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INTERNATIONAL MARITIME LAW INSTITUTE
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**REGULATIONS TO INCORPORATE THE ATHENS CONVENTION
RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 2002 INTO THE LAWS OF GHANA AND TO
PROVIDE FOR THE EFFECTIVE IMPLEMENTATION THEREOF**

**A Legislation Drafting Project submitted in partial fulfilment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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Institute**

SUBMITTED BY

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Academic Year 2019-2020

DEDICATION

This dissertation is dedicated to all who lost their lives to COVID-19.

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I would like to express my sincere gratitude to God Almighty for making it possible for me to attend and complete this programme. A special appreciation to my family and all who supported me in diverse ways.

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Finally, I would like to acknowledge my colleagues at IMLI for the bond of love and friendship we shared, God bless love you all.

DECLARATION

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Title of drafting: REGULATIONS TO INCORPORATE THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2002 INTO THE LAWS OF GHANA AND TO PROVIDE FOR THE EFFECTIVE IMPLEMENTATION THEREOF

In accordance with the Regulations for the Degree of LL.M. in International Maritime Law and Ocean Policy, I **Jonathan Mawuli Dzaisu (Ghana)** the undersigned, do hereby declare that the Dissertation being presented with this declaration is my own personal work and that it has not been previously submitted, or is not concurrently being submitted in candidature for any other degree or diploma.

Academic Year: 2019-2020

Date: 7 August 2020

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IMPLEMENTATION THEREOF**

PART I

EXPLANATORY NOTE

1. Introduction

The primary focus of the earliest ocean-going vessels was on the cargo they carried and not the passengers. *Black Ball Line* in New York, was the first ship which offered a regular scheduled service to passengers for their comfort in the year 1818 from the United States of America to the United Kingdom.¹ Since then, the development of passenger ships has grown from simple transport passenger ships to large luxurious cruise ships that carries thousands of passengers.

During the 19th and 20th centuries, developed countries such as the United States of America, Germany and the United Kingdom were dominating in passenger transport in the shipping industry.² However, the development did not only bring a positive influence on the world's economy but, also very catastrophic maritime accidents that took away thousands of lives.

On 14 April 1912, much public attention was given to the incident of *RMS Titanic* which is one of the world's known maritime accidents in the history of mankind. It recorded a death toll of 1,501 persons on board the vessel after it struck an iceberg in the North Atlantic Ocean and sunk. Shortly after that, the *Empress of Ireland* also sunk on 29 May 1914 after a collision on the St. Lawrence River causing an estimated death toll of 1,270 persons on board the ship. On 20 December 1987 however, the world witnessed the greatest maritime tragedy in the history of mankind when *M/V Doña Paz* collided with an oil tanker leading to the death of 4,400 persons on board the vessel.³

¹ <https://croisieremagazine.com/blog/history/lecture-encyclopedie-maritime-et-la-mer-bleu-blanc-rouge/88>, accessed on 15 January 2020.

² <https://www.cruiselinehistory.com/a-brief-history-of-the-cruise-ship-industry/> accessed on 15 January 2020.

³ Norman A. Martinez Gutierrez, *Limitation of liability in international maritime conventions: The relationship between global limitation conventions and particular liability regimes*, (IMLI Studies in International Maritime Law, Routledge 2012), 114.

The aftermath of the 1912 and 1914 incidents triggered discussions among stakeholders in the international maritime industry to adopt regulations to prevent such future occurrences and also to adopt a special purpose legal regime to regulate the carriage of passengers and their luggage by sea particularly with regards to death or personal injury, or loss of or damage to their luggage in cases of accidents.

The Carriage of Passengers Convention, 1961⁴ and the Carriage of Passenger Luggage Convention, 1967⁵ were both adopted in Brussels to deal with the protection of passengers. The 1961 Convention imposed an obligation on the owner to exercise due diligence to make the vessel seaworthy and to ensure it was appropriately manned, equipped and supplied.⁶ It further imposed a fault based liability on the carrier, his servants or his agents⁷ and a limit of liability on the carrier at 250,000 francs per passenger per carriage.⁸ The 1967 Convention introduced a distinction between a cabin luggage and other luggage⁹ and provided different limits of liability for each¹⁰ but never came into force.

By a Diplomatic Conference the 1974 Athens Convention was adopted and entered into force on 28 April 1987¹¹ to consolidate and harmonize the two earlier Brussels Conventions adopted to deal with issues concerning the carriage of passengers and their luggage by sea. The Athens Convention regulates the carriage of passengers and their luggage by sea and constitutes the foundation of modern international regulations on the carriage of passengers and their luggage by sea. Despite its wide acceptance by the shipping industry, its low limits of liability for carriers were seriously criticized.¹² It also had insufficient regulations that provides full compensation to the claimants.

⁴ International Convention for the Unification of Certain Rules relating to Carriage of Passenger Luggage by Sea and Protocol, 1961.

⁵ International Convention for the Unification of Certain Rules relating to Carriage of Luggage by Sea, 1967.

⁶ International Convention for the Unification of Certain Rules relating to Carriage of Passengers by Sea and Protocol, 1961, Article 3.

⁷ Ibid., Article 4(1).

⁸ Ibid., Article 6.

⁹ International Convention for the Unification of Certain Rules Relating to Carriage of Luggage by Sea, 1967, Article 1(d).

¹⁰ Ibid., Article 6.

¹¹ Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.

¹² The 1976 Protocol made the unit of account the Special Drawing Rights (SDR), replacing the 'Poincare franc', based on the 'official value' of gold, as the applicable unit of the account. Limits for death or personal injury was

Subsequent to the 1974 Athens Convention, three protocols were adopted. The first was the 1976¹³ Protocol which was ratified by 26 States¹⁴ and came into force in 1989. The second was the 1990 Protocol which never came into force. Most of the States that adopted these Protocols however adopted higher limits than what was provided by the 1990 Protocol into their national legislations.¹⁵ The 2002 Protocol was adopted on 1 November 2002¹⁶ and entered into force on 23 April 2014. The 2002 Protocol however widened the scope of the 1974 Athens Convention by imposing more responsibilities and liabilities on the carriers.

2. General view of the 2002 Athens Convention

The Protocol states that Articles 1 to 22 of the Convention, as revised by the 2002 Protocol, together with Articles 17 to 25 of the Protocol and the Annex thereto, shall constitute and be called the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002. The Convention required States to denounce the 1974 Convention and its subsequent Protocols, to which they were Parties before ratifying this Convention.

