

MERCHANT SHIPPING (MARITIME TRADE AND COMMERCE)

BILL, 1992

A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED
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EXPLANATORY NOTE

**(This note does not form part of the
BILL but is intended to explain its purport)**

The Government having articulated a policy aimed at reviewing the commercial aspects of the Cameroon maritime law, this BILL addresses the following subject matters: Marine Insurance, Delivery of Goods, Liner Conferences, Bills of Lading and Carriage of Goods. The drafted provisions herein address matters relating to Bills of Lading and Carriage of Goods by Sea.

Part II, which deals with Marine Insurance is derived from the Marine Insurance Act, 1906 of the United Kingdom. It highlights the fundamental principles of marine insurance which are insurable interest, indemnity, uberrimae fidei, subrogation, constructive total loss and abandonment. The purpose of adopting legislation in this area is to provide a statutory regime for the placement of marine insurance in Cameroon, having regard to the strategic role which marine insurance plays in modern ocean commerce.

Part III, dealing with Delivery of Goods is derived from the United Kingdom Merchant Shipping Act, 1894. It addresses the regime pertaining to cargo after its delivery into a Cameroonian port with particular reference to the shipowner's right to a lien for freight or other charges and the conditions for the discharge of such lien.

Part IV deals with Liner Conferences. Conferences are cartels which emerged for the purpose of minimising cut throat competition among shipowners and protecting themselves from outside competition. This Part implements as a matter of legal obligation the Code of Conduct for Liner Conferences, 1974 which Cameroon ratified on the 15th June 1976. The code provides for relative stability in freight rates and establishes a formula for cargo-sharing of 40:40:20 which is equitable to developing countries. This Part, however, extends the cargo-sharing formula to bulk trade having regard to the specific economic needs of Cameroon.

Part V which relates to Bills of lading, is drawn from the Hague/Visby Rules 1968, the Hamburg Rules 1978 and the Draft Carriage of Goods by Sea Bill recommended by the Law Commissions to replace the Bills of Lading Act, 1855. When it comes into force, this Part will replace Part 7 of book 2 of the Code of Commerce which is the existing legislation on the subject. It is aimed at harmonising the terms and conditions in a bill of lading and to establish the rights and liabilities of holders of bills of lading.

Pursuant to this objective, this **Part** provides a list of items which must be included in the bill of lading. It also contains provisions conferring rights of suit upon holders of bills of lading and other provisions imposing liability on holders of bills of lading under certain circumstances. Provision is also made regarding the evidentiary value of the bill of lading and in this respect, as between

the carrier and the shipper, the bill of lading is prima facie evidence of receipt of the goods as described therein but conclusive evidence in the hands of a lawful holder. There are provisions obligating the shipper to indemnify the carrier for losses and damage resulting from inaccuracies in particulars furnished by him for insertion in the bill of lading. This Part exempts from its application bills of lading issued before its coming into force.

Part VI which addresses Carriage of Goods by Sea incorporates the Hague/Visby Rules 1968 as amended by the Protocol of 1979. Although Cameroon is not yet a party to this Convention, the Rules have been chosen because they provide an equitable allocation of risk between ship and cargo which best serve the interest of Cameroon both as a shipper nation and as a potential shipowning country. However, a few departures have been made so as to bring the legislation in harmony with the current trend of ocean carriage. In this respect, the following matters not dealt with in the Hague/Visby Rules have been included namely: deck cargo, rights and liabilities of the performing carrier, losses resulting from delay in delivery and the period of responsibility of the carrier for the goods has been extended to cover the whole period during which the goods are in his custody. When it comes into force, this Part will replace Articles 191-200 of the Merchant Shipping Code, 1962 relating to carriage of goods by sea.

This **Part** imposes an obligation on the carrier before and at the commencement of the voyage to exercise due diligence to make the ship seaworthy and to properly care for the goods. It also makes provision for defences which the carrier can avail himself of where loss or damage to goods occurs without want of due diligence on his part. An express provision is included to the effect that the defences shall apply to actions brought against the carrier, his servants or agents (excluding independent contractors) whether such action is founded in contract or in tort.

