

MARITIME COMMERCE, TRADE AND TRANSPORT ACT, 1992

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SUPERVISOR: PROFESSOR P.K. MUKHERJEE

ALEX CHEPSIROR

MARITIME COMMERCE, TRADE AND TRANSPORT ACT, 1992**EXPLANATORY NOTE**

The purpose of this Act is to create a new and comprehensive statutory regime to govern maritime commerce, trade and transport by making provision in respect of Carriage of Goods by Sea, Delivery of Cargo, Marine Insurance and Liner Conferences. In view of the international character of the subject matter the Act, where appropriate, seeks to incorporate the provisions of relevant international conventions to which Kenya is a party. This has been done in respect of Carriage of Goods by Sea and also in respect of Liner Conferences. Both the law on Delivery of Goods and Marine Insurance have been updated and earlier statutes thereon repealed.

The Act is divided in four Parts. **Part I** which deals with Carriage of Goods by Sea incorporates the relevant provisions of the United Nations Convention on the Carriage of Goods by Sea, 1978 (The Hamburg Rules) as substantive provisions of the Act. The reason for doing this is that the Government desires that the Hamburg Rules, which Kenya has ratified and which will come into force soon, should have the force of law in Kenya. By making the Hamburg Rules part of Kenya's domestic legislation, it will be possible to enforce the provisions of the rules against other state parties or their nationals in their dealings with Kenya.

The provisions of **Part I** are set out under seven headings, the first of which contains preliminary and general provisions regarding interpretation and application of **Part I**. It also contains a provision disclaiming any warranty of absolute seaworthiness of the ship on the part of the carrier in view of the fact that the carrier and the shipowner are not always one and the same person with the consequence that their responsibilities and liabilities are different.

Under the second heading, there are provisions in respect of Bills of Lading and other alternative documents used in contracts of carriage of goods by sea. The reason for making provision for other documents is to avail those shippers who use them instead of bills of lading the same measure of protection afforded to those who use the bill of lading system. The greater part of the provisions, however, are concerned with such aspects in respect of bills of lading as issue, particulars, legal character and reservations, evidentiary effect, absence of certain particulars, effect of insertion of weight ascertained by a third party, guarantees by the shipper and indemnity agreements. In order to give the parties to a contract of carriage by sea a free hand in the making of their contract, the issuance of the bill of lading is not made compulsory but dependent upon demand by the shipper. The signature on the bill of lading has been extended to cover in addition to handwritten signatures, those by other means notably electronic in order to facilitate the international electronic transfer of documents. The section on guarantees by the shipper is

necessitated by the need to protect and indemnify the carrier in the performance of his part of the contract of carriage by sea and cannot be avoided even by the transfer of the bill of lading by the shipper to a third party.

The liability of the carrier is dealt with under the third heading. The background to this liability is a provision creating a period of responsibility for the goods on the part of the carrier upon his taking charge of the goods. This period which has been widened and made clearer than that under the repealed Carriage of Goods by sea Act starts from the time the carrier has taken over the goods at the port of loading until the time he has delivered the goods at the port of discharge. The provisions that follow apply during this period and cover the liability of the carrier for loss, damage, or delay in delivery of the goods, liability for loss or damage due to fire, liability in respect of live animals, partial liability and exemptions from liability, carriage of goods on deck and liability arising therefrom and the liability of the carrier in relation to the performance of the contract by the actual carrier. The carrier's liability under these provisions is based on the principle of presumed fault with the consequence that the burden of proof has been shifted to the carrier.

The fourth heading contains provisions on the limitation of liability which is calculated on the basis of packages or other shipping units, weight of the goods, or the freight payable. The limits of liability together with the defences apply whether the claim be brought in tort or is based on contract. In keeping with public policy, the right of the carrier to limit his liability is lost if the loss, damage or delay in delivery is due to wilful misconduct on his part. Provision is also made to save the limitation of liability conferred on a shipowner by the Merchant Shipping Act.

The liability of the shipper is dealt with under the fifth heading. It is based on fault, negligence or want of due diligence on the part of the shipper, his servants or agents. Provision is made for special rules to be complied with by the shipper where the goods to be carried are dangerous. There is also a saving of section 230 of the Merchant Shipping Act which empowers the Minister charged with the administration of that Act to make regulations as to the transport of dangerous goods.

