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ACT

ENTITLED:

**THE CARRIAGE OF GOODS BY SEA ACT
2000**

FOR THE REPUBLIC OF GHANA

**A MARITIME LEGISLATION DRAFTING PROJECT
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***BY AZARA AL-HASSAN
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SUPERVISED BY DR. IVAN VELLA

CARRIAGE OF GOODS BY SEA ACT 2000

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CARRIAGE OF GOODS BY SEA ACT 2000

THE PREAMBLE

AN ACT TO CONSOLIDATE THE LAW RELATING TO THE CARRIAGE OF GOODS BY SEA AND RELATED TRANSPORT DOCUMENTS

PART I

GENERAL PROVISIONS

1. Definitions

“Actual Carrier” means any person to whom the performance of the carriage of the goods, or part of the carriage, has been entrusted by the carrier.

“Bill of lading” means a document which evidences a contract of carriage by sea and of the carrier having received or loaded the goods and by which the carrier undertakes to deliver the goods against surrender of the document. A provision in the document that the goods are to be delivered to the order of a named person, or to order, or to bearer constitutes such an undertaking.

“Bill” means bill of lading as governed by this Act

“Carrier” means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.

“Consignee” means the person entitled to take delivery of the goods.

“Contract of carriage by sea” means any contract whereby the carrier undertakes against payment of freight to carry goods by sea from one port to another; a contract which involves carriage by sea and also carriage by some other means is deemed to be a contract of carriage by sea for the purposes of this Act only in so far as it relates to the carriage by sea.

“Data message” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (E.D.I), electronic mail, telegram, telex or telecopy.

“Electronic data interchange” means the electronic transfer from computer to computer of information using an agreed standard to structure the information.

“Goods” includes live animals; where the goods are consolidated in a container, pallet or similar article of transport or where they are packed, “goods” includes such article of transport or packaging if supplied by the shipper and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

“Holder” of a bill means a person who has possession of such bill.

“Order” means an order by endorsement on the bill.

“Person” includes a corporation or partnership, or two or more persons having a joint or common interest in property

“Port” includes any facility used for receiving vessels for the purpose of loading and unloading of goods carried by sea;

“Sea waybill” means a document which is not a bill of lading but is a receipt for goods that contains or evidences a contract of carriage of goods by sea and identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract.

“Ship’s delivery order” means any document which is neither a bill of lading nor a sea waybill but contains an undertaking which:

- (a) is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and
- (b) is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.

“Shipper” means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom and in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea.

“Transport documents” in this Act refers to the following documents:

- (a) any bill of lading
- (b) any sea waybill
- (c) any ship’s delivery order.

“Unit of account” means the Special Drawing Right as defined by the International Monetary Fund;

2.Scope of application

(1) The provisions of this Act shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods to or from any port in Ghana to any other port whether in or outside Ghana.

(2) The provisions of this Act are not applicable to charter-parties. However, where a bill of lading is issued pursuant to a charter-party, then the provisions of this Act apply to such a bill of lading if it governs the relation between the carrier and the holder of the bill of lading, not being the charterer.

3. Statement as to application of this Act to be included on the transport document.

Every bill of lading or similar document of title issued in Ghana, which contains or is evidence of any contract to which this Act applies, shall contain an express statement that it is effective subject to the provisions of the Act. The provisions so applied shall be deemed to be incorporated in every bill of lading or similar transport document notwithstanding that it does not contain the express statement required by this section

PART II

LIABILITY OF THE CARRIER

4.Identity of the carrier

- (1) The carrier must indicate his name and principal place of business in the transport document.
- (2) When the carrier is named, then the person so named shall be conclusively taken to be the carrier.
- (3) Where the carrier is not named, but the transport document contains a representation that the goods have been shipped (or received for shipment) on board a named ship, the registered owner of that ship shall be conclusively taken to be the carrier unless the registered owner proves that the ship was at the time of the carriage of the goods under a demise charter.
- (4) If the registered owner declares that the ship was under a demise charter the time bar shall stop running from the time when the suit is brought against the registered owner. The time bar shall then run from the time when the registered owner proves that the ship was at the time of the carriage of the goods under a demise charter.