This Part also provides for the liability of the carrier for loss or damage to the goods and for loss resulting from delay in delivery. It addresses the limitation of the liability of the carrier and the ship. The amounts of limits are established in terms of "units of account" which are Special Drawing Rights as defined by the Finance Act. There are provisions conferring power on the Minister of Finance to determine from time to time the value of the Franc C.F.A. in relation to the Special Drawing Rights. Provision is also made for circumstances under which the carrier and the ship will lose the right to limit liability.

This Part also contains provisions nullify stipulations in the contract of carriage aimed at relieving or lessening the carrier's liability as herein provided. There are provisions allowing the carrier to agree to higher limits of liability under certain circumstances. This Part also includes provisions allowing the parties to enter into special terms regarding particular goods if the terms are not embodied in a bill of lading or other negotiable document.

Provisions relating to general average are contained in this Part as well. Time bar and settlement of disputes are also addressed.

Part VII which deals with Final and Transitional Provisions, provides for the repeal of existing legislation relating to bills of lading and carriage of goods by sea.

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BILL

A Law relating to marine insurance, delivery of goods, liner conferences, bills of lading and carriage of goods by sea and matters incidental thereto.

MERCHANT SHIPPING (MARITIME TRADE AND COMMERCE) BILL, 1992

Enactment Pursuant to Article 9 of the Constitution of the Republic of Cameroon, BE IT ENACTED AS FOLLOWS:

PART I
PRELIMINARY

Short Title and 1. This Law may be cited as the Merchant Commencement Shipping (Maritime Trade and Commerce) Code, 1992 and shall come into force on publication in the official Gazette.

PART II
MARINE INSURANCE
Article 2-89

PART III
DELIVERY OF GOODS
Article 90-98

PART IV
LINER CONFERENCES
Article 99-112

PART V
BILLS OF LADING

Application 113. This Part shall not apply to bills of lading issued before its coming into force.

Interpretation 114. In this Part and Part VI, unless the context otherwise requires:

"bill of Lading" does not include a document which is incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement, but includes a "received for shipment" bill of lading;

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

"consignee" means a person entitled to take delivery of the goods;

"contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as

aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between the carrier and a holder of the same;

"goods" includes goods, wares, merchandise and articles of every kind except live animals;

"holder" in relation to a bill of lading means:

- (a) a person in possession of the bill who, by virtue of being the person identified therein, is the consignee of the goods to which the bill relates;
- (b) a person in possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in case of a bearer bill, of any other transfer of the bill;
- (c) a person in possession of the bill as a result of any transaction by virtue of which he would have become a holder falling within paragraph (a) or (b) above, had the transactions not been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates;

and a person shall be regarded as having become a lawful holder of a bill of lading wherever he has become the holder of the bill in good faith;

"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;

"ship" means any vessel used for the carriage of goods by sea;

"shipper" means any person by whom or in whose name or on behalf of whom a contract of carriage of goods by sea has been concluded with a carrier or 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.

Nature of contract 115. (1) A contract of carriage shall be of carriage effected by a bill of lading which the carrier shall issue to the shipper on his request.

(2) The bill of lading shall be signed by a person having authority from the carrier and a bill of lading signed by the master of the ship carrying the goods shall be deemed to have been signed on behalf of the carrier.

(3) The signature on the bill of lading shall be either handwritten, printed in facsimile, perforated or in symbol, or made by any other mechanical or electronic means.

Contents of a 116. (1) The bill of lading shall state, bill of lading inter alia, the following particulars:

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of the goods, provided such marks are stamped or otherwise

shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

- (b) the number of packages or pieces, or the quantity or weight of the goods as the case may be, as furnished in writing by the shipper;
- (c) the apparent order or condition of the goods;
- (d) the name and principal place of business of the carrier;
- (e) the name of the shipper;
- (f) the consignee if named by the shipper;
- (g) the place of issuance of the bill of lading;

(h) the statements, if applicable, that the goods shall or may be carried on deck;
 (i) the date or period of delivery of the goods if expressly agreed upon by the parties; and
 (j) a statement that the bill of lading shall have effect subject to Part VI.

(2) Notwithstanding sub-article (1)(a) and (b) the carrier, master or agent of the carrier shall not be bound to state in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting do not accurately represent the goods actually taken over or which he has no reasonable means of checking.

(3) After the goods have been loaded, where the shipper so requests, the carrier shall issue to the shipper a "shipped" bill of lading which shall state that the goods are on board a named ship or ships and the date or dates of loading.