The sixth heading is in relation to claims and actions arising from contracts of carriage by sea. Provision is made for the giving of notice of loss, damage or delay in delivery. In view of the international character of the contract of carriage of goods by sea, the period of limitation of actions has departed appreciably from the three-year and six-year periods for tort and contract respectively under the Limitation of Actions Act and has instead been restricted to two years. Original jurisdiction in respect of actions and claims is vested in the High Court of Kenya and provision is made in respect of other laws under which that jurisdiction is to be exercised. Resort

to arbitration is also protected and regulated by subjecting any arbitral proceedings to the provisions of **Part I** and the Arbitration Act.

The seventh heading contains two supplementary provisions. The first is in relation to the nullity of contractual stipulations in contracts of carriage by sea that derogate from the provisions of **Part I** and the second provides for the repeal of the Carriage of Goods by Sea Act.

Part II of the Act contains provisions governing delivery of cargo.

This Part has been necessitated by the existence of a lacuna in the laws of Kenya in respect of this critically important area of maritime transport of goods. It provides, *inter alia*, for the responsibilities and liabilities of the parties involved arising from their rights and duties in relation to delivery of cargo.

Part III updates and amends the law of Marine Insurance by taking into account the provisions of the Insurance Act, 1984 in a schedule added thereto.

The provisions of **Part IV** govern Liner Conferences and to a large extent have been incorporated from the United Nations Convention on a Code of Conduct for Liner Conferences, 1974 which Kenya has already acceded to.

MARITIME COMMERCE, TRADE AND TRANSPORT ACT, 1992**ARRANGEMENT OF SECTIONS**

1. Short title

PART I: CARRIAGE OF GOODS BY SEA

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3. Scope of Application
4. Absolute warranty of seaworthiness not to be implied

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5. Bill of Lading to be issued
6. Particulars to be included in bill of lading
7. Legal character of and reservations in a bill of lading
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9. Absence of particulars regarding payment of freight and demurrage
10. Where weight ascertained by third party
11. Guarantees by the Shipper
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13. Document as evidence of receipt of goods

C: LIABILITY OF THE CARRIER

14. Period of responsibility
15. Liability for loss, damage or delay in delivery
16. Liability for loss or damage due to fire
17. Liability for loss, damage or delay in delivery in respect of live animals
18. When carrier not liable or partially liable
19. Carriage of goods on deck
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D: LIMITATION OF LIABILITY

21. Limits of liability
22. Defence and limits of liability to apply in actions based on contract or in tort
23. Loss of right to limit liability
24. Limitation of liability of shipowner not to be affected

E: LIABILITY OF THE SHIPPER

25. Liability to be based on fault, negligence or want of due diligence
26. Special rules on dangerous goods
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F: CLAIMS AND ACTIONS

- 28. Notice of loss, damage or delay in delivery to be given
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- 33. Repeal of Carriage of Goods by Sea Act

PART II: DELIVERY OF CARGO

(not included)

PART III: MARINE INSURANCE

(not included)

PART IV: LINER CONFERENCES

(not included)

MARITIME COMMERCE, TRADE AND TRANSPORT ACT, 1992**Commencement: 1st July 1992**

An Act of Parliament to Make Provision for the Carriage of Goods by Sea, Delivery of Cargo, Marine Insurance, Liner Conferences and Matters arising therefrom, connected therewith or incidental thereto.

Short title. This Act may be cited as the Maritime Commerce Trade and Transport Act, 1992

PART I: CARRIAGE OF GOODS BY SEA**A: PRELIMINARY AND GENERAL PROVISIONS**

Interpretation 2. In this Part:-

"actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted;

"bill of lading" means any document evidencing a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document;

"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 any 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 and includes a contract which involves carriage by sea and also carriage by some other means only in so far as that part of the contract involving actual carriage by sea is concerned;

"goods" includes live animals and, where the goods are consolidated in a container, pallet or similar article of transport, or are packed, such article of transport or packaging if supplied by the shipper;

"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 and includes any person by whom or in whose name or on whose behalf the goods are actually delivered to the carrier in relation to the contract of carriage by sea;

"unit of account" means the Special Drawing Right as defined

by the International Monetary Fund and adopted by the Finance Act;

"writing" includes, inter alia, facsimile, telegram and telex.