Apart from the significant increase in the limits of liability of the carrier, the Convention also saw a change in the basis of claims. It introduced strict liability provisions for claims in shipping-related incidents, such as shipwreck, collision, stranding, explosion, fire or defects in the ship up to a certain limit and fault-based liability beyond that limit whereas, non-shipping

700,000 francs per carriage, limits for cabin luggage was for the loss of or damage to cabin luggage was 50,000 francs per carriage, loss of or damage to vehicles including all luggage carried in or on the vehicle 50,000 francs per vehicle, per carriage, loss of or damage to luggage other than cabin luggage or luggage in or on a vehicle was 18,000 francs per passenger, per carriage.

¹³ Protocol of 1976 to The Athens Convention relating to The Carriage of Passengers and Their Luggage by Sea (PAL), 1974.

¹⁴ See IMO's Summary Status of Conventions, www.imo.org, accessed on 20 January 2020.

¹⁵ Protocol of 1990 to amend the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.

¹⁶ 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.

incidents remain fault-based.¹⁷ Furthermore, it introduced protection for claimants by providing for compulsory insurance and the right of direct action against insurers.¹⁸

The Convention set a maximum limit for death and injury of passengers for shipping-related incidents but empowered States to adopt higher limits in their national legislations to if it deems fit. The Convention also has an "opt-out" clause, enabling State Parties to retain or introduce higher limits of liability (or unlimited liability) in the cases of carriers who are subject to the jurisdiction of their courts.

The Convention introduced other mechanisms to assist passengers in obtaining compensation based on accepted principles applied in existing liability and compensation regimes dealing with environmental pollution.¹⁹

3. Highlights of the 2002 Athens Convention.

3.1. Basis of Liability.

3.1.1. Death or personal injuries.

In relation to “shipping-related” incidents, the fault-based regime is now replaced with strict liability under the Convention up to a certain limit and fault-based beyond that limit for both the carrier²⁰ and the performing carrier in respect of incidents resulting in the death or personal injury of a passenger.²¹

A two-tier liability system for claims relating to death or personal injuries suffered as a result of shipping incidents has been introduced in Article 3 of the Convention.²² Under the first tier, the carrier is strictly liable to the claimant up to 250,000 Special Drawing Rights (SDR) unless the carrier can prove that the accident was caused by;

¹⁷ Norman A. Martinez Gutierrez, *Limitation of liability in international maritime conventions, The Relationship between global limitation conventions and particular liability regimes (IMLI Studies in International Maritime Law)* Routledge, 131.

¹⁸ [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx), accessed on 20 January 2020.

¹⁹ Ibid.

²⁰ 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974, Article 3.

²¹ Ibid., Article 4.

²² Ibid., Article 3(5)(a).

- i. an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- ii. was wholly caused by an act or omission done with the intent to cause the incident by a third party.²³

The second tier is fault-based and covers claims exceeding 250,000 SDR. The Convention provides that, the carrier would be liable for such claims, to the extent that the loss exceeds 250,000 SDR up to 400,000 SDR²⁴ for ‘each distinct occasion’ and burden of proof shall be on the claimant.

Regarding the “non–shipping” related incidents however, the fault or neglect-based regime for the death or personal injury of a passenger remains and the burden of proving the fault or neglect lies with the claimant.

3.1.2 Loss of or damage to luggage and vehicles.

The Convention provides that, where a claim relates to loss of or damage to the luggage, the carrier will be liable only if the incident giving rise to the claim was caused by the fault or neglect of the carrier. The burden of proving such fault or neglect will vary depending on the type of incident giving rise to the claim and the type of luggage which has been lost or damaged.²⁵

However, the liability of the carrier for the loss of or damage to cabin luggage is up to 2, 250 SDR per passenger, per carriage. Liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle is limited to 12,700 SDR per vehicle, per carriage. Liability of the carrier for the loss of or damage to other luggage is limited to 3,375 SDR per passenger, per carriage.

The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDR in the case of damage to a vehicle and not exceeding 149 SDR per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

²³ Ibid., Article 3(1).

²⁴ Ibid., Article 7(1).

²⁵ Ibid., Articles 3(3),(4).

3.1 Limitation of liability.

3.2.1 Limit of Liability for death or personal injury.

The Convention provides a limit of liability up to 400,000 SDR for claims for death or personal injury to reflect present day conditions.²⁶ The Convention however abandoned the 'per carriage' approach and adopted 'each distinct occasion' approach.²⁷ This means that, the new limits of liability for claims for death or personal injury of a passenger under the convention is 400,000 SDR per passenger for each distinct occasion.

3.2.2 Limits of Liability for loss or damage to luggage.

Limitation of liability for loss or damage to luggage and vehicles is as follows:

- Loss or damage to cabin luggage – 2,250 SDR²⁸
- Loss or damage to vehicles (including luggage carried in it) – 12,700 SDR²⁹
- Loss or damage to other luggage – 3,375 SDR³⁰

However, the carrier cannot exercise the right to limit his liability for damage resulting 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.

The Article further increases the amounts for deductibles, where the limits may not exceed 300 SDR in case of loss or damage to a vehicle and 149 SDR in case of loss of or damage to other luggage per passenger.³¹

3.2 "Opt-out" clause.

The Convention allows a State Party to regulate by specific provisions of national law the limit of liability for personal injury and death, provided that the national limit of liability, if any, is

²⁶ Ibid., Article 7(1).

²⁷ Ibid., Article 7 (1). Per carriage was substituted with each distinct occasion to bring the 2002 Athens Convention at par with Article 7 of the LLMC Convention. See LEG 83/4/3 of 3 August 2001, p.2 and LEG 83/14 of 23 October 2001, p.10.

²⁸ Ibid., Article 8 (1).

²⁹ Ibid., Article 8 (2).

³⁰ Ibid., Article 8 (3).

³¹ Ibid., Article 8 (4).

not lower than that prescribed in the Protocol.³² A State Party, which makes use of this option is obliged to inform the IMO Secretary-General of the limit of liability adopted or of the fact that there is none.

3.3 Compulsory insurance.

Article 4bis of the Convention requires vessels licensed to carry more than 12 passengers and registered in a State Party to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the limits for strict liability under the Convention in respect of the death of and personal injury to passengers only. The rationale behind compulsory insurance is to protect the injured passengers and ensure that funds are available to compensate the victims. The limit of the compulsory insurance or other financial security shall not be less than 250,000 SDR per passenger on each distinct occasion.³³

On a practical level, to comply with the Protocol requirements, carriers will need:

(a) blue cards issued by their P&I insurers.