5.Liability of the carrier and actual carrier

- (1) Where the performance of the carriage or part thereof has been entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea, the carrier shall still remain responsible for the entire carriage in accordance with this Act. The carrier shall be responsible in relation to the carriage performed by the actual carrier and of his servants and agents acting within the scope of their employment
- (2) The responsibility of the carrier under this Act shall apply mutatis mutandis to the actual carrier for the part of the carriage performed by him.
- (3) Where the carrier through a special agreement assumes obligations not imposed by this Act or waives rights conferred by this Act, the actual carrier shall be deemed to be bound by such assumption of obligation or waiver if he expressly agrees to be so bound but whether or not the actual carrier so agrees, the carrier shall remain bound by the obligations or waivers resulting from such special agreement.
- (4) The carrier and actual carrier shall be held jointly and severally liable.
- (5) Nothing in this section shall prejudice any right of recourse as between the carrier and the actual carrier.

6. Through carriage

Notwithstanding subsection (1) section 5 where a contract of carriage of goods by sea provides explicitly that a specified part of the carriage covered by the said contract is to be performed by a named person other than the carrier, the contract may also provide that the carrier is not liable for loss, damage or delay in delivery caused by an occurrence which takes place while the goods are in the charge of the actual carrier during such part of the carriage

7.Period of responsibility

(1) The carrier is responsible for the goods while he is in charge of them at the port of loading, during the carriage and at the port of discharge. The carrier is deemed to be in charge of the goods from the time he has taken over the goods from the shipper or a person acting on his behalf, an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over.

(2) The carrier is deemed no longer in charge of the goods according to section (1) when he has delivered the goods

- (i) by handing the goods over to the consignee,
- (ii) in cases where the consignee does not receive the goods from the carrier, when the goods have been stored on behalf of the consignee in accordance with the contract, the usage of that trade, or with the law or regulations applicable at the port of discharge
- (iii) by handing over the goods to an authority or other third party to whom, pursuant to the law or regulations applicable at the port of discharge, the goods must be handed over.

8. Basis of liability

(1) The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to-

- (a) Make the ship seaworthy.
- (b) Properly man, equip and supply the ship
- (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

(2) Subject to the provisions hereof the carrier shall properly and carefully load, handle, stow, carry, keep care for, and discharge the goods carried.

- (a) The carrier shall not be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of sub-section (1) of this section. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.
- (b) The carrier is liable for loss resulting from loss of or damage to the goods, as well as from delay in the delivery.

(3) The carrier shall not be responsible for loss, damage or delay arising or resulting from-

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship
- (b) Fire, unless caused by the actual fault or privity of the carrier.
- (c) Perils, dangers and accidents of the sea or other navigable waters
- (d) Act of God

- (e) Act of War
- (f) Act of public enemies.
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process
- (h) Quarantine restrictions
- (i) Act or omission of the shipper or owner of the goods, his agent or representative.
- (j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general.
- (k) Riots and civil commotions
- (l) Saving or attempting to save life or property at sea
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods.
- (n) Insufficiency of packing
- (o) Insufficiency or inadequacy of marks.
- (p) Latent defects not discoverable by due diligence.
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault and neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage

9. Limit of liability.

- (a) *Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.7 units of account per package or unit or 2 units of account per kilogramme of the gross weight of the goods lost or damaged, whichever is the higher.*
- (b) *The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality at the port of discharge.*
- (c) *The liability of the carrier for delay in delivery according to the provisions of section 8, is limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but not exceeding the total freight payable under the contract of carriage of goods by sea.*
- (d) *Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit*
- (e) *An enumeration shall not cease to be such merely because it is accompanied by such words or abbreviations such as 'said to contain', 'STC' or 'full container load', 'FCL' as justified by section 19 of this Act*
- (f) *The defences and limits of liability provided for in this Act shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or tort*
- (g) *If such action is brought against a servant or agent of the carrier (such servant or agent not being an independent contractor), such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under this Act*
- (h) *The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in this Act.*