Scope of Application 3. This Part is applicable to all contracts of carriage of goods by sea where -

- (a) the port of loading as provided for in the contract is situated in Kenya, or
- (b) the port of discharge as provided for in the contract is situated in Kenya, or
- (c) one of the optional ports of discharge provided for in the contract is the actual port of discharge and is situated in Kenya, or
- (d) the bill of lading or other document evidencing the contract is issued in Kenya, or
- (e) the bill of lading or other document evidencing the contract provides that the contract is subject to Kenyan law and practice, or
- (f) pursuant to a charter-party, a bill of lading governing the relationship between the carrier and the holder of the bill of lading, the latter not being the charterer, has been issued, or
- (g) the contract provides for future carriage of goods in a series of shipments during an agreed period, in which event the provisions of this Part shall be applicable to each shipment.

Absolute warranty 4. There shall not be implied into any of seaworthiness contract for the carriage of goods by sea to not to be implied which this Part applies any absolute undertaking by the carrier to provide a seaworthy ship.

B: BILLS OF LADING AND OTHER DOCUMENTS

Bill of lading 5.(1) Where the carrier or the actual to be issued carrier has taken the goods into his charge, the carrier must, on demand of the shipper, issue to the shipper a bill of lading signed by the master of the ship carrying the goods or by any other person having authority from and acting on behalf of the carrier.

(2) 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 or other means.

Particulars 6.(1) The bill of lading issued pursuant to to be s.5 shall contain, inter alia, the following included in particulars:
bill of lading

- (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 otherwise expressed, all such particulars being furnished by the shipper;
- (b) a statement as to the apparent 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 issuance of the bill of lading;
- (j) the freight to the extent payable by the consignee or other indication that freight is payable by the consignee;
- (k) a statement to the effect that the carriage is subject to the provisions of this Part which nullify any stipulation in the bill of lading derogating from the provisions of this Part to the detriment, damage, loss or prejudice of the shipper or consignee;
- (l) a statement, if applicable, that the goods shall or may be carried on deck;
- (m) the date or the period of delivery of the goods at the port of discharge if expressly agreed upon between the parties;
- (n) any increased limit or limits of liability fixed by agreement between the carrier and the shipper.

(2) (a) After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper a "shipped" bill of lading which, in addition to the particulars required under sub-section (1) of this section, must state that the goods are on board a named ship or ships, and the date or dates of loading.

(b) Where the goods have been loaded on board, the shipper shall, on request of the carrier, surrender any bill of lading or other document of title previously issued to the shipper in respect of the goods, in exchange for a "shipped" bill of lading.

(c) Without prejudice to paragraph (a) of sub-section (2) of this section, the carrier may amend any previously issued document in order to meet the shipper's demand for a "shipped" bill of lading if, as amended, such document includes all the information required by this Part to be contained in a "shipped" bill of lading.

Legal character of 7.(1) The absence in the bill of lading of and reservations one or more of the particulars set forth in a bill of in sub-section (1) of section 6 of this Part lading shall not affect the legal character of the document as a bill of lading if it complies with the provisions of section 2 of this Part in respect to bills of lading.

(2)(a) Where 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 either knows or has reasonable grounds to suspect do not accurately represent the goods taken over, the carrier or such other person must insert in the bill of lading a reservation specifying the inaccuracies or the grounds of suspicion.

(b) Where a "shipped" bill of lading contains particulars concerning the general nature, leading marks, number of packages or pieces, weight or quantity of the goods loaded, which the carrier or other person issuing the "shipped" bill of lading had no reasonable means of checking, it shall contain a reservation by the carrier or other person issuing the "shipped" bill of lading to the effect that he had no reasonable means of checking such particulars.

(3) Where the carrier or other person issuing the bill of lading or the "shipped" bill of lading, as the case may be, fails to note thereon the apparent condition of the goods, he shall be deemed to have noted thereon that the goods were in apparent good condition.

Evidentiary effect 8. Except for particulars in respect of of bill of lading which and to the extent to which a reservation permitted under sub-section (2) of section 7 of this Part has been entered:

- (a) the bill of lading shall be prima facie evidence of the taking over or, where a "shipped" bill of lading is issued, of the loading, by the carrier of the goods as described in the bill of lading; and
- (b) proof to the contrary by the carrier shall not be admissible where the bill of lading has been transferred to a bona fide third party, including a consignee, who has acted in reliance upon the description of the goods therein.