(4) Where the carrier had previously issued to the shipper any document of title with respect to any goods referred to under sub-article (3), the shipper shall surrender such document in exchange for a "shipped" bill of lading.

(5) Where the carrier so desires, the document of title referred to in sub-article (4) may be noted at the port of shipment by the carrier, master or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purposes of this Article be deemed to constitute a "shipped" bill of lading.

(6) The absence in the bill of lading of any particulars referred to in this Article shall not affect the legal character of the document as a bill of lading if it meets the requirements of a bill of lading as defined in this Part.

Evidentiary effect of a bill of lading issued in accordance with this Part shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with Article 116 (1)(a), (b) and (c).

Bill of lading in the hands of party board a ship or received for shipment on board a ship; and (b) has been signed by the master of the vessel or by a person who was not the master but had express, implied or apparent authority of the carrier to sign bills of lading, shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of such shipment or their receipt for shipment, as the case may be.

117. A bill of lading issued in accordance with this Part shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with Article 116 (1)(a), (b) and (c).

118. A bill of lading issued:

(a) in respect of goods shipped on a third party board a ship or received for shipment on board a ship; and

(b) has been signed by the master of the vessel or by a person who was not the master but had express, implied or apparent authority of the carrier to sign bills of lading, shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of such shipment or their receipt for shipment, as the case may be.

Guarantee by 119.(1) The shipper shall be deemed to have shipperguaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him, and shall indemnify the carrier against all loss, damage and expenses arising or resulting from inaccuracies in such particulars.

(2) The right of the carrier to indemnity referred to in sub-article (1) shall in no way affect his responsibility and liability under the contract of carriage to any person other than the shipper.

Rights under a 120.(1) Subject to this Article, a person bill of ladingwho becomes a lawful holder of a bill of lading shall have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

(2) If, when a person becomes the lawful holder of a bill of lading, possession of the bill no longer gives a right as against the carrier to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of sub-article (1) unless he becomes the holder of the bill:

(a) by virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to holding of the bill; or

(b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.

(3) Where a person with any interest or right in, or in relation to the goods to which a bill of lading relates sustains loss or damage in consequence of a breach of contract, but the rights of suit in respect of that breach are vested in another person by the operation of sub-article (1), 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.

(4) The right of suit transferred under sub-article (1) shall extinguish any entitlement to those rights by the original

party to the contract.

- Liability under 121.(1) Where, a person in whom rights are bill of lading vested by virtue of Article 120.(1);
- (a) takes or demands delivery from the carrier of any goods to which the bill of lading 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 become subject to the same liabilities under the contract as if he had been a party to that contract.

(2) Nothing in sub-article (1) shall affect the liabilities of an original party to the contract of carriage.

PART VI
CARRIAGE OF GOODS BY SEA

Scope of application of lading relating to a contract of carriage of goods by sea where:

- 122.(1) This Part shall apply to every contract of carriage of goods by sea where:
- (a) either the port of shipment or the port of discharge is located in Cameroon; or
 - (b) the bill of lading is issued in Cameroon; or
 - (c) the contract contained in or evidenced by the bill of lading provides that this Part is to govern the contract.

(2) This Part shall apply without regard to the nationality of the ship, the carrier, the performing carrier, the shipper or any other interested person.

(3) Subject to sub-article (4) this Part shall not apply to charterparties.

(4) Where a bill of lading is issued pursuant to a charterparty, this Part shall apply to such bill of lading if it regulates the relations between the carrier and the holder of the bill of lading, not being the charterer.

Period of application during which the goods are in the custody of the carrier at the port of loading until the time when the goods have been delivered at the port of discharge.

(2) For the purposes of sub-article (1), the goods are deemed to be in the custody of the carrier:

- (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 custom applicable at the port of loading, the goods must be handed for shipment;
- (b) until the time he has delivered the goods:
 - (i) by handing over the goods to the consignee; or
 - (ii) by handing over the goods to an authority or other third party to whom pursuant to the law applicable at the port of discharge, the goods must be handed over.

(3) In this Article, "carrier" or "consignee" includes the servants or agents, respectively, of the carrier or consignee.