(b) a certificate issued by a State Party confirming that insurance or other financial security is in place. The certificate must be on board the vessel at all times and a copy shall be deposited with the State Party that issued it.³⁴

3.4 Right of Direct Action against Insurers.

The Convention allows claims for compensation to be brought directly against the liability insurer for claims up to the strict liability limit.³⁵ Facing such a claim, the insurer is allowed only a limited set of defences. He cannot avail himself of any of the defences to which he might have been entitled in proceedings brought by the carrier such as unseaworthiness or “pay to be paid”. Such defences are not available to insurers against passengers.

³² Ibid., Article 7 (2).

³³ Ibid., Article 4bis (1).

³⁴ Ibid., Article 4bis (5).

³⁵ Ibid., Article 4bis (10).

3.5 Amendment of limits.

The Convention introduced a new procedure for amending the limits of liability under the Convention, so that any future rises in limits can be achieved more readily. Under the 1974 Convention, limits could only be raised by adopting amendments to the Convention which require a specified number of States' acceptances to bring the amendments into force. This meant, for example, that the 1990 Protocol, which was intended to raise the limits, but never entered into force has indeed been overtaken by this Convention.

The Convention introduced a tacit acceptance procedure for raising the limits of liability. A proposal to amend the limits, as requested by at least one-half of the Parties to the Convention, would be circulated to all IMO Member States and all States Parties and would then be discussed in the IMO Legal Committee. Amendments would be adopted by a two-thirds majority of the States Parties to the Convention as amended by the Convention present and voting in the Legal Committee, and amendments would enter into force 18 months after its deemed acceptance date. The deemed acceptance date would be 18 months after adoption, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the IMO Secretary-General that they do not accept the amendment.

3.6 Time-bar for actions.

The 1974 Convention provides that, “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 time time-barred after a period of two years”.³⁶ This can however, be extended by national law in special cases where;

- a) A period of five years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later or if earlier³⁷.
- b) A period of three years from the date when the claimant knew or ought to reasonably have known of the injury, loss or damage caused by the incident.³⁸

Generally, the starting point is the date of disembarkation of the passenger in the case of personal injury. This means that, if death occurs during the carriage, then the starting point will

³⁶ Ibid., Article 16.

³⁷ Ibid., Article 16 (1).

³⁸ Ibid., Article 16 (2)(a).

be from the date when the passenger should have disembarked. However, in a case where a personal injury occurs during the carriage and results in the death of the passenger after disembarkation, then the starting date will be from the date of death, provided that the period shall not exceed three years from the date of disembarkation.

3.7 IMO reservation and guidelines.

The Legal Committee at its 92nd session in October 2006 adopted the text of a reservation, intended for use as a standard reservation, to the 2002 Protocol and adopted Guidelines for the implementation of the Athens Convention, to allow limitation of liability in respect of claims relating to war or terrorism.³⁹ The aim was to put States in a position to ratify the 2002 Protocol and thereby afford passengers a better cover.

The text of the agreed reservation states that the Government concerned reserves the right to and undertakes to limit liability to 250,000 units of account in respect of each passenger on each distinct occasion; or 340 million units of account overall per ship on each distinct occasion. This relates in particular to war insurance which, under the guidelines, shall cover liability, if any, for loss suffered as a result of death or personal injury to a passenger caused by: war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power; capture, seizure, arrest, restraint or detainment, and the consequences thereof or any attempt thereat; derelict mines, torpedoes, bombs or other derelict weapons of war; act of any terrorist or any person acting maliciously or from a political motive and any action taken to prevent or counter any such risk; confiscation and expropriation.⁴⁰

Accordingly, State Parties are required to a certificate of insurance covering the liability for both war risks and non-war risks, which will be issued based on one insurance undertaking (Blue Card) for war risks and another undertaking (Blue Cards) for non-war risks.⁴¹ Blue Cards are provided by P&I Clubs.

³⁹ See Report of the Legal Committee of IMO on the work of its 92nd session, LEG.92-13 of November 2002, 6.

⁴⁰ [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-\(PAL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Athens-Convention-relating-to-the-Carriage-of-Passengers-and-their-Luggage-by-Sea-(PAL).aspx) accessed on 15 January 2020.

⁴¹ Ibid.

4. Legislation on Carriage of Passengers and their Luggage by sea in Ghana.

Ghana is neither a State Party to the 1974 Athens Convention nor the 2002 Athens Convention. However, Part Thirteen, Section 405 of the Shipping Act, 2003 (ACT 645) which deals with passenger ships, particularly sub-section 2 makes reference to the 1974 Athens Convention. It provides as follows:

(1) The Minister may make Regulations-

(a) In respect of accommodation facilities and provisions on board ships which carry passengers to or from a port in Ghana;

(b) Requiring the preparation and furnishing of particulars of the passengers to or from a port in Ghana;

(c) Regulating the number of passengers which a ship may carry from a port in Ghana whether or not the ship is a passenger ship; and

(d) To prescribe the terms and conditions on which a ship may carry passengers between ports in Ghana.

(2) In making Regulations under subsection (1) the Minister shall consider the 1974 International Convention on the carriage of passengers and their luggage on board ships and the amendments to it.

Despite the fact that the Minister has not made any regulations regarding the Carriage of Passengers and their Luggage by Sea, the Shipping Act, 2003 has made a provision for limitation of liability of a ship-owner for passenger claims. Section 418 of the Shipping Act, 2003 (ACT 645) provides as follows: -

418. Limitation for passenger claims

(1) The limitation of liability of a ship-owner in respect of claims on a distinct occasion for loss of life or personal injury to passengers of a ship shall be an amount of 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

This provision applies *mutatis mutandis* without recourse to causation. It is also based on the global limits of the Limitation of Liability of Maritime Claims and thus, there are no provisions in place with respect to Carriage of Passengers and their Luggage by Sea regime in Ghana.

5. The purpose of these Regulations.

The shipping industry in Ghana has evolved over time. In 2013, there was a governmental drive to expand the ports in Ghana to make it the biggest shipping hub in West Africa. Since the completion of these expansions, Ghana has seen up to 3-times increase in shipping traffic. The number of cruise vessels that visit the port has also significantly increased.