10. Loss of right to limit liability

- (1) The carrier is not entitled to the benefit of the limitation of liability provided for in this Act if it is proved that loss, damage or delay in delivery resulted from an act or omission of the carrier done with the intent to cause loss, damage or delay, or recklessly and with knowledge that such loss, damage or delay would probably result.
- (2) Notwithstanding that a servant or agent of the carrier acted within the scope of his employment such servant or agent is not entitled to the benefit of the limitation of liability provided in this Act if it is proved that the loss, damage or delay in delivery resulted from an act or omission of such servant or agent, done with intent to cause such loss or damage or delay, or recklessly and with knowledge that such loss, damage or delay, would probably result.

11. Delay

Delay in delivery occurs when the goods have not been delivered at the port of discharge provided for in the contract of carriage by sea within the time expressly agreed upon, or in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier having regard to the circumstances of the case.

12. Deviation

Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation, shall not be deemed to be an infringement or breach of the duties imposed by this Act or of the contract of carriage. The carrier shall not be liable for any loss or damage resulting therefrom.

PART III

LIABILITY OF THE SHIPPER

13. Guarantee by the shipper

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

14. General rule

Subject to section 13 above the shipper shall not be liable for loss sustained by the carrier or the actual carrier, or for damage sustained by the ship, unless such damage or loss was caused by the fault or neglect of the shipper, his servants or agents; nor is any

servant or agent of the shipper liable for such loss, or damage unless it was caused by fault or neglect on his part.

15. Special rules on dangerous goods

- (1) The shipper shall mark or label in a suitable manner dangerous goods as dangerous
- (2) Where the shipper hands over goods to a carrier or an actual carrier as the case may be, the shipper shall inform him of the dangerous character of the goods and if necessary, of the precautions to be taken.
- (3) Where the shipper fails to so mark and label the goods and such carrier does not otherwise have knowledge of their dangerous character; the shipper shall be liable to the carrier and any actual carrier for the shipment of such goods.
- (4) Where subsection (2) of this section is not complied with and dangerous goods pose an actual danger to life or property, such goods may be unloaded, destroyed or rendered harmless, as the circumstances may require, without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with this section.

PART IV

TRANSPORT DOCUMENTS

Chapter I- ISSUE OF BILL OF LADING

16. Issue of bill of lading

- (1) When the carrier or actual carrier takes the goods in his charge, the carrier must on demand of the shipper issue to the shipper a bill of lading.
- (2) The bill of lading shall be signed by a person with authority from the carrier.
- (3) The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means in accordance with the laws of Ghana in force at the time of the contract.

17. Contents of a bill of lading

- (1) The bill of lading must include, inter alia, the following particulars:
 - (a) The general nature of the goods, the leading marks necessary for identification of the goods, an express statement, if applicable, as to the dangerous character of the goods, the number of packages or pieces, and the weight of the goods or their quantity or expressed, all such particulars as furnished by the shipper;
 - (b) the apparent order or condition of the goods;
 - (c) the name and principal place of business of the carrier;
 - (d) the name of the shipper;

- (e) the consignee if named by the shipper;
- (f) the port of loading under the contract of carriage by sea and the date on which the goods were taken over by the carrier at the port of loading;
- (g) the port of discharge under the contract of carriage by sea;
- (h) the number of originals of the bill of lading, if more than one;
- (i) the place of issue of the bill of lading;
- (j) the signature of the carrier or a person acting on his behalf;
- (k) the freight to the extent payable by the consignee or other indication that freight is payable by him;
- (l) a statement that the carriage is subject to the provisions of this Act;
- (m) the statement, if applicable, that the goods shall or may be carried on deck;
- (n) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
- (o) any increased limit or limits of liability where agreed in accordance with this Act.