Duties and rights 124. Subject to Article 139, under every contract of carriage of goods by sea, the carrier shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

Responsibilities and liabilities 125.(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 cooling 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 Article 128, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

(3) After receiving the goods into his charge the carrier or master or agent of the carrier shall, on the request of the shipper, issue to the shipper a bill of lading in accordance with Article 116.(1) (a) (b) and (c) of Part V.

Notice of loss 126.(1) Unless notice of loss or damage and or damage the general nature of such loss or damage is given in writing to the carrier or his agents at the port of discharge before or at the time of 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.

(2) Where the loss or damage is not apparent, the notice shall be given within three days of the delivery, excluding holidays.

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

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

Loss resulting 127.(1) Subject to this Article, the from delay in provisions of this Part relating to the delivery responsibilities, liabilities, rights and immunities of the carrier shall apply to losses resulting from delay in delivery.

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

(3) No liability shall lie for loss resulting from delay in delivery unless notice has been given in writing to the carrier

within forty consecutive days after the day when the goods were handed over to the consignee.

Rights and immunities shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, to properly man, equip and supply the ship, 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 Article 125.(1).

(2) Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this Article.

(3) Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

- (a) act, neglect, or default of the master, pilot, or the servant of the carrier in the navigation 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 peoples, 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; and
- (q) any other cause arising without the actual fault or privity of the carrier, or without the actual fault or neglect of the agents or

servants of the carrier.

- (4) The burden of proof shall be on the person claiming the benefit of an exception under sub-article (3) (q) 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.

(5) 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 this Part or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

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

Limits of liability for or damage 129. (1) Neither the carrier nor the ship shall in any event be or become liable for loss or damage to the goods in an amount to exceed 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher, unless the nature and value of such goods has been declared by the shipper before shipment and inserted in the bill of lading.

(2) 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.

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

(4) 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 to be the number of packages or units for the purpose of this Article as far as these packages or units are concerned.

(5) The unit of account mentioned in this Article is the Special Drawing Right as defined in the Finance Act.

(6) Subject to sub-article (7), the value of the Franc CFA in relation to the Special Drawing Right shall be as of 1st July 1992.

(7) The Minister of Finance may from time to time determine the value of the Franc CFA in relation to the Special Drawing Right.

(8) The declaration mentioned in sub-article (1), if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(9) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-article (1) may be fixed, except that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that sub-article.

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

Limits of liability for loss resulting from delay in delivery, the liability of the carrier shall be limited to such direct and reasonable loss as at the time of the contract could reasonably have been foreseen by the carrier as a probable consequence of the delay.

130.(1) Where the carrier shall be or become liable for loss resulting from delay in delivery, the liability of the carrier shall be limited to such direct and reasonable loss as at the time of the contract could reasonably have been foreseen by the carrier as a probable consequence of the delay.

(2) In no case shall the amount recoverable exceed the total freight payable under the contract of carriage.

Application to non-contractual liability provided for in this Part shall apply in any claim 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.

131.(1) The defences and limits of liability non-contractual provided for in this Part shall apply in any claim 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.

(2) Subject to sub-article (4), 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 Part.

(3) The aggregate of the amounts recoverable from the carrier and such servants and agents, shall in no case exceed the limits provided for in this Part.

(4) A servant or agent of the carrier shall not be entitled to avail himself of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge

that damage would probably result.

Loss of right 132. Neither the carrier nor the ship shall to limit liability be entitled to the benefit of the limitation of liability provided for in Articles 129 and 130 if it is proved that the damage or loss resulted from an act or omission of the carrier done with intent to cause damage or loss, or recklessly and with knowledge that such damage or loss would probably result.

Dangerous goods 133. (1) Goods of an inflammable, explosive or dangerous nature, the shipment of which would not have been agreed by the carrier, master or agent if he had been aware of their nature, may at any time or place be discharged, destroyed or rendered inoffensive by the carrier without indemnity, and the shipper of such goods shall be liable for any damage or expenses directly or indirectly arising from such shipment.

(2) Where the shipper has consented to the shipment of such goods with the knowledge of their nature, the goods may in like manner be discharged, destroyed or rendered inoffensive if they become a danger to ship or cargo; the carrier shall not be liable except by way of general average, if any.

Deck cargo 134. (1) The carrier shall not be entitled to carry the goods on deck unless such carriage is in accordance with an agreement with the shipper or with the usage of the particular trade or is required by statutory rules or regulations.

