

A

BILL

ENTITLED

AN ACT to provide for Malta's accession to the 1974 Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, Protocols 1976, and 1990 thereto, and for the implementation of the provisions of the convention and protocols.

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 authority of the same, as follows:-

Short title and commencement

1. (1) This Act may be cited as the Carriage of Passengers and their Luggage by Sea Act, 1999.

(2) This Act shall come into force on such date as the Minister responsible for shipping may by notice in the government gazette appoint and different dates may be so appointed for different provisions and different purposes of this Act.

Interpretation

2. (1) In this Act, unless the context otherwise requires-

“Convention” means the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974.

“Protocol 1976” means Protocol of 1976 to the abovementioned Athens Convention .

“Protocol 1990” means Protocol of 1990 to the abovementioned Athens Convention.

“Organization” means the International Maritime Organization;

“Minister” means the Minister responsible for shipping;

“carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;

"performing carrier" means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;

"contract of carriage" means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;

"ship" means only a seagoing vessel, excluding an air-cushion vehicle;

"passenger" means any person carried in a ship-

(a) under a contract of carriage; or

(b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;

"luggage" means any article or vehicle carried by the carrier under a contract of carriage, excluding-

(a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and

(b) live animals;

"cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of the interpretation of "carriage" given in this section and section 9, cabin luggage includes luggage which the passenger has in or on his vehicle;

"loss of or damage to luggage" includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;

"carriage" covers the following periods:

(a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice versa, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;

(b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;

(c) with regard to other luggage which is not cabin

luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its redelivery by the carrier or his servant or agent;

“international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

(2) In this Act and in any regulations made hereunder, if there is any conflict between the English and the Maltese text, the English text shall prevail.

(3) Unless the text otherwise requires, words and expressions used in this Act shall have the same meaning assigned to them in the Convention.

Ratification of Conventions

3. For the purpose of any law thereto applicable, the Government of Malta is hereby authorized to accede to the Convention, Protocol 1976 and Protocol 1990.

Schedule given force of law in Malta.

4. Subject to the provisions of section 10, 11, and 12, and notwithstanding the provisions of any other law, the provisions reproduced in the First Schedule to this Act, shall form part of and be enforceable as part of the Law of Malta.

Application

5. (1) This Convention and therefore this Act, shall apply to any international carriage if-

(a) the ship is flying the flag of or is registered in a State Party to the Convention; or

(b) the contract of carriage has been made in a State Party to the Convention; or

(c) the place of departure or destination, according to the contract of carriage, is in a State Party to this Convention.

(2) Notwithstanding sub-section(1) of this section, the Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

Liability of the Carrier

6. (1) . The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss

of or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

(2). The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

(3). Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of, or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

Performing
carrier

7 (1) . If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of the Convention. In addition, the performing carrier shall be subject and entitled to the provisions of the Convention for the part of the carriage performed by him.

(2). The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

(3) Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

(4) Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

(5) Nothing in this section shall prejudice any right of recourse as between the carrier and the performing carrier.

Valuables

8. The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such

valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in sub-section 3 of section 11 unless a higher limit is agreed upon in accordance with sub-section 1 of section 13

Contributory
fault

9 If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

Limit of
liability for
personal injury

10 .(1). The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed that amount of Units of Account per carriage as proscribed in section 1 of the First Schedule to this Act. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

(2) Notwithstanding sub-section 1 of this section, the national law of any State Party to the Convention may establish, as far as carriers who are nationals of such State are concerned, a higher per capita limit of liability.

Limit of
liability
for loss or
damage to
luggage

11. (1) The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed that amount of Units of Account per passenger, per carriage as proscribed in section 2 (1) of the First Schedule to this Act.

(2) The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed that amount of Units of Account per vehicle, per carriage as proscribed in section 2 (2) of the First Schedule to this Act.

(3) The liability of the carrier for the loss of or damage to luggage other than that mentioned in sub-section 1 and 2 of this section shall in no case exceed that amount of Units of Account per passenger, per carriage as proscribed in section 2 (3) of the First Schedule to this Act.

(4) The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding that amount of Units of Account in the case of damage to a vehicle as proscribed in section 2 (4) (i) of the First Schedule, and not exceeding that amount of Units of Account per passenger in the case of loss of or damage to other luggage, as proscribed in section

2 (4) (ii) of the First Schedule to this Act, such sum to be deducted from the loss or damage.