(2) The absence in the bill of lading of one or more particulars referred to in this section does not affect the validity or legal character of the document as a bill of lading provided that it nevertheless meets the requirements set out in section (1) hereof.

18. Authority of the master

A bill of lading signed by the master of the vessel carrying the goods is deemed to have been signed on behalf of the carrier.

CHAPTER II-BILL OF LADING AS EVIDENCE

19. Reservations and evidentiary effect of bill of lading

- (1) If the bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods which the carrier or other person issuing the bill of lading on his behalf knows or has reasonable grounds to suspect do not accurately represent the goods actually taken over or where a “shipped” bill of lading is issued, or if he had no reasonable means of checking such particulars, the carrier or such other person may insert in the bill of lading a reservation specifying these inaccuracies, grounds of suspicion or the absence of reasonable means of checking.
- (2) If the carrier or the other person issuing the bill of lading on his behalf fails to note on the bill of lading the apparent condition of the goods, he is deemed to have noted on the bill of lading that the goods were in apparent good condition.
- (3) Except for particulars in respect of which and to the extent to which a reservation permitted under sub-section (1) of this section has been entered:
 - (a) the bill of lading is prima facie evidence of the taking over or, where a “shipped” bill of lading is issued, loading, by the carrier of the goods as described in the bill of lading; and
 - (b) proof to the contrary by the carrier is not admissible if the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the description of the goods therein.

- (4) A bill of lading which does not set forth the freight or otherwise indicate that freight is payable by the consignee or does not set out the demurrage incurred at the port of loading payable by the consignee, is prima facie evidence that no freight or demurrage is payable by him. However proof to the contrary by the carrier is not admissible when the bill of lading has been transferred to a third party, including a consignee, who in good faith has acted in reliance on the absence in the bill of lading of any such indication.

20. Liability on a bill of lading marked “duplicate”

The placing upon the face of a bill the word “duplicate” or some other word or words indicating that the document is not an original bill shall impose upon the carrier issuing the same the liability of one who represents and warrants that such a bill is an accurate copy of an original bill properly issued, but no other liability.

21. Relationship between carrier and holder of the bill of lading

The relationship between the carrier and the holder of the bill of lading with respect to their rights and obligations shall be defined by the clauses of the bill of lading. Stipulations in the contract of carriage which have not been inserted in the bill of lading shall not be invoked against such a holder unless the bill of lading contains a reference to them.

CHAPTER III-TRANSFER AND NEGOTIABILITY OF BILLS OF LADING

22. Straight bill of lading

A bill of lading in which it is stated that the goods are consigned or destined to a specific person without the words “assigns” or its equivalent, is a straight bill. The straight bill of lading must be presented before delivery by the carrier to the named consignee.

23. Indications on straight bills.

A straight bill shall have placed plainly upon its surface by the carrier issuing it “non-negotiable” or “not negotiable”

This section shall not apply, however, to memoranda or acknowledgements of an informal character.

24. Order bill of lading

A bill of lading in which it is stated that the goods are consigned or destined to the order of any person named in such a bill is an order bill of lading. Any provision in such a bill or in any notice, contract, rule, or regulation that it is non-negotiable shall be null and void and shall not affect its negotiability unless upon its face and in writing agreed to by the shipper.

25. Negotiation of order bill by endorsement

An order bill may be negotiated by the endorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such endorsement may be in blank or to a specified person. If endorsed to a

specified person it may be negotiated again by the endorsement of such person in blank or to another specified person. Subsequent negotiations may be made in a like manner.

26. Negotiation of an order bill by delivery

An order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such specified person or a subsequent endorsee of the bill has endorsed it in blank.

27. Negotiation by a person in possession

An order bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

28. Negotiation of a bearer bill of lading

If a bill of lading does not name the consignee but makes the goods deliverable to the bearer, the space for the name of the consignee being left blank, it may be transferred by delivery without endorsement.

29. Liability of the endorser of a bill of lading

The endorsement of a bill of lading shall not make the endorser liable for any failure on the part of the carrier or previous endorsers of the bill to fulfil their respective duties and obligations.