Absence of 9. Where a bill of lading does not, as particulars provided in paragraph (j) of sub-section (1) regarding payment of section 6, indicate the freight or of freight and otherwise indicate that freight is payable demurrage by the consignee, or does not specify

any demurrage incurred at the port of loading payable by the consignee,

- (a) it shall be prima facie evidence that no freight or such demurrage is payable by the consignee; and
- (b) proof to the contrary by the carrier shall not be admissible where the bill of lading has been transferred to a bona fide third party, including a consignee, who has acted in reliance upon the absence in the bill of lading of any such indication or specification.

Where weight 10. Notwithstanding the provisions of ascertained by section 8, third party

- (a) where, under the custom of any trade, the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper; and
- (b) the fact that the weight has been so ascertained or accepted is stated in the bill of lading;

the bill of lading shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

Guarantees by the 11.(1) The shipper shall be deemed to have shipper-guaranteed to the carrier the accuracy of particulars relating to the general nature of the goods, their marks, number, weight and quantity where such particulars are furnished by the shipper for insertion into the bill of lading.

(2) The shipper shall indemnify the carrier for any loss, damage, prejudice or expense suffered or incurred by the carrier in consequence of inaccuracies in the particulars furnished by the shipper.

(3) The transfer of the bill of lading by the shipper to a third party shall have no effect whatsoever on the liability of the shipper to indemnify the carrier as provided for in sub-section (2) of this section.

(4) The right of the carrier to indemnity under this section shall not in any way limit or alter his liability under the contract of carriage by sea in respect of any person other than the shipper.

Letters of 12.(1) Any letter of guarantee or agreement guarantee and by which the shipper undertakes

to indemnify indemnity the carrier against any loss, damage, agreementsprejudice or expense resulting from the issuance of the bill of lading by the carrier, or by a person acting on his behalf, without entering a reservation relating to the particulars furnished by the shipper for insertion in the bill of lading, or to the apparent condition of the goods, shall be void and of no effect as against any third party, including a consignee, to whom the bill of lading has been transferred.

(2) (a) A letter of guarantee or agreement by which the shipper undertakes to indemnify the carrier against any loss, damage, prejudice or expense resulting from the issuance of the bill of lading by the carrier is valid as against the shipper unless the carrier or the person acting on his behalf omits the reservation referred to in sub-section (1) of this section with intent to defraud a third party, including a consignee, acting in reliance upon the description of the goods in the bill of lading.

(b) Where the reservation omitted by the carrier relates to particulars furnished by the shipper for insertion in the bill of lading, the carrier shall not have any right of indemnity from the shipper pursuant to the provisions of section 11.

(3) In the case of intended fraud referred to in paragraph (a) of sub-section (2) of this section, the carrier shall be liable, without the benefit of the limitation of liability provided for in section 21, for the loss, damage, prejudice or expense resulting to a third party, including a consignee, by reason of having acted in reliance upon the description of the goods in the bill of lading.

Document as 13. Where a carrier issues a document other evidence of than a bill of lading to evidence the receipt receipt of goods of the goods to be carried, such a document shall be prima facie evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described.

C: LIABILITY OF THE CARRIER

Period of 14.(1) The responsibility of the carrier for responsibility the goods under this Part covers the period during which the carrier is in charge of the goods,

- (a) at the port of loading;
- (b) during the carriage; and
- (c) at the port of discharge.

(2) For the purpose of sub-section (1) of this section, the carrier is deemed to be in charge of the goods,

(a) from the time he has taken over the goods from:

- (i) the shipper, or a person acting on his behalf or;
- (ii) an authority or other third party to whom, pursuant to the law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(b) until the time he has delivered the goods:

- (i) by handing over the goods to the consignee; or
- (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
- (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.

(3) Reference to the carrier or to the consignee in sub-sections (1) and (2) of this section mean, in addition to the carrier or the consignee, their respective servants or agents.

Liability for loss, 15.(1) The carrier shall be liable for damage, or delay in loss, damage to or delay in delivery of the goods where the occurrence which caused the loss, damage or delay in delivery took place while the goods were in his charge as defined in section 14, unless he proves that he, his servants or agents took all reasonable and diligent measures to avoid the occurrence and its consequences.

(2) For the purpose of sub-section (1) of this section delay in delivery occurs where the goods have not been delivered at the port of discharge stipulated in the contract of carriage by sea,

(a) within the time expressly agreed upon; or

(b) in the absence of an agreed time, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

(3) For the purpose of sub-section (1) of this section, the person entitled to make a claim for loss of goods may treat the goods as lost where they have not been delivered as required by section 14 within 60 consecutive days following the expiry of the time for delivery according to sub-section (2) of this section.