Carriage of passengers and their luggage by sea is steadily developing due to a deliberate governmental initiative to invest in this sector mainly for tourism. The government in 2019 launched the ‘year of return’ which marked a century after the abolishing of slave trade. According to the Tourism Ministry’s report in January 2020, the event saw more than twenty thousand tourists visiting Ghana throughout the year to celebrate the event.

It was reported in Daily Graphic 16 September 2019 that, about a third of the tourist who were mainly black, most of whom came from Barbados, Trinidad and Tobago and the United States of America, arrived in Ghana by ships in remembrance of their ancestors’ journey to their places of destination. With all the pageantry associated with the drive to encourage the carriage of passengers by sea, the private sector has taken keen interest in this business as it is a safer and cheaper alternative means of transport even within internal waters in Ghana.

Some foreign companies in Europe have registered companies and have started operating the business within the internal waters. It is however sad to know that there are no regulations in Ghana covering such important policy. This means that, in case there is any incident leading to the death, personal injury, loss of or damage to luggage, the Shipping Act provides very little protection to claimants and hence the need for incorporation of the 2002 Athens Convention.

Section 2 (a) of the Ghana Maritime (Amendment) Act, 2011 (Act 826)⁴² provides that: “the Authority shall implement the provisions of the Ghana Shipping Act, 2003 (Act 645)⁴³ to ensure safety of navigation and its related issues” but the regulations on carriage of passengers and their luggage by sea is yet to be enacted.

There is the need to accede to and incorporate these regulations because, it gives a basis for making claims and distinguishes claims which arise as a result of ‘shipping related’ incidents and ‘non-shipping related’ incidents. Under this Convention, ‘shipping related’ incidents have strict liability. This will ensure that carriers maintain higher standards.

⁴² Ghana Maritime (Amendment) Act, 2011 (Act 826).

⁴³ Shipping Act, 2003 (Act 645).

The 2002 Convention also provides for compulsory insurance for ships that engage in the carriage of passengers and their luggage by sea thereby, giving total financial protection to all passengers on board the ship in case any incident occurs that warrants people to make claims for compensation. It also gives a claimant the right to make a claim directly from the insurer.

Also, the Convention provides a higher sum payable as compared to the provision made by the Shipping Act. The limit of liability is up to 400,000 Special Drawing Rights of account. That is an increase of 203,334 Special Drawing Rights as compared to 46,666 Special Drawing Rights provided in the Shipping Act. This will amend Section 418 of the Shipping Act, 2003 (ACT 645) and also provide for liability for claims in respect of loss of or damage to luggage.

This means that, until the regulations are made by the Transport Minister, the passenger and his luggage will not be protected in case of any “shipping incident” under the Ghanaian legal regime. Any cause of action by an aggrieved person may only be in tort.

The incorporation of the 2002 Athens Convention will bring on board maximum protection to the passenger with respect to strict liability provisions for “shipping incident” claims and protection for claimants through compulsory insurance and rights of direct action. It will also provide opportunity to carriers to limit their liabilities in case of death of or personal injury to passengers, as well as loss of or damage to passengers’ vehicles and luggage.

The 2002 Convention generally gives two years for an action to be brought against a carrier or the insurer for a claim in respect of death or personal injury or loss of or damage to luggage. However, it makes room for an extension under a double time-bar provision where a claim may be brought before a court provided, there is grounds for suspension and interruption of limitation periods. The first being a period of five years beginning with the date of disembarkation of the passenger and the second being a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident. This means a claim for death.

6. Incorporation.

The Government of Ghana is obliged under the 1992 Constitution of Ghana to conduct its international affairs in consonance with accepted principles of international law and diplomacy in a manner that is consistent with its national interest.⁴⁴ The President is charged with the duty to execute treaties or cause the Foreign Affairs Minister to execute same on his behalf for the Republic.⁴⁵

Since the Convention is already in force, (thus the period for signing and ratification has long elapsed), Ghana must accede to the 2002 Protocol by submitting an instrument to the depository of the Protocol expressing its consent to be bound by the Protocol and then incorporate same into Ghanaian Law.

In accordance with article 11(7) of the Constitution, the draft regulation must be published in the Gazette on the day it is laid before Parliament and come into force on the expiration of twenty-one parliamentary sitting days unless Parliament annuls the regulation by the votes of not less than two-thirds of the members of Parliament before the expiration of the twenty-one days.

The Ghana Maritime Authority has the mandate under Section 2(a) of the Ghana Maritime Authority (Amendment) Act, 2011 (Act 825)⁴⁶ to ensure the full implementation of the Shipping Act⁴⁷ including this regulation. In the event of any dispute, the High Court of Ghana, under Order 62 of the High Court (Civil Procedures) Rules, 2004 (C.I 47)⁴⁸, shall have the jurisdiction to settle the dispute subject to the provisions of this Regulation. Furthermore, the Ghanaian Law shall be the applicable law in settling any dispute that shall be brought in respect of this Regulation.

The Director General of the Ghana Maritime Authority or his representative shall have the power to board any ship within the territorial waters of Ghana to inspect the insurance certificate in compliance with the provisions of this Regulation.

The limits of liability as provided in section 418 of the Shipping Act, 2003 (ACT 645) must be amended to reflect the provisions in Article 6 of 2004 Limitation of Liability in International Maritime Convention (LLMC). This is because the provision made by the Shipping Act is

⁴⁴ Article 73 of the Constitution of the Republic of Ghana, 1992.

⁴⁵ Article 75 (1) Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ High Court (Civil Procedures) Rules, 2004 (C.I 47).

woefully inadequate and if maintained, it will defeat the purpose of the 2002 Athens Convention as it does not reflect present conditions.

It is proposed that, the fee to be charged by the Ghana Maritime Authority for issuing the certificate attesting that an insurance cover or other financial security is in force be One Thousand Ghana Cedis [**GHS 1000.00**] in respect of a ship registered in Ghana subject to parliamentary approval or review.

It is also proposed that the fee to be charged by the Ghana Maritime Authority for issuing the certificate attesting that an insurance cover or other financial security is in force, shall be two hundred and fifty dollars [**\$250.00**], or its Cedi equivalent in respect of a ship not registered in Ghana subject to parliamentary approval or review.