30. Warranties arising out of transfer of a bill of lading

Unless a contrary intention appears a person who negotiates or transfers for value, a bill by endorsement or delivery, warrants:

- (a) That the bill is genuine;
- (b) That he has a legal right to transfer it;
- (c) That he has no knowledge of any fact which would impair the validity or worth of the bill;

31. Title and right acquired by the transferee of an order bill

A person to whom an order bill has been duly negotiated acquires thereby:

- (a) Such title to the goods as the transferor of the bill had, or had the ability, to convey to a purchaser in good faith for value
- (b) The obligation of the carrier to hold possession of the goods on his behalf according to the terms of the bill as if the carrier had contracted directly with him.

PART V

TRANSPORT DOCUMENTS OTHER THAN BILLS OF LADING

CHAPTER I-Sea waybill

32. Contents

A sea waybill shall contain the following particulars:

- (1) concerning the goods received for carriage,
- (2) of the contracting shipper,
- (3) of the consignee,
- (4) of the carrier,
- (5) the conditions of the carriage,
- (6) the freight and other cost payable by the consignee or a reference to a document in which this may be found,
- (7) The name and principal place of business of the carrier.
- (8) The signature of the carrier or any person acting on his behalf
- (9) A statement that the carriage is subject to the provisions of this Act will nullify any stipulation derogating therefrom to the detriment of the shipper or the consignee;
- (10) A statement, if applicable, that the goods shall or may be carried on deck;
- (11) The date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties; and
- (12) Any increased limit or limits of liability where agreed in accordance with this Act.

33. The carrier's duty to inspect

The carrier shall to a reasonable extent check the accuracy of the particulars included in the sea waybill. If he has reasonable grounds to suspect the accuracy of such particulars or if he had no reasonable means of checking the accuracy, he must insert on the waybill a proper reservation to this effect.

34. Qualification report

If a waybill is described as a received for shipment document, and damage is sustained whilst the goods are on the quay, a qualification report should be issued to the shipper and the consignee if they are not one person.

35. Effect as evidence

The sea waybill shall be evidence of the contract of carriage and of the receipt of the goods as they have been described in the document.

36. Right of control

- (1) Unless the shipper has exercised his option under sub-section (2) below he shall be the only party entitled to give the carrier instructions in relation to the contract of carriage. He shall be

entitled to change the name of the consignee at any time up to the consignee claiming delivery of the goods after their arrival at the destination, provided he gives the carrier reasonable notice in writing, or by some other means acceptable to the carrier, thereby undertaking to indemnify the carrier against any additional expense caused thereby.

- (2) The shipper shall have the option, to be exercised not later than the receipt of the goods by the carrier, to transfer the right of control to the consignee. The exercise of this option must be noted on the sea waybill or similar document, if any. Where the option has been exercised the consignee shall have such rights as are referred to in section (1) above.

37. Delivery of the goods

The carrier shall deliver the goods to the consignee upon production of the proper identification.

CHAPTER II-Ship's Delivery orders

38. Ship's Delivery order

The rights vested in any person by virtue of the operation of section 48 in relation to a ship's delivery order –

- (1) shall be so vested subject to the terms of the order,
- (2) where the goods to which the order relates, form only part of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.

39. Liabilities under Ship's delivery order

Where the goods that a ship's delivery order describes, form only a part of the goods to which the contract of carriage relates, the liability to which any person is subject in relation to that order shall exclude liability in respect of any goods that the order does not describe as appropriated to the consignee in that delivery order.

PART VI

ELECTRONIC SHIPPING DOCUMENTS

40. Legal recognition of data messages

Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of a data message.

41. Incorporation by reference

Information shall not be denied legal, effect, validity or enforceability solely on the grounds that it is not contained in the data message

purporting to give rise to such legal effect, but is merely referred to in that data message.

