of arbitration designated in the agreement is situated in one of the places referred to in subparagraph 2 (b) of this article;
- (b) The agreement is contained in the transport document or electronic transport record;
- (c) The person to be bound is given timely and adequate notice of the place of arbitration; and
- (d) Applicable law permits that person to be bound by the arbitration agreement.

(5). The provisions of paragraphs 1, 2, 3 and 4 of this article are deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement to the extent that it is inconsistent therewith is void.

75. (1). Nothing in this Act affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Act or the provisions of this Act apply by reason of:

- (a) The application of article 7; or
- (b) The parties' voluntary incorporation of this Act in a contract of carriage that would not otherwise be subject to this Act.

(2). Notwithstanding paragraph 1 of this article, an arbitration agreement in a transport document or electronic transport record to

Arbitration
agreement in non-
liner transportation

which this Act applies by reason of the application of article 7 is subject to this chapter unless such a transport document or electronic transport record:

- (a) Identifies the parties to and the date of the charter party or other contract excluded from the application of this Act by reason of the application of article 6; and
- (b) Incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

76. Notwithstanding the provisions of this chapter and chapter 14, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place. Agreement to arbitrate after a dispute has arisen

Chapter 16 Validity of contractual terms

77. (1). Unless otherwise provided in this Act, any term in a contract of carriage is void to the extent that it: General provisions

- (a) Directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Act;
- (b) Directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Act; or
- (c) Assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in article 18.

(2). Unless otherwise provided in this Act, any term in a contract of carriage is void to the extent that it:

- (a) Directly or indirectly excludes, limits or increases the obligations under this of the shipper, consignee, controlling party, holder or documentary shipper; or
- (b) Directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary

shipper for breach of any of its obligations under this Act.

78. (1). Notwithstanding article 77, as between the carrier and the shipper, a volume contract to which this Act applies may provide for greater or lesser rights, obligations and liabilities than those imposed by this Act.

Special rules for
volume contracts

(2). A derogation pursuant to paragraph 1 of this article is binding only when:

(a) The volume contract contains a prominent statement that it derogates from this Act;

(b) The volume contract is (i) individually negotiated or (ii) prominently specifies the sections of the volume contract containing the derogations;

(c) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with this Act without any derogation under this article; and

(d) The derogation is neither (i) incorporated by reference from another document nor (ii) included in a contract of adhesion that is not subject to negotiation.

(3). A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to paragraph 1 of this article, but a volume contract may incorporate such documents by reference as terms of the contract.

(4). Paragraph 1 of this article does not apply to rights and obligations provided in articles 14, subparagraphs (a) and (b), 29 and 32 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in article 61.

(5). The terms of the volume contract that derogate from this Act, if the volume contract satisfies the requirements of paragraph 2 of this

article, apply between the carrier and any person other than the shipper provided that:

(a) Such person received information that prominently states that the volume contract derogates from this Act and gave its express consent to be bound by such derogations; and

(b) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

(6). The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

79. Notwithstanding article 77 and without prejudice to article 78, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

Special rules for live animals and certain other goods

(a) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in article 18, done with the intent to cause such loss of or damage to the goods or such loss due to delay or done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or

(b) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

Chapter 17 Matters not governed by this Act

- | | |
|--|--|
| <p>80. No provision in this Act affects the application of any convention governing the carriage of goods by air or road to the extent that such convention according to its provisions applies to any part of the contract of carriage in force at the time this Act enters into force, including any future amendment to such conventions, that regulate the liability of the carrier for loss of or damage to the goods.</p> | <p>International conventions governing the carriage of goods by other modes of transport</p> |
| <p>81. Nothing in this Act affects the application of any international convention or national law regulating the global limitation of liability of vessel owners.</p> | <p>Global limitation of liability</p> |
| <p>82. Nothing in this Act affects the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.</p> | <p>General average</p> |
| <p>83. This Act does not apply to a contract of carriage for passengers and their luggage.</p> | <p>Passengers and luggage</p> |
| <p>84. No liability arises under this Act for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage:</p> <p>(a) Under the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004, the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil</p> | <p>Damage caused by nuclear incident</p> |

Liability for Nuclear Damage of 12 September 1997, or the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997, including any amendment to these conventions and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or

(b) Under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

Bibliography and References

Baataz, Debattista, Lorenzon, Serdy, Stainland, Tsimplis, The Rotterdam Rules: A Practical Annotation, Informa London, 2009, First Edition.

Baughen, S., Shipping Law, Cavendish Publishing, 2009, Fourth Edition.

Chapter 140 of the Laws of Malta, The Carriage of Goods by Sea Act.

Chapter 234 of the Laws of Malta, The Merchant Shipping Act.

Chapter 304 of the Laws of Malta, The Ratification of Treaties Act.

European Shippers' Council Position Paper – April 2007.

Gert Jan van der Ziel – Chapter 9 of the Rotterdam Rules: Delivery of the Goods.

Hailey, R., Brussels to draft own equivalent to divisive Rotterdam Rules, <http://www.rotterdamrules.com/pdf/Brussels-to-draft-own-equivalent-to-divisive-Rotterdam-Rules.pdf>, as seen January 2010.

Hailey, R., Rotterdam Rules rebels intent on rocking the boat, <http://www.rotterdamrules.com/pdf/Rotterdam-Rules-rebels-intent-on-rocking-the-boat-Lloyd's-List-28-08-2009.pdf>, as seen January 2010.

Martin – Clark, D., IMLI Lecture Notes, January 2010.

Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading (The Hague-Visby Rules).

Reynolds, F., The Hague Rules, the Hague-Visby Rules, and the Hamburg Rules, an edited transcript of the MLAANZ New Zealand Branch Conference held at Tokaanu in April 1990.

Rhidian Thomas, D., And then there were the Rotterdam Rules, Editorial Article of the Journal of International Maritime Law, Law Text Publishing Limited, 2008.

Sturley, M.F., Transport law for the 21st Century: an Introduction to the preparation, philosophy, and potential impact of the Rotterdam Rules, The Journal of International Maritime Law, Law Text Publishing Limited, 2008.

The Constitution of Malta.

The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (The Hague Rules).

The United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (The Rotterdam Rules).

The United Nations Convention on the Carriage of Dangerous Goods by Sea, 1978 (The Hamburg Rules).