It is further proposed that, a penalty not exceeding a fine of [**2,000**] SDR be imposed by the Ghana Maritime Authority on a shipowner whose ship enters or leaves any port in Ghana or attempts to navigate a ship into or out of the port without the certificate attesting to the compulsory insurance subject to parliamentary approval or review.

It is finally proposed that, if a person required by regulation to deliver up a certificate fails to do so he shall be liable on conviction to a fine not exceeding [**1,000**] SDR.

7. An overview of the Regulation on Carriage of Passengers and their Luggage by Sea, 2020.

In the light of the observations made above, the Regulations, drafted hereafter will be titled Regulations on Carriage of Passengers and their Luggage by Sea, 2020. These regulations are divided into twenty-nine sections with an annexed form appended to it to serve the object as enunciated therein. The Regulations shall contain the following: -

Regulations: -

1. Title: These regulations shall be called; Regulation on Carriage of Passengers and their Luggage by Sea, 2020
2. Interpretation: This provision will define the terms *inter alia* carrier, insurance, passenger, luggage, contract of carriage,
3. Scope of application: The scope of application will be within the meaning of contract for carriage as defined in the regulation.
4. Liability of the Carrier: This provision will deal with the basis for liability of the carrier.

5. Performing carrier: This distinguishes the carrier from the performing carrier with respect to their liabilities.
6. Compulsory insurance: This deals provision deals with limits of the insurance. The limit of insurance of 250,000 SDR is provided in respect of each passenger on each distinct occasion or 340million SDR overall per ship on each distinct occasion.
7. Certificate: This provision deals with the power of the Ghana Maritime Authority to issue a certificate of compliance with the compulsory insurance.
8. Validity of certificate: This provision deals with the procedure for certification and its revocation.
9. Penalty: This provision deals with the power of the Ghana Maritime Authority to enforce penalties against ships for the breach of insurance provisions.
10. Power to detain: This provision deals with the conditions under which a ship shall be detained.
11. Fees: This provision deals with the fees to be paid to acquire the insurance certificate.
12. Valuables: This provision deals with properties belonging passengers which are not considered as part of the luggage.
13. Contributory fault: This provision deals with incidents in which the passenger contributed to the incident for which claim is being made.
14. Limit of liability for death or personal injury: This provision deals with the limit of liability for death or personal injury to the passenger.
15. Limit of liability for loss of or damage to luggage and vehicles: This provision deals with the limit of liability for loss of or damage to the luggage of the passenger.
16. Units of account: This provision deals with the formula for determining the actual financial claim.
17. Supplementary provisions on limits of liability: This provision deals with mutual agreement between the carrier and the passenger to increase the limit of liability.
18. Defences and limits for carriers' servants: This provision deals with liabilities of the servants of the carrier.
19. Aggregation of claims: This provision deals with situations where claims are being made by the same person in respect of death or personal injury and loss of or damage to property.
20. Loss of right to limit liability: This provision deals with situations in which the carrier will lose his right to limit his liability.

21. Basis for claim: This provision deals with the grounds on which a claim may be brought.
22. Notice of loss or damage to luggage: This provision deals with the procedure to apply in bringing notice before the carrier on the loss of or damage to the luggage.
23. Time-bar for actions: This provision deals with the time duration within which an action may be brought against a carrier.
24. Competent jurisdiction: This provision gives the High Court jurisdiction regarding any cause of matter arising out of this regulation.
25. Recognition and enforcement: This provision deals with the right to enforce judgements of another State within the meaning of this regulation.
26. Invalidity of contractual provisions: This provision deals with mutual agreements between the carrier and the passenger with respect to claims in accordance with these regulations that will not be enforced.
27. Other Conventions on limitation of liability: This provision deals with the effect of other Convention on this regulation.
28. Nuclear damage: This provision deals with death or injury caused by a nuclear weapon.
29. Commercial carriage by public authorities: This provision deals with how public commercial ships are treated under the regulation.
30. Offences in connection with passenger ships: This provision deals with what constitutes an offence under this regulation
31. Commencement date: This provision deals with the date that this regulation shall have operational effect in Ghana. This is 14-days after the regulation is entered into the national gazette.



REPUBLIC OF GHANA

INSTRUMENT OF ACCESSION

To be deposited with the Secretary-General of IMO, London

MODEL INSTRUMENT OF ACCESSION TO THE PROCTOCOL OF 2002 TO THE
ATHENS

CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR
LUGGAGE BY SEA, 1972 (PAL PROT 2002)

WHEREAS the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted by the Diplomatic Conference organized under the auspices of the International Maritime Organization, in Athens, on 13 December 1974;**WHEREAS** the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 was adopted by the Diplomatic Conference organized under the auspices of the International Maritime Organization, in London, on 1 November 2002;

WHEREAS Ghana, being a State entitled to become a party to the said Protocol by virtue of Article 17 thereof,

WHEREAS the Legal Committee of the International Maritime Organization, at its ninety-second session in October 2006, adopted the guidelines for the implementation of the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 should include reservation and declaration to the same effect concerning a limitation of liability for carriers and a compulsory insurance for acts of terrorism taking into account the current state of the insurance market;

WHEREAS the Government of Ghana is desirous of acceding to the Protocol and the Parliament of Ghana shall approve the said Protocol in accordance with the Laws of Ghana;

NOW THEREFORE the Government of Ghana having considered and approved the said Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 hereby formally declares its accession to the said Protocol

IN WITNESS WHEREOF I,

NANA AKUFFO ADDO of GHANA have signed this Instrument of Accession and affixed [my] [the] official seal.

DATED at this.....day of..... two thousand and.....

(Seal) (Signature)

[President]

ANNEX

RESERVATION

The Athens Convention should be ratified with the following reservation or declaration to the same effect:

Reservation in connection with the ratification by the Government of Ghana of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 (“the Convention”)

Limitation of liability of carriers:

The Government of Ghana reserves the right to and undertakes to limit liability under paragraph 1 or 2 of the Convention, if any, in respect of death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 SDRs of account in respect of each passenger on each distinct occasion; or
- 340 million SDRs of account overall per ship on each distinct occasion.

Further, the Government of Ghana reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention paragraphs 2.1.1 and 2.2.2 *mutatis mutandis*, to such liabilities.

The liability of the performing carrier pursuant to Article 4 of the Convention, the liability of the servants and agents of the carrier or the performing carrier pursuant to Article 11 of the Convention and the limit of the aggregate of the amounts recoverable pursuant to Article 12 of the Convention shall be limited in the same way.