Liability for loss or 16.(1) The carrier shall be liable, damage due to fire

(a) for loss of or damage to the goods caused by fire where it is proved that the fire arose from fault, negligence or want of due diligence on the part of the carrier, his servants or agents, and

(b) for such loss of or damage to the goods as is proved to have resulted from the failure of the carrier, his servants or agents to take all reasonable measures to put out the fire and avoid or mitigate its consequences.

- (2) The carrier shall upon request by the claimant co-operate in facilitating a survey in accordance with ordinary shipping practice, into the cause and circumstances of the fire.

Liability for loss, 17.(1) Where the carriage by sea is in damage or delay in respect of live animals, the carrier delivery in respect shall not be liable for any loss, damage of live animals or delay in delivery resulting from any risks inherent in that kind of carriage if he proves that he has complied with any special instructions given to him by the shipper in respect of the animals.

- (2) Notwithstanding the provisions of sub-section (1) of this section, the carrier shall be liable for any loss, damage or delay in delivery in respect of the animals carried where there is proof that the loss, damage or delay in delivery resulted from fault, negligence or want of due diligence on the part of the carrier, his servants or agents.

When carrier not 18.(1) The carrier shall not be liable, liable or partially except by way of contributions in liable general average, where loss, damage to, or delay in delivery of goods is attributable to measures taken to save life or reasonable measures taken to save property at sea.

- (2) Where fault, negligence or want of due diligence on the part of the carrier, his servants or agents combines with another cause to produce loss, damage to, or delay in delivery of the goods, the carrier shall be liable only for that part of the loss, damage or delay in delivery attributable to the fault, negligence or want of due diligence on his part or on the part of his servants or agents.

Carriage of goods 19.(1) The carrier may carry the goods on deck only where such carriage,

- (a) is done pursuant to an agreement with the shipper; or
 (b) is in accordance with the usage of the particular trade; or
 (c) is permitted by any statutory rules or regulations.

(2) (a) Where the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier shall insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect.

(b) Where the statement required by paragraph (a) of this sub-section is not inserted in the bill of lading,

- (i) the onus of proving that an agreement for carriage on deck has been entered into shall be upon the carrier; and
- (ii) the carrier shall not be entitled to prove or invoke such an agreement against a bona fide third party,

including a consignee, to whom the bill of lading has been transferred.

- (3) Where the goods have been carried on deck contrary to the provisions of sub-section (1) of this section or, where the carrier may not, under sub-paragraph (ii) of paragraph (b) of sub-section (2) of this section, prove or invoke an agreement for carriage on deck, the carrier shall, notwithstanding the provisions of sub-section (1) of section 15, be liable for loss of, damage, to, or delay in delivery of the goods arising solely from the carriage on deck.
- (4) Carriage of goods on deck contrary to express agreement for carriage under deck shall have the same effect as an act or omission of the carrier within the meaning of section 23.

Liability of the carrier and actual carrier entrusted to an actual carrier, whether or not in pursuance of a liberty under the contract of carriage by sea, the carrier shall, nevertheless, remain responsible for the entire carriage and, in relation to the carriage performed by the actual carrier, the carrier shall be responsible for the acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment.

20.(1) Where the performance of the

- (2) (a) Any special agreement under which the carrier assumes obligations not imposed by this Part or waives rights conferred by this Part shall have effect in relation to the actual carrier only if consented to by him expressly in writing.

(b) The carrier shall be bound by the obligations or waivers pursuant to any special agreement entered into by him whether or not the actual carrier gives his consent as required by paragraph (a) of this sub-section.

- (3) Where and to the extent that both the carrier and the actual carrier are liable, their liability shall be joint and several.
- (4) The aggregate of the damages recoverable from the carrier, the actual carrier and their servants and agents shall not exceed the limits of liability provided for in this Part.
- (5) (a) Nothing in this section shall prejudice any right of recourse as between the carrier and the actual carrier.
- (b) Notwithstanding the provisions of sub-section (1) of this section, where a contract of carriage by sea provides explicitly that a specified part of the carriage covered by the said contract shall 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.

(6) The responsibility of the actual carrier for the carriage performed by him shall be governed by the provisions of this Part governing the responsibility of the carrier.