42. Writing

- (1) Where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference
- (2) Sub-section (1) applies whether the requirement is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

43. Signature

- (1) Where the law requires a signature of a person, that requirement is met in relation to a data message if
 - (a) a method is used to identify that person and to indicate that person's approval of the information contained in the message; and
 - (b) that method is as reliable as was appropriate for the purposes for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.
- (2) Sub-section (1) applies whether the requirement is in the form of an obligation or whether the law simply provides consequences for the information not being in writing.

44. Application to actions related to the carriage of goods by sea

This part shall apply to any transaction using one or more data messages including but not limited to:

- (a) furnishing the marks, number, quantity or weight of goods;
- (b) stating or declaring the nature or value of goods;
- (c) issuing a receipt for goods;
- (d) confirming that the goods have been loaded;
- (e) notifying a person of the terms and conditions of a contract;
- (f) giving instructions to the carrier;
- (g) claiming delivery of goods;
- (h) giving notice of loss of, or damage to goods;
- (i) giving any other notice or statement in connection with the performance of the contract;
- (j) undertaking to deliver goods to a named person or a person authorised to claim delivery;
- (k) granting, acquiring, renouncing, surrendering, transferring or negotiating rights in goods;
- (l) acquiring and transferring rights and obligations under the contract.

45. Application to transport documents

- (1) Where the law requires that any action referred to in section 45 be carried out in writing or by using a paper document, that

requirement is met if the action is carried out by using one or more data messages.

(2) Sub-section (1) applies whether the requirement is in the form of an obligation or whether the law simply provides consequences for failing either to carry out the action in writing or to use a paper document.

(3) If a right is to be granted to, or an obligation is to be acquired by one person and no other person, and if the law requires that, in order to effect this, the right or obligation must be conveyed to that person by transfer or the use of a paper document, that requirement is met if the right or obligation is conveyed by using one or more data messages, provided that a reliable method is used to render such data message or messages unique.

(4) The standard of reliability required for sub-section (3) shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement.

(5) Where one or more data messages are used to effect any action in sub-sections (k) and (l) of section 44, no paper document used to effect any such action is valid unless the use of data messages has been terminated and replaced by the use of paper documents. A paper document issued in these circumstances shall contain a statement of such termination. The replacement of data messages by paper documents shall not affect the rights or obligations of the parties involved.

(6) If a rule of law is compulsorily applicable to a contract of carriage by sea which is in, or is evidenced by, a paper document that rule shall not be inapplicable to such a contract which is evidenced by one or more data messages by reason of the fact that the contract is evidenced by such data message or messages instead of by a paper document.

PART VII

RIGHTS UNDER TRANSPORT DOCUMENTS

46. Rights of stoppage

(1) The right of a seller in the event of the buyer's insolvency, to prevent the handing over of the goods to the buyer or to reclaim the goods shall also apply where a bill of lading concerning the goods has been transferred to the buyer.

(2) The right of stoppage shall not be invoked against a third party who has acquired the bill of lading in good faith.

47. Right to sue

A person who becomes –

(1) the lawful holder of a bill of lading;

(2) without being an original party to the contract of carriage the person to whom delivery of goods to which a sea way bill relates;

(3) the person to whom delivery of goods to which a ship's delivery order relates;

shall have transferred to and vested in him all the rights of suit under the contract of carriage as if he had been a party to that contract.

(4) Where in the case of any document to which this Act applies a person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage and sub-sections (1), (2) or (3) are operative, in relation to that document but the right of suit is vested in another person, that other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.

48. Liability under Transport documents

Where section 47 is operative and a person in whom rights are vested under sub-sections (1), (2), and (3) of section 47:

- (a) takes or demands delivery from the carrier of any of the goods to which the documents relates;
- (b) makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
- (c) is a person who at the time before those rights were vested in him took or demanded delivery from the carrier of any of those goods,

that person shall (by virtue of taking or demanding delivery or making the claim, or in a case falling within paragraph (c) above, of having the rights vested in him) become subject to the same liabilities under that contract as if he had been a party to that contract. This is without prejudice to the liabilities under the contract of any person as an original party to the contract.