The reservation and undertaking in paragraph 1.2 apply regardless of the basis of liability under paragraph 1 or 2 of Article 3 and notwithstanding anything to the contrary in Article 4 of 7 of the Convention; but this reservation and undertaking shall not affect the operation of Articles 10 and 13.

Compulsory insurance and limitation of liability of insurers:

The Government of Ghana reserves the right to and undertakes to limit the requirement under paragraph 1 of Article 4bis to maintain insurance or other financial security for the death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the lower of the following amounts:

- 250,000 SDRs of account in respect of each passenger on each distinct occasion; or
- 340 million SDRs of account overall per ship on each distinct occasion

The Government of Ghana reserves the right to and undertakes to limit the liability of the insurer or other persons providing financial security under paragraph 10 of Article 4bis, for the death or personal injury to a passenger caused by any of the risks referred to in paragraph 2.2 of the IMO Guidelines for Implementation of the Athens Convention to the maximum limit of the amount of the insurance or other financial security which the carrier is required to maintain under paragraph 1.6 of the reservation.

The Government of Ghana reserves the right to and undertakes to apply the IMO Guidelines for Implementation of the Athens Convention including the application of the clauses referred to in paragraphs 2.1 and 2.2 in the Guidelines in all compulsory insurance under the Convention.

The Government of Ghana reserves the right to and undertakes to exempt the insurer or the provider of other financial security under paragraph 1 of Article 4bis from any liability for which he has not undertaken to be liable.

Certification:

The Government of Ghana reserves the right to and undertakes to issue insurance certificates under paragraph 2 of article 4bis of the Convention to:

- reflect the limitations of liability and requirements for insurance cover referred to in paragraphs 1.2, 1.6, 1.7 and 1.9 and;
- include such other limitations, requirements and exemptions as it finds that insurance market conditions at the time of the issue of the certificate necessitate.

The Government of Ghana reserves the right to and undertakes to accept insurance certificates issued by other State Parties issued in accordance with this Convention, pursuant to a similar reservation.

All such limitations, requirements and exemptions will be clearly reflected in the Certificate issued or certified under paragraph 2 of Article 4bis of the Convention.

The relationship between this Reservation and the IMO Guidelines for Implementation of the Athens Convention:

The rights retained shall be exercised with due regard to the IMO Guidelines for Implementation of the 2002 Athens Convention, or to any amendments thereto, to achieve the universal objectives of the Convention. If a proposal to amend the IMO Guidelines for Implementation of the Convention, including the limits, has been approved by the Legal Committee of the International Maritime Organization, those amendments will apply as from the time determined by the Committee. This is without prejudice to the rules of international law regarding the right of Ghana to withdraw or amend its reservation.

PART II - LEGISLATIVE DRAFTING

REGULATIONS ON CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2020.

ARRANGEMENT OF REGULATIONS

Regulations

1. Title
2. Interpretation
3. Application
4. Liability of the Carrier
5. Performing carrier
6. Compulsory insurance
7. Certificate
8. Validity of certificate
9. Penalty
10. Power to detain
11. Fees
12. Valuables
13. Contributory fault
14. Limit of liability for death or personal injury
15. Limit of liability for loss of or damage to luggage and vehicles
16. Units of account
17. Supplementary provisions on limits of liability
18. Defences and limits for carriers' servants
19. Aggregation of claims

20. Loss of right to limit liability
21. Basis for claim
22. Notice of loss or damage to luggage
23. Time-bar for actions
24. Competent jurisdiction
25. Recognition and enforcement
26. Other conventions on limitation of liability
26. Invalidity of contractual provisions
27. Other Conventions on limitation of liability
28. Nuclear damage
29. Commercial carriage by public authorities
30. Offences in connection with passenger ships
31. Commencement date

Annex- Certificate of insurance or other financial security in respect of liability for death and personal injury to passengers.



REPUBLIC OF GHANA

REGULATION ON CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA, 2020

1. Title

The title of this regulation shall be the Regulation on Carriage of Passengers by Sea, 2020

2. Interpretation

(1) In these regulations, unless the context otherwise requires,

- (a) "Carrier" means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- (b) "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;
- (c) "Carrier who actually performs the whole or a part of the carriage" means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;

(2) "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;

(3) "Ship" means only a seagoing vessel, excluding an air-cushion vehicle;

(4) "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 Regulation;

(5) "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;

(6) "Cabin luggage" means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control.

(7) "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;

(8) "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 this 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 on shore or on board until the time of its re-delivery 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 Ghana if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

(9) "Director-General" means the Director-General of the Ghana Maritime Authority.

(10) "Competent Authority" means the Ghana Maritime Authority or any such institution in another State qualified to issue or certify a certificate for the purposes of this regulation.

(11) "Insurance" means insurance or other financial security.

(12) "Convention" means the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.

3. Application

(1) These regulations shall apply to any domestic or international carriage if:

- (a) The ship is registered in Ghana, or
- (b) The contract of carriage has been made in Ghana, or
- (c) The place of departure or destination is in Ghana.

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

4. Liability of the carrier

(1) For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 250,000 SDRs of account, unless the carrier proves that the incident:

- (a) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) was wholly caused by an act or omission done with the intent to cause the incident by a third party (e.g. terrorist)

(2) If and to the extent that the loss exceeds the above limit, the carrier shall be further liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

(3) For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier to the extent that such loss in respect of that passenger on each distinct occasion does not exceed 400,000 SDRs of account. The burden of proving fault or neglect shall lie with the claimant.

(4) For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

(5) For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

(6) For the purposes of this section:

(a) "shipping incident" means shipwreck, capsizing, collision or stranding of the ship, explosion or fire in the ship, or defect in the ship;

(b) "fault or neglect of the carrier" includes the fault or neglect of the servants of the carrier, acting within the scope of their employment;

(c) "defect in the ship" means any malfunction, failure or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment when used for the escape, evacuation, embarkation and disembarkation of passengers, or when used for the propulsion, steering, safe navigation, mooring, anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or when used for the launching of life saving appliances; and

(d) "loss" shall not include punitive or exemplary damages.

(7) The liability of the carrier under this regulation only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which

caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

(8) Nothing in these regulations shall prejudice any right of:

(a) recourse of the carrier against any third party, or the defence of contributory negligence under regulation 13.

(b) limitation of liability under regulations 14 and 15.

(9) Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

5. Performing carrier

(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 this regulation. In addition, the performing carrier shall be subject and entitled to the provisions of this regulation 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 these regulations or any waiver of rights conferred by this regulation 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 Article shall prejudice any right of recourse as between the carrier and the performing carrier.

6. Compulsory Insurance

- (1) A ship licensed to carry more than twelve passengers may not enter or leave a port in Ghana, nor, if the ship is a Ghanaian ship, a port in any other country, unless there is an insurance cover in force.
- (2) Any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under these regulations in respect of the death of and personal injury to passengers.
- (3) The limit of the compulsory insurance or other financial security shall not be less than 250,000 SDRs per passenger on each distinct occasion.

7. Certificate

- (1) A certificate attesting that insurance or other financial security is in force in accordance with regulations 6 shall be issued to each ship after the Ghana Maritime Authority has determined that the requirements of regulation 6 have been complied with.
- (2) With respect to a ship registered in another State, such certificate shall be issued and certified by the competent authority of the State.
- (3) With respect to a ship not registered in a State which is a party to the 2002 Athens Convention, a certificate may be issued and certified by a competent authority of any State that is a party to the Convention.
- (4) This certificate shall be in the form of the model set out in the annex to this regulation.
- (5) In all cases, the Ghana Maritime Authority after issuing the certificate shall fully guarantee the completeness and accuracy of the certificate so issued, and shall undertake to ensure the necessary arrangements to satisfy this obligation, and shall have the power to withdraw these certificates if the conditions under which they have been issued are not complied with.
- (6) The certificate shall be carried on board the ship, and a copy shall be deposited with the Authority issuing or certifying the certificate or authorities who keep the record of the ship's registry.
- (7) The certificate shall be in English or a certified translation in English.
- (8) An insurance or other financial security shall not satisfy the requirements of this regulation if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed

from the date on which notice of its termination is given to the competent authority in paragraph 6 unless, the certificate has been surrendered to these competent authority or a new certificate has been issued within the said period.

- (9) The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this regulation.
- (10) The competent authority issuing the certificate shall, subject to the provisions of this regulation, determine the conditions of issue and validity of the certificate.
- (11) Certificates issued or certified by a competent authority of another State shall be accepted for the purposes of this regulation and shall have the same force as certificates issued in Ghana.
- (12) The Ghana Maritime Authority may at any time request consultation with the issuing or certifying authority should it believe that the insurer or guarantor named in the insurance certificate is not financially capable of meeting the obligations imposed by this regulation.
- (13) Any claim for compensation covered by insurance or other financial security pursuant to this regulation may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in regulation 6 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability.
- (14) The defendant may further invoke defences (other than the bankruptcy or winding up) which the carrier referred to in regulation 5 would have been entitled to invoke in accordance with this regulation.
- (15) The defendant may invoke the defence that the damage resulted from the willful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant.
- (16) The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.
- (17) Any sums provided by insurance or by other financial security maintained in accordance with regulation 6 shall be available exclusively for the satisfaction of claims under this regulation, and any payments made of such sums shall discharge any liability arising under this regulation to the extent of the amounts paid.

- (18) Subject to the provisions of this regulation, the competent Authority shall ensure, under the national law, that insurance or other financial security, to the extent specified regulation 6, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this regulation applies.
- (19) Notwithstanding the provisions of this regulation, ships may not be required to carry on board or to produce the certificate required by this regulation when entering or leaving ports in Ghana, provided that the officers of the ship's registry notifies the Director-General that it maintains records in an electronic format, accessible to the Director-General and expressly guarantee that such information meets the requirements of regulation 6.

8. Validity of certificate

- (1) The Director-General shall determine validity of such certificate for ships registered in Ghana and, in respect of certificates issued by another State, the appropriate authority of such State shall determine its validity.
- (2) If the Director-General is satisfied on the application for such a certificate as is stated in paragraph 1 that, there will be in force throughout the period for which the certificate is to be issued a contract of insurance or other financial security satisfying the requirements of these regulations, the Director-General may issue such certificate to the registered owner of the ship.
- (3) If the Director General has reasons to doubt whether -
- (a) the person providing the insurance or financial security will be able to meet its obligations thereunder; or
 - (b) the insurance will not cover the registered owner's liability as provided under these regulations, the Director-General may, after taking into account any other matters which appear to be relevant, refuse to issue the certificate.
- (5) Where, at any time while a certificate is in force, the person to whom the certificate has been issued ceases to be the owner of the ship to which the certificate relates, the certificate shall be delivered up forthwith to the Director-General and in such case shall be cancelled.
- (6) Where, at any time while a certificate is in force, it is established in any legal proceedings that the contract of insurance in respect of which the certificate is issued is or

may be treated as invalid, the certificate may be cancelled by the Director-General and, if so cancelled, shall be delivered to the Director-General by the shipowner.

9. Penalty

- (1) A shipowner or master shall be liable to a fine not exceeding [2,000] SDRs if -
 - (a) a ship belonging to the shipowner enters or leaves a port in contravention of regulation 7; or
 - (b) anyone attempts to navigate that ship into or out of a port in contravention of regulation 7.
- (2) If a person required by regulation 8 fails to deliver up a certificate fails to do so he shall be liable on conviction to a fine of [1,000] SDRs.

10. Power to detain

- (1) A ship may be detained if anyone attempts to navigate it out of port in contravention with regulation 7.
- (2) An officer detaining the ship must serve on the master of the ship a notice which -
 - (a) states the reason for the detention; and
 - (b) requires the ship to comply with the terms of the notice until it is released by the Authority.
- (3) Where a ship, which is not a Ghanaian ship is detained, the Director-General must immediately inform, in writing -
 - (a) the ship's flag state administration; or if this is not possible,
 - (b) the Consul of the State of the flag administration; or in the Consul's absence,
 - (c) the nearest diplomatic representative of the State of the flag administration.
- (4) The written information referred to in paragraph 3 must set out all the circumstances of the decision to detain the ship.
- (5) Where paragraph 3 applies the Director-General may notify all relevant nominated surveyors or recognized organizations responsible for the issue of classification certificates.

11. Fees

(1) The fee to be charged for issuing the certificate attesting that an insurance cover or other financial security is in force, shall be One Thousand Ghana cedis [**GHS 1000.00**] in respect of a ship registered in Ghana.

(2) The fee to be charged for issuing the certificate attesting that an insurance cover or other financial security is in force, shall be one hundred and fifty dollars [**\$250.00**], or its cedi equivalent in respect of a ship not registered in Ghana.