D: LIMITATION OF LIABILITY

Limits of liability 21. (1) (a) The liability of the carrier for loss of or damage to goods according to the provisions of sections 15, 16, 17 and 18 shall be limited to an amount equivalent to 835 units of account per package or other shipping unit, or 2.5 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The liability of the carrier for delay in delivery according to the provisions of sections 15, 17 and 18 shall be limited to an amount equivalent to two and a half times the freight payable for the goods delayed, but shall not exceed the total freight payable under the contract of carriage by sea.

(c) In no case shall the aggregate liability of the carrier, under both paragraphs (a) and (b) of this subsection, exceed the limitation which would be established under paragraph (a) of this sub-section for total loss of the goods in respect of which such liability was incurred.

(2) For the purpose of calculating which amount is the higher in accordance with paragraph (a) of sub-section (1) the following rules shall apply:

(a) Where a container, pallet or similar article of transport is used to consolidate goods, the package or other shipping units enumerated in the bill of lading or other document evidencing the contract of carriage by sea as packed in such article of transport, shall be deemed packages or shipping units.

(b) Where the article of transport itself has been lost or damaged, that article of transport, if not owned or supplied by the carrier, shall be considered one separate shipping unit.

(3) Nothing in this section shall prevent the carrier and the shipper from entering into an agreement to fix limits of liability exceeding those provided for in sub-section (1) of this section.

Defences and limits of 22. (1) The defences and limits of liability to apply in liability provided for in this Part actions based on shall be available to the carrier in any contract or in tort action for loss of, damage to or delay in delivery of the goods whether it be founded on contract or in tort.

(2) Where an action is brought against a servant or agent of the

carrier or of the actual carrier as the case may be, such servant or agent shall, if he acted within the scope of his employment, be entitled to avail himself of the defences and limits of liability which the carrier or actual carrier is entitled to invoke under this Part.

- (3) Except as provided for in section 23, the aggregate of the damages recoverable from the carrier or actual carrier and from their servants or agents respectively shall not exceed the limits of liability provided for in this Part.

Loss of right to 23.(1) Neither the carrier nor the limit liability actual carrier shall be entitled to the benefit of the limitation of liability provided for in section 21 where the loss of, damage to or delay in delivery of the goods results from an act or omission of the carrier or actual carrier done with intent to cause such loss, damage or delay or with recklessness as to the occurrence of such loss, damage or delay.

- (2) A servant or agent of the carrier or actual carrier shall not be entitled to the benefit of sub-section (2) of section 22 where the loss of, damage to or delay in delivery of the goods results from an act or omission of such servant or agent, done with the intent to cause such loss, damage or delay or with recklessness as to the occurrence of such loss, damage or delay.

Limitation of 24. Nothing contained in the provisions liability of shipowner of this Part shall affect the limitation not to be affected of liability of the shipowner provided for in section 273 of the Merchant Shipping Act, (Cap. 389, Laws of Kenya) or in any amendments thereto.

E: LIABILITY OF THE SHIPPER

Liability to be based on fault, negligence or want of due diligence 25. The shipper, his servants or agents shall be liable for loss sustained by or damage sustained by the ship, only where such loss or damage is attributable to the fault, negligence or want of due diligence on the part of the carrier or actual carrier, or for the shipper, his servants or agents.

Special rules on dangerous goods 26.(1) The shipper, his servants or agents shall mark or label in a suitable manner dangerous goods as dangerous.

(2) Where the carrier or actual carrier is not informed by the shipper of the dangerous character of the goods, or where necessary, of the precautions to be taken in their carriage, and the carrier or actual carrier does not otherwise have knowledge of their dangerous character or of the precautions to be taken -

(a) the shipper shall be liable to the carrier or, as the case may be, to the actual carrier, for any loss or damage arising out of the shipment of such goods, and

(b) where necessary, the goods may at any time be unloaded, destroyed or rendered innocuous without any payment of compensation to the shipper.

(3) The carrier or the actual carrier shall not invoke the provisions of sub-section (2) of this section where he has taken the goods in his charge with knowledge of their dangerous character.

(4) Where the provisions of paragraph (b) of sub-section (2) of this section do not apply and dangerous goods pose an immediate and actual danger to life or property, whether inside or outside of the ship, they may be unloaded, destroyed or rendered innocuous without payment of compensation except where there is an obligation to contribute in general average or where the carrier is liable in accordance with the provisions of section 15.

Saving of powers 27. The provisions of section 26 shall to make regulations not in any manner whatsoever affect the relating to carriage powers of the Minister of Transport and of dangerous goods Communications to make regulations relating to the carriage of dangerous goods pursuant to section 230 of the Merchant Shipping Act, (Cap. 389, Laws of Kenya).