PART VIII

CLAIMS AND ACTIONS

49. Notice of loss, damage or delay

- (1) Delivery by the carrier shall be prima facie evidence of delivery of the goods contained in the bill of lading.
- (2) Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge, before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.
- (3) Or if the loss or damage is not apparent, within three days of such removal.
- (4) The notice in writing need not be given if the state of the goods has at the time of receipt been the subject of a joint survey or inspection.

- (5) No compensation shall be payable for loss resulting from delay in delivery unless notice has been given in writing to the carrier within sixty (60) consecutive days after the day when the goods were handed in to the consignee

50. Limitation of actions

(1) Subject to the provisions of sub-section (3) the carrier shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of the delivery or of the date when the goods should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

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

(3) An action for indemnity against a third person may be brought even after the expiration of the year provided for in sub-section (2) if brought within the time allowed by the Statute of Limitations. However the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with the process in the action against himself.

51. Interpleader of conflicting claimants

If more than one person claim the title or possession of the goods the carrier may require all known claimants to interplead, either as a defence to an action brought against him for non-delivery of the goods or as an original suit.

52. Reasonable time for procedure allowed in case of an adverse claim

If someone other than the consignee or the person in possession of the bill of lading has a title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill of lading or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

53. Lost stolen or destroyed bill of lading

Where an order bill of lading has been lost, stolen, or destroyed, a court of competent jurisdiction may order delivery of the goods upon satisfactory proof of such loss, theft or destruction and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill of lading remaining outstanding.

54. Jurisdiction

- (1) Any proceedings under this law may be instituted,
(a) in the High Court of Ghana provided that:

- (i) the defendant's principal place of business is in Ghana, or where such principal place of business is not in Ghana, the habitual residence of the defendant is in Ghana
 - (ii) the contract of carriage was entered into in Ghana and the defendant has a place of business, branch or agency in Ghana; or
 - (iii) the port of discharge or of loading is in Ghana;
- (b) or in any place designated for that purpose in the contract of carriage.
- (2) Notwithstanding the provisions of subsection (1) an action may be instituted in the High Court of Ghana, where the carrying vessel or any other vessel in the same ownership has been arrested in a port in Ghana in accordance with the relevant Ghanaian law for the time being in force.
- (3) Notwithstanding the provisions of this section, a designation of where the claimant may institute an action agreed to by the parties after the claim has arisen shall be valid.

55. Arbitration

- (1) Subject to this section, parties to a contract for the carriage of goods by sea may provide by agreement evidenced in writing, that any dispute arising under the contract, shall be referred to arbitration.
- (2) The arbitration proceedings shall at the option of the claimant, be instituted in Ghana, provided:
 - (a) the principal place of business of the defendant is in Ghana or where such principal place of business is not in Ghana, the habitual residence of the defendant is in Ghana; or
 - (b) the contract of carriage was entered into in Ghana and the defendant has a place of business or agency in Ghana; or
 - (c) the port of discharge or of loading is in Ghana;
- (3) The Arbitrator or arbitration tribunal shall apply the provisions of this Act.
- (4) Sub-sections (2) and (3) herein shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement that is inconsistent therewith shall be null and void.
- (5) Notwithstanding the provisions of this section an agreement by the parties regarding the place of arbitration after the claim has arisen shall be valid.

PART IX

FINAL PROVISIONS

56. Contractual stipulations

- (1) Any stipulation in a contract of carriage of goods by sea shall be null and void to the extent that it derogates, directly or indirectly from the provisions of this Act.
- (2) The nullity of such a stipulation shall not affect the validity of the other provisions of the contract or the document of which it forms part.
- (3) A clause assigning benefit of insurance of the goods to the carrier or any similar clause shall be null and void.
- (4) Notwithstanding subsection (1), a carrier may increase his responsibilities and obligations under this Act.

57. Regulations

The Minister may make regulations to facilitate the administration of this Act.

58. Repeal

The Bills of Lading Act 1961 (Act 42) is hereby repealed.