12. Valuables

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 regulation 16 unless a higher limit is agreed upon in accordance with paragraph 1 regulation 18.

13. Contributory fault

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.

14. Limit of liability for death or personal injury

- 1) The liability of the carrier for the death of or personal injury to a passenger under regulation 4 shall in no case exceed 400,000 SDRs of account per passenger on each distinct occasion.
- 2) Where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the limit in paragraph 1.
- 3) Notwithstanding the provision in paragraph 1, the limit of liability of the carrier for death or personal injury to a passenger caused by an act of war or terrorism shall be;
 - (a) 250,000 SDRs of account in respect of each passenger on each distinct occasion; or
 - (b) 350 million SDRs of account overall per ship on each distinct occasion.

15. Limit of liability for loss of or damage to luggage and vehicles

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2,250 SDRs per passenger, per carriage.
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 12,700 SDRs of account per vehicle, per carriage.
3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3,375 SDRs of account per passenger, per carriage.
4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 SDRs of account in the case of damage to a vehicle and not exceeding 149 SDRs of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

16. Units of Account

- (1) The SDRs of Account mentioned in this regulation is the Special Drawing Right as defined by the International Monetary Fund.
- (2) The claim to be paid shall be calculated with reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties.

17. Supplementary provisions on limits of liability

- (1) The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in regulations 14 and 15.
- (2) Interest on damages and legal costs shall not be included in the limits of liability prescribed in regulations 14 and 15.

18. Defences and limits for carriers' servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this regulation, 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 this regulation.

19. Aggregation of claims

(1) Where the limits of liability prescribed in regulations 14 and 15 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 this regulation, 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 regulation 18 to avail himself of the limits of liability prescribed in regulations 14 and 15, 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.

20. Loss of right to limit liability

(1) The carrier shall not be entitled to the benefit of the limits of liability prescribed in regulations 14 and 15 and paragraph 1 of regulation 17, 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 result.

21. Basis for claims

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 these regulations.

22. Notice of loss or damage to luggage

(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 fifteen 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 paragraph 1, 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.

23. Time-bar for actions

(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 time-barred after a period of two years.

(2) The limitation 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 three 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 laws of Ghana shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

(a) a period of five years beginning with the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later; or, if earlier

(b) a period of three years beginning with the date when the claimant knew or ought reasonably to have known of the injury, loss or damage caused by the incident.

(4) Notwithstanding paragraphs 1, 2 and 3 of this regulation, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen and the said declaration or agreement shall be in writing.

24. Competent jurisdiction

(1) The High Court of Ghana shall have exclusive jurisdiction in any cause of action arising under this regulation if the port of departure is in Ghana or the ship is registered in Ghana.

(2) Where a ship does not depart from a port in Ghana or registered in Ghana, the law of the State of the ship's registry shall apply.

(3) Notwithstanding paragraph 1 and 2, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration after the occurrence of the incident which has caused the damage provided the State chosen is a party to the 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974.

25. Recognition and enforcement

(1) Any judgment given by a court with jurisdiction in accordance with regulation 24 which is enforceable in the State of origin where it is no longer subject to ordinary forms of review, shall be recognized in Ghana, except: -

(a) where the judgment was obtained by fraud; or

(b) where the defendant was not given reasonable notice and a fair opportunity to present his or her case.

(2) A judgment recognized under paragraph 1 shall be enforceable in Ghana as soon as the formalities required have been complied with. The formalities shall not permit the merits of the case to be re-opened.

(3) The Court may apply other rules for the recognition and enforcement of judgments, provided that their effect is to ensure that judgments are recognized and enforced at least to the same extent as under paragraphs 1 and 2.

26. Invalidity of contractual provisions

Any contractual provision concluded before the occurrence of the incident which caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this regulation of liability towards the passenger or to prescribe a lower limit of liability than that fixed in these regulations except as provided in regulation 15, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting regulation 24 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 these regulations.

27. Other conventions on limitation of liability

This regulation 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.

28. Nuclear damage

No liability shall arise under this regulation 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 any amendment or Protocol thereto which is in force; 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 or any amendment or Protocol thereto which is in force.

29. Commercial carriage by public authorities

This regulation shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of regulation 1.

30. Offences in connection with passenger ships

(1) A person commits an offence if that person

- a) on account of being drunk and disorderly is refused entry to a passenger ship or where that person is already on board, is requested by the owner or a person in the employment of the owner to leave the ship, and although the fare paid has been returned or tendered to that person, that person persists in attempting to enter the ship, or where that person is already on board, does not leave the ship;
- b) after a warning by the master or any other officer of a ship, molests or continues to molest a passenger on board the ship;
- c) on account of a ship being full, is refused admission or requested to leave the ship by the owner or a person in the owner's employ after having the amount of a fare paid by that person returned or tendered to that person, that person nevertheless persists in attempting to enter the ship, or where that person is already on board, does not leave the ship;
- d) travels or attempts to travel on a ship without first paying the fare and with intent to avoid payment of the fare;
- e) having paid the fare to travel on a ship for a certain distance, knowingly and willfully proceeds in the ship beyond that distance without first paying the fare for the additional distance;
- f) on arriving on a ship at a point to which the fare has been paid, knowingly refuses or neglects to leave the ship;
- g) while on board a ship fails, when requested by the master or any other officer to pay the fare or exhibit a ticket or any other receipts showing payment of the fare as is usually given to persons travelling by and paying their fare for the ship; or
- h) willfully does or causes to be done anything in a manner so as to obstruct or damage a part of the machinery or tackle of the ship, or to obstruct, impede or molest the crew or any of them in the navigation or management of the ship or otherwise in the execution of their duty on or about the ship.

(2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months.

31. Commencement date

This regulation shall enter into force 14-days after publication in the national gazette.

ANNEX

**CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN
RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO
PASSENGERS**

Name of Ship:.....

Distinctive number or letters:.....

IMO Ship Identification Number:.....

Port of Registry:.....

Name and full address of the principal place of business of the carrier who actually performs the carriage:.....

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of Security.....

Duration of Security

Name and address of the insurer(s) and/or guarantor(s)

Name

Address

.....

This certificate is valid until

Issued by the Government of Ghana by the Director General, Ghana Maritime Authority.

.....

At On

(Place)

(Date)

.....

(Stamp & Signature)