Unit of
Account
and conversion

12. (1) The Unit of Account mentioned in the Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in section 10 sub-section 1, and 11 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the Parties.

The value of the national currency, in terms of the Special Drawing Right of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

Supplementary
provisions on
limits of
liability

13. (1) The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in section 10 and 11.

(2). Interest on damages and legal costs shall not be included in the limits of liability prescribed in sections 10 and 11.

Defences and
limits for
carriers'
servants

14. If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by the Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under the Convention.

Aggregation of
claims

15. (1) Where the limits of liability prescribed in sections 10 and 11 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

(2) In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier

or the performing carrier under the Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

(3) In any case where a servant or agent of the carrier or of the performing carrier is entitled under section 14 to avail himself of the limits of liability prescribed in sections 10 and 11 and, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

Loss of right to
limit liability

16. (1) The carrier shall not be entitled to the benefit of the limits of liability prescribed in Section 10 and 11 and sub-section 1 of section 13, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

(2). The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits, if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably ensue.

Basis for claims

17. No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with the Convention.

Notice of loss
or damage to
luggage

18. (1)The passenger shall give written notice to the carrier or his agent:

- (a) in the case of apparent damage to luggage;
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
- (b) in the case of damage to luggage which is not apparent, or loss of luggage, within 15 days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

(2). If the passenger fails to comply with this section, he shall be presumed, unless the contrary is proved, to have received the

luggage undamaged.

(3). The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

19. (1) Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be prescribed after the lapse of a period of 2 years.

Prescription

(2) The prescriptive period shall be calculated as follows:

(a) in the case of personal injury, from the date of disembarkation of the passenger;

(b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed 3 years from the date of disembarkation;

(c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

(3) The law of the court seized of the case shall govern the grounds of suspension and interruption of prescriptive periods, but in no case shall an action under the Convention be brought after the expiration of a period of 3 years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

(4) Notwithstanding sub-section 1, 2 and 3 of this section, the prescriptive period may be extended by a declaration of the carrier or by agreement of the Parties after the cause of action has arisen. The declaration or agreement shall be in writing.

20. (1) Any action arising under the Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to the Convention:

Jurisdiction

(a) the court of the place of permanent residence or principal place of business of the defendant; or

(b) the court of the place of departure or that of the destination according to the contract of carriage; or

(c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State; or

(d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

(2) After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

Invalidity of contractual provisions

21 Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to establish a lower limit of liability than that estimated under the Convention except as provided in paragraph 4 of section 11, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in sub-section 1 of section 20, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of the Convention.

Other Conventions on limitation of liability

22 This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships.

Nuclear damage

23 No liability shall arise under the Convention for damage caused by a nuclear incident:

(a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or

(b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions.

Commercial carriage by public authorities

24 The Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of section 2.

Procedure

25. Notwithstanding the provisions of any other law, the First Hall of the Civil Court shall have jurisdiction to try and determine cases and actions that, in accordance with this Act, are to be brought before it.

Power to make regulations

26 (1) The Minister may make regulations , rules or orders, or give instructions, as are necessary for the carrying into effect the provisions of the Convention, Protocol 1976 and Protocol 1990 and any amendments thereto as may from time to time arise.

(2) Regulations, rules and orders made under any of the provisions of this Act, may be made in the English language only.

FIRST SCHEDULE

1. The Amount of Units of Account shall be.....175,000.

- 2 (1). The Amount of Units of Account shall be1,800.
- (2). The Amount of Units of Account shall be.....10,000.
- (3). The Amount of Units of Account shall be.....2,700.
- (4) (i). The Amount of Units of Account shall be.....300.
- (4) (ii). The Amount of Units of Account shall be.....135.

THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA ACT 1999

A MARATIME LEGISLATION DRAFTING PROJECT
SUBMITTED
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE AWARD OF A MASTER OF LAWS DEGREE (LL.M.) MAY 1999.

SUPERVISED BY PROFESSOR W.MULLER

**IMO INTERNATIONAL MARATIME LAW
INSTITUTE MALTA.**

Magt. Dr. Jacqueline Padovani.

CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA ACT 1999

EXPLANATORY NOTE

In the light of recent developments which bring Malta's accession to the European Union in the realms of reality, it has become incumbent of Malta to regularize its position vis a vis its international commitments.

Indeed, Malta seems to be gearing up to ratify the Marpol and Solas Conventions together with the ILO Convention 147 in the immediate future. It is with this purpose in mind that the undersigned has embarked on the drafting project at hand.

The Athens Convention 1974 together with its protocols, applies to all international carriage involving ships flying the flag of states parties to the Convention or where the contract was made in a state party or where the place of departure or destination is in a state party to the same Convention.

APPLICATION

In the case of Malta, the provisions of the Convention shall apply to international carriages i.e. where the contract is made in Malta or the place of destination or departure is in Malta, and to domestic carriages where the place of departure or destination is Malta and there is no intermediate port of call. The Convention shall therefore apply to nearly all journeys to and from Malta. Thus therefore a passenger booking in Malta, a cruise in the Caribbean, would also be covered. The Convention however does not cover a contract of carriage which is not for reward.

The Convention defines passenger as 'any person carried in a ship' under a contract of carriage and also persons who, with the carrier's consent, accompany live animals or vehicles as for instance on roll-on,

roll-off ferries. This is of particular importance in cases where contracts of carriage are made in respect of goods and not expressly including accompanying drivers or herdsmen.

In contrast to provisions relating to air carriage, the shipowner is not liable for anything happening to a passenger while at a marine station or terminal. Luggage however is covered as soon as the carrier has taken it in charge. The Convention rules come into play on relation to international carriage where the ports of departure and destination are in two different countries or even where the same port is that of departure and destination provided that there is a port of call in another state, a rule vital to cruise passengers.

LIABILITY

The shipowner's liability for death or injury to the passenger or for loss or damage to luggage depends on any event being "due to the fault or neglect of" the carrier or of servants or agents in the course of their employment. The burden of proof is specific and the passenger must prove that, for example, he contracted food poisoning while on board. When it comes to fault, the Convention makes a definitive distinction between loss or damage resulting from shipwreck, collision, fire, stranding, explosion or defect in the ship, with consequential personal injury or loss or damage to luggage, where the fault or neglect of the shipowner, servant or agent is presumed.

No liability is incurred where valuables, monies, negotiable securities have not been deposited for safe-keeping.

LIMITATION

Like other regimes dealing with specific aspects of carriage, such as the HAGUE RULES, the Athens Convention allows the shipowner to limit his liability. Though admittedly the Convention prescribes rather low limits, the 1976 Protocol expresses the limit in the special drawing rights of the International Monetary Fund and provides for realistic

compensation . Furthermore the carrier loses his right to limit, under the Convention if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage or recklessly and with knowledge that such damage would probably result.

JURISDICTION AND EXEMPTION CLAUSES

Article 17 of the Athens Convention has outlawed the option of the shipowner to insert a jurisdiction clause for the convenience of being sued in his principal place of business with the corollary consequences of passenger claimants being disadvantaged by costly overseas legal proceedings. The passenger under the Convention has the options of suing in any court provided in the said Article 17. Furthermore the shipowner cannot contract out of this or any other article of the Convention

The Athens Convention regulates the carrier's liability for personal injury, death and damage to luggage. It does not cover other matters relating to the contract between the carrier and the passenger. Thus, under u.k. law, express terms of the contract may be dealt under the Unfair Contract Terms Act 1977. There is however no similar legislation in Malta and such terms of contract may only be impugned under the wide notion of public policy or illegal causa.

It will be interesting to note that the Athens Convention excludes from its protection air cushion vehicles and whilst in U.K there is ample protection under the Hovercraft Act 1968, in Malta there seems to be no equivalent cover.

In the legislative draft at hand the undersigned has attempted to provide not simply an incorporation of the Convention into Maltese Law but provision has been made for the effortless updating of future amendments to the Convention and to future protocols without the necessity of passing another Act in Parliament. This has been achieved by the insertion of all amounts likely to be amended in a separate schedule to the Act and by

empowering the Minister responsible for shipping to incorporate such amendments in regulations, rules and orders.

Further provisions have been inserted to regulate which language is to have prevalence, which Court in Malta is to have jurisdiction and competence, and for the overriding predominance of the Convention over inconsistent laws.