F: CLAIMS AND ACTIONS

Notice of loss, damage or delay in delivery 28.(1) Unless notice of loss or damage or specifying the general nature of such to

be given loss or damage, is given in writing by the consignee to the carrier not later than the working day after the day when the goods were handed over, such handing over shall be prima facie evidence of the delivery by the carrier of the goods as described in the document of transport or, if no such document has been issued, in good condition.

- (2) Where the loss or damage is not apparent, the provisions of sub-section (1) of this section shall apply only if notice has not been given within 15 consecutive days after the day when the goods were handed over to the consignee.
- (3) Where the condition of the goods at the time they were handed over to the consignee has been the subject of a joint survey or inspection by the parties, notice in writing need not be given of loss or damage ascertained during such survey or inspection.
- (4) The carrier and the consignee shall give each other all reasonable facilities for inspection and tallying of the goods where there is an actual or apprehended loss or damage.
- (5) No compensation shall be payable for loss resulting from delay in delivery of the goods unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were handed over to the consignee.
- (6) Where the goods have been delivered by an actual carrier, any notice given to him under this section shall have the same effect as if it had been given to the carrier, and any notice given to the carrier shall have effect as if given to such actual carrier.
- (7) The fact that no notice of loss or damage has been given in writing by the carrier or actual carrier to the shipper within 90 consecutive days after the occurrence of loss or damage or after the delivery of the goods in accordance with sub-section (2) of section 14, whichever is later, shall be prima facie evidence that the carrier or the actual carrier has sustained no loss or damage attributable to the fault, negligence or want of due diligence on the part of the shipper, his servants or agents.
- (8) For the purposes of this section, notice given to any person acting on behalf of the carrier or actual carrier, including the master or the officer in charge of the ship, or to any person acting on behalf of the shipper, shall be deemed to have been given to the carrier, to the actual carrier or to the shipper respectively.

Limitation of actions 29. (1) No action or arbitral proceedings shall be brought in respect of any claim arising out of a contract of carriage by sea to which this Part applies after the lapse

of a period of two years from the date when such action first accrued.

- (2) The period of limitation shall commence on the day on which the carrier has delivered the goods or part thereof or, where the goods have not been delivered, on the last day of the period during which the goods should have been delivered.
- (3) The day on which the period of limitation commences shall not be taken into account in the computation of the two-year period provided for in subsection (1) of this section.
- (4) Any person against whom a claim has been made may at any time during the running of the period of limitation extend that period by a written declaration to the claimant.
- (5) Any person, held liable under the provisions of this Part may institute an action for indemnity even after the expiry of the period of limitation provided for in sub-section (1) of this section provided that such action is instituted within the period of limitation stipulated in the Limitation of Actions Act, (Cap. 22, Laws of Kenya).

Jurisdiction30. (1) The High Court of Kenya shall have and exercise original jurisdiction in respect of all claims arising under this Part.

- (2) The jurisdiction conferred on the High Court of Kenya by sub-section (1) of this section shall be exercised in accordance with the Constitution of the Republic of Kenya, the Judicature Act, (Cap. 8, Laws of Kenya), the Civil Procedure Act, (Cap. 21, Laws of Kenya) and any other applicable laws for the time being in force in Kenya.

Arbitration31. Where the parties to a contract of carriage by sea to which this Part applies provide in the contract that any dispute arising therefrom shall be referred to arbitration, the arbitrator or arbitral panel shall apply the provisions of this Part and the arbitration proceedings shall be subject to the Arbitration Act (Cap. 49, Laws of Kenya).

G: SUPPLEMENTARY PROVISIONS

Contractual 32. (1) Any stipulation in a contract of Stipulations to be carriage by sea, in a bill of lading, null and void or in any other document evidencing a contract of carriage by sea shall be null and void to the extent that it derogates, directly or indirectly from the provisions of this Part.

- (2) Notwithstanding the provisions of sub-section (1) of this section, any stipulation by which the carrier increases his

responsibilities and obligations under this Part shall be valid.

Repeal of Carriage of Goods by Sea Act (Cap. 392, Laws of Kenya) is hereby repealed. 33. The Carriage of Goods by Sea Act

PART II: DELIVERY OF CARGO

(not included)

PART III: MARINE INSURANCE

(not included)

PART IV: LINER CONFERENCES

(not included)