

IMO INTERNATIONAL MARITIME LAW INSTITUTE

**The Law on Carriage of Goods by Sea to amend
Chapter V (Contract of Carriage of Cargo) of the Viet Nam Maritime Code**

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Explanatory Note

Carriage of goods by sea is currently governed by the Viet Nam Maritime Code 1990. However, in the context of the Government's market oriented economy and open door policy, Chapter 5 of the Viet Nam Maritime Code titled "Contracts of Carriage of Cargo" has demonstrated certain shortcomings. For example, Article 98 paragraph (1) of the Code stipulates: "Freight and additional charge for the carriage of the cargo are determined on the basis of the tariff approved by the Council of Ministers". With a view to creating a sound legal framework for liability rules relating to carriage of goods by sea; to ensuring that Viet Nam legislation in the area is more consistent with that of major trading partners, and to contributing to uniformity of international law on carriage of goods by sea as well as enabling the shipping industry to operate with a degree of certainty, Viet Nam is planning to amend Chapter 5 of the Viet Nam Maritime Code. Viet Nam has not ratified the Hague Rules, the Hague Visby Rules, or the Hamburg Rules, therefore Viet Nam can incorporate appropriate provisions of these conventions in the amendments. It is proposed to largely base the amendments on the Hague Visby Rules and incorporate advantages of Hamburg Rules provided that this will not conflict with provisions of Hague Visby Rules. The amendments will comprise the following main proposals.

Contract of carriage of goods: Chapter 5 of the Viet Nam Maritime Code stipulates the two types of contract of carriage namely: the contract for the use of a whole or a substantial part of a vessel (charterparty), and the situation where the carrier enters into a number of separate contracts with various owners of cargo (contract covered by bill of lading or other shipping documents). However the legal regimes applied to these types of contracts are different. Moreover since Chapter 7 of the same Code also provides for charterparties, it is proposed to amend the definition of contract of carriage to the exclusion of charterparties.

Liability of carrier: Under the Viet Nam Maritime Code, the carrier is deemed to bear responsibility for damages and losses of goods if he fails to prove that the losses or damages have not occurred through his fault (Article 108). This is similar to the principle of "presumed fault" in the Hamburg Rules. Currently the Carriage of Good by Sea Acts of almost all countries use the principle of the Hague Visby Rules, therefore it is appropriate that the liability of the carrier is based on the Hague Visby Rules.

Deck cargo: Chapter 5 of the Vietnam Maritime Code excludes deck cargo from the liability regime; this is inappropriate in modern shipping, especially in the context of containerized trades. Therefore it is proposed that deck cargo should be covered by provisions aligned on the Hamburg Rules whereby the carrier is entitled to carry goods on deck if there is a specific agreement with the shipper to that effect, or where carriage on deck is in accordance with the usage of the particular trade or is required by statutory rules or regulations.

Abolish error in navigation or management as a defence: under Article 108, paragraph (2), subparagraph (a): “the carrier is completely exempt from liability for loss of or damage to the cargo resulting from act, neglect, or default of the master, other members of the crew, pilot, or servants of the carrier in the navigation or in the management of the ship”. Nowadays, however, with the development of technology the ship is provided with modern devices such as the Global Positioning System (GPS) and proper weather forecasts, hence it is not appropriate to regard *error in navigation or management* as an exoneration.

Freight: Under the Viet Nam Maritime Code, freight and additional charges for the carriage of the cargo are determined on the basis of the tariff approved by the Council of Ministers. However, in the context of market-oriented economy, this provision is not appropriate, and should therefore be repealed.

Delay: The Viet Nam Maritime Code provides that the carrier is liable for delay but it does not stipulate clearly the limitation of liability for loss caused by delay in delivery or the exceptions where delay is excusable. Hence, it is proposed that the amendments will include a comprehensive provision on this issue.

Unit of account: Under Article 10 of the Viet Nam Maritime Code, the currency unit for limitation of liability is the “Gold Franc”. Nowadays almost all countries use the SDR unit concerning limitation of liability. With a view to bring about uniformity with the unit of account employed in other countries, Viet Nam should introduce the SDR unit in its legislation.

Electronic shipping documents: With the development of information technology, information could be transferred through electronic data interchange. This enables the resolution of some disadvantages of paper documents, for instance, the delay in the arrival of bills of lading, so it is appropriate to provide provisions in relation to electronic shipping documents.

Arbitration and jurisdiction: It is proposed that there should be explicit provision for arbitration and jurisdiction in the Chapter. Especially, the provision for arbitration will receive support because it is consistent with a general trend towards utilization of alternative dispute resolution mechanisms.

With the proposed amendments, Chapter 5 of the Vietnam Maritime Code would provide a comprehensive and modern legal framework for carriage of goods by sea.