(2) 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 a statement to that effect.

(3) In the absence of any such statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into.

(4) Notwithstanding sub-article (3), the carrier shall not be entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

(5) Where the goods have been carried on deck contrary to sub-article (1) or where the carrier may not under sub-article (4) invoke an agreement for carriage on deck, the carrier shall be liable for loss or damage to the goods as well as for delay in delivery, resulting solely from the carriage on deck, and the extent of his liability shall be determined in accordance with the provisions of Articles 129 or 130 as the case may be.

(6) Carriage of goods on deck contrary to express agreement for carriage under deck shall be deemed to be an act or omission

of the carrier within the meaning of Article 132.

Performing carrier135.(1) The liability of the carrier as provided in this Part shall remain for the entire carriage even where the performance or

part thereof has been entrusted to a performing carrier.

(2) The performing carrier shall be subject and entitled to the provisions of this Part for the part of the carriage performed by him.

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

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

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

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

Contractual 136.(1) Any stipulation in a contract of stipulationscarriage relieving the carrier or the ship from liability for loss or damage to goods arising from negligence, fault, or failure in the duties or obligations provided in this Part or lessening such liability otherwise than as provided in this Part, shall be null and void.

(2) A clause assigning to the carrier the benefit of insurance on the goods, or similar clause shall be deemed to be a clause relieving the carrier from liability.

(3) The nullity of any stipulation under sub-article (1) shall not affect the validity of other provisions of the contract.

Surrender of 137.(1) Subject to sub-article (2), a rights
and carrier shall be at liberty to surrender in immunities and
whole or in part all or any of his rights and increase of
immunities or to increase any responsibilities
responsibilities and obligations under this

and liabilitiesPart.

(2) Any surrender or increase made pursuant to sub-article (1) shall be embodied in the bill of lading issued to the shipper.

General average 138. Nothing in this Part shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Special conditions139.(1) Notwithstanding this Part, a carrier, master or agent and a shipper shall in regard to any particular goods be at liberty to enter into any agreement as to:

- (a) the responsibility and liability of the carrier of such goods;
- (b) the rights and immunities of the carrier in respect of such goods;
- (c) the obligation of the carrier as to seaworthiness, so far as this stipulation is not contrary to public policy; and
- (d) the care or diligence of the carrier's servants or agents with respect to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea,

if no bill of lading shall have been issued and the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

(2) Any agreement entered into pursuant to sub-article (1) shall be valid.

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

Other agreements¹⁴⁰. Nothing in this Part shall prevent a carrier or a shipper from entering into any agreement, with respect to the responsibility and liability of the carrier or the ship for loss or damage to, or in connection with the custody, care and handling of the goods prior to the goods being in the custody of the carrier and subsequent to the delivery of the goods at the port of discharge.

Time bar¹⁴¹. (1) Subject to this Article, no action shall in any event lie against the carrier and the ship in respect of any loss or damage to the goods as well as loss resulting from delay in delivery, unless the action is brought within one year from the day on which the goods were delivered or from the date when they should have been delivered.

(2) The period provided for in sub-article (1) may be extended if the parties so agree after the cause of action has arisen.

(3) An action for indemnity against a third person may be brought even after the expiration of the year provided for in sub-article (1) if brought within the time allowed by the law of the court seized of the case; except that the time allowed shall not

be less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against him.

Settlement of 142.(1) Subject to sub-article (2), any disputesaction relating to a contract of carriage under this Part shall be brought before the courts designated by the ordinary law rules of competence.

(2) Where the port of destination is located in Cameroon, the shipper or consignee, or other persons claiming under the contract of carriage may sue the carrier before the court of that port.

(3) An arbitration clause shall in no case entitle arbitrators to make a settlement out of court.

(4) Any stipulation in a contract of carriage, including an arbitration clause, shall be null and void to the extent that it derogates from this Article.

PART VII FINAL AND TRANSITIONAL PROVISIONS

Repeals143.(1) Articles 191-200 of the principal Code (on carriage of goods by sea) and Part 7 of Book 2 of the Code of Commerce (relating to bills of lading) are repealed.

(2) Notwithstanding sub-article (1), any matter arising after the coming into force of this Code in respect of contracts of carriage effected andbills of lading issued under the repealed provisions shall be dealt with as though those provisions had not been repealed.