Chapter V: Carriage of Goods by Sea

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CHAPTER V: CARRIAGE OF GOODS BY SEA

PART I: GENERAL PROVISIONS

Article 61: Purpose of the Provisions

This Chapter aims at regulating the relations arising from the contract of carriage of goods by sea covered by a bill of lading and analogous shipping documents, to protect the legitimate rights and interests of the parties concerned and to promote the development of maritime transport.

Article 62: Definitions

In this Chapter:

1. "Carrier" means any person by whom or in whose name a contract of carriage of goods by sea has been concluded with a shipper.
2. "Actual carrier" means any person to whom the performance of the carriage of the goods, or of part of the carriage, has been entrusted by the carrier, and includes any other person to whom such performance has been entrusted.
3. "Shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods by sea has been concluded with a carrier, or any person by whom 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.
4. "Consignee" means the person entitled to take delivery of the goods.
5. "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever supplied by the shipper except live animals.
6. "Container" includes any type of container, transportable tank or flat, swapbody, lashbarge, or any similar unit load used to consolidate goods and any equipment ancillary to such unit load.
7. "Bill of lading" means a document of title, which is evidence of a contract of carriage by sea and of the carrier having received or loaded the goods; and contains an undertaking by the carrier to deliver the goods against the surrender of the document.
8. "Through bill of lading" is a bill of lading in which it is stated that the carriage of the goods is to be performed by more than one carrier.

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

10. "Ship's delivery order" means any document which is neither a bill of lading nor a sea waybill but contains an undertaking which is given under or for the purposes of a contract for the carriage by sea of the goods to which the document relates, or of goods which include those goods; and is an undertaking by the carrier to a person identified in the document to deliver the goods to which the document relates to that person.

11. "Contract of carriage by sea": in relation to a bill of lading or sea waybill, means the contract contained in or evidenced by that bill or waybill; and in relation to a ship's delivery order, means the contract under or for the purposes of which the undertaking contained in the order is given; it also includes any bill of lading issued under or pursuant to a charter-party from the moment at which such bill of lading regulates the relations between the carrier and a holder of the same.

12. "Freight" means the remuneration payable to the carrier for the carriage of goods under any contract of carriage.

13. "Delay" means the situation when the goods are not delivered at the place of destination provided for in the contract of carriage within the time expressly agreed upon or, in the absence of such agreement, within the time which it would be reasonable to require of a diligent carrier, having regard to the circumstances of the case.

14. "Private key" means any technically appropriate form, such as a combination of numbers and/or letters, which the parties may agree for securing the authenticity and integrity of a transmission

15. "Unit of account" means the Special Drawing Right (SDR) as defined by the International Monetary Fund (IMF).

Article 63: Scope of Application

1. The provisions of the present Chapter are applicable to contracts of carriage by sea in domestic transport in Viet Nam.

2. In any other traffic, the provisions of the present Chapter shall apply to contracts of carriage by sea between Viet Nam and other states if

a. The port of loading as provided for in the contract of carriage by sea is located in Viet Nam, or

b. The bill of lading, sea waybill, or ship's delivery order is issued in Viet Nam, or

c. The contract provides that the law of Viet Nam is to govern the contract.

PART II: LIABILITIES AND RIGHTS OF THE CARRIER

Article 64: Period of Responsibility

1. The responsibility of the carrier for the goods covers the period during which the carrier is in charge of the goods at the port of loading, during the carriage and at the port of discharge.
2. For the purpose of paragraph (1) of this Article, the carrier is deemed to be in charge of the goods
 - a. from the time he has taken over the goods from:
 - (i) the shipper, or a person acting on his behalf; or
 - (ii) an authority or other third party to whom, pursuant to laws or regulations applicable at the port of loading, the goods must be handed over for shipment;
 - b. until the time he has delivered the goods:
 - (i) by handing over the goods to the consignee; or
 - (ii) in cases where the consignee does not receive the goods from the carrier, by placing them at the disposal of the consignee in accordance with the contract or with the law or with the usage of the particular trade, applicable at the port of discharge; or
 - (iii) by handing over the goods to an authority or other third party to whom, pursuant to laws or regulations applicable at the port of discharge, the goods must be handed over.

Article 65: Basic Obligations of the Carrier

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:
 - a. make the ship seaworthy,
 - b. properly man, equip and supply the ship,
 - c. make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article 67, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

Article 66: Deck Cargo

1. The carrier is entitled to carry the goods on deck only if:
 - a. such carriage is required by the relevant laws or administrative rules or regulations, or
 - b. goods are carried in or on containers on decks which are specially fitted to carry containers, or
 - c. in accordance with an agreement with the shipper or in compliance with the usage of the particular trade.

2. If the carrier and the shipper have agreed that the goods shall or may be carried on deck, the carrier must insert in the bill of lading or other document evidencing the contract of carriage by sea a statement to that effect. In the absence of such statement the carrier has the burden of proving that an agreement for carriage on deck has been entered into and the carrier is not entitled to invoke such an agreement against a third party, including a consignee, who has acquired the bill of lading in good faith.

3. If the carrier under this paragraph (1) is liable for loss or damage to goods carried on deck, his liability is limited to the extent provided for in Article 68; however if such liability occurs while it was expressly agreed to carry the goods under deck, the carrier is not entitled to limit his liability.

Article 67: Exemption of Liability

1. The carrier shall not be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of Article 65. 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.

2. The carrier shall not be responsible for loss or damage arising or resulting from:
 - a. fire, unless caused by the actual fault or privity of the carrier,
 - b. perils, dangers and accidents of the sea or other navigable waters,
 - c. force majeure,
 - d. act of war,
 - e. act of public enemies,

- f. arrest or restraint of rulers or people, or seizure under legal process,
- g. quarantine restrictions,
- h. act or omission of the shipper or owner of the goods, his agent or representative,
- i. strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general,
- j. riots and civil commotions,
- k. saving human life or aiding a ship in distress where human life may be in danger,
- l. wastage in bulk of weight or any other loss or damage arising from inherent defect, quality or vice of the goods,
- m. insufficiency of packing,
- n. insufficiency or inadequacy of marks,
- o. latent defects not discoverable by due diligence,
- p. any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The carrier shall not be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the shipping documents.

4. The carrier shall not be responsible for delay if

- a. the delay is due to deviation authorized by the shipper;
- b. the delay is caused by force majeure;
- c. the delay is for the purposes of saving human life or aiding a ship in distress where human life may be in danger;
- d. the delay is reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship;

Article 68: Limits of Liability

1. Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, the carrier shall not in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding the equivalent of 666.67 units of account per package or unit or 2 units of account per kilo of gross weight of the goods lost or damaged, whichever is the higher.
2. Where a container is used to put things together each package or unit which, according to a declaration in shipping documents, has been packed into that transportation equipment, is considered as a package or unit as referred to in paragraph (1). Except in the case described above, this transportation equipment is considered to be one package or unit.
3. The carrier is liable for any economic loss caused by delay in delivery up to the freight for the goods.

Article 69: Application to Non-Contractual Claims

1. The defences and limits of liability provided for in this Chapter shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage by sea.
2. If such an 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 Chapter.

Article 70: Loss of Right to Limit Responsibility

The carrier, servant or agent of the carrier shall not be entitled to the benefit of the limitation of liability provided for in Article 68 if it is proved that the loss, damage or delay resulted from an act or omission of the carrier, servant or agent of the carrier or done with intent to cause loss, damage or delay, or recklessly and with knowledge that loss, damage or delay would probably result.

Article 71: Validity of Terms of Contract of Carriage

1. Any clause, covenant, or agreement in a contract of carriage relieving the carrier from liability for loss or damage to, or in connection with, goods arising from negligence, fault, or failure in the duties and obligations or lessening liabilities provided in this Chapter shall be null and void and of no effect.
2. A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and obligations under this Chapter, provided such surrender or increase shall be embodied in the shipping documents. Nothing in this Chapter shall be held to prevent the insertion in shipping documents of any lawful provision regarding general average.

Article 72: Liability of the Carrier and Actual carrier

1. The actual carrier is subject to the responsibilities and liabilities under this Chapter, and entitled to the rights and immunities provided by this Chapter during the period it has custody of the goods; and at any other time to the extent that it is participating in the performance of any of the activities contemplated by the contract of carriage by sea.
2. Subject to paragraph (4), a carrier shall be responsible for the acts and omissions of any actual carrier who performs, undertakes to perform, or procures to be performed any of that carrier's responsibilities under the contract of carriage as if such acts or omission were its own.
3. Responsibility is imposed on a carrier under paragraph (2) only when the actual carrier's act or omission is within the scope of its contract, employment, or agency, as the case may be.
4. If an action is brought against an actual carrier who proves that it acted within the scope of its contract, employment, or agency, as the case may be, the actual carrier is entitled to the benefit of the defences and limitations of liability available to the carrier under this Chapter.
5. To the extent that both the carrier and actual carrier are liable, their liability is joint and several.
6. The aggregate liability of the carrier and actual carriers will not exceed the overall limits of liability under this Chapter.
7. Any special agreement under which the carrier assumes obligations not imposed by this Chapter or waives rights conferred by this Chapter affects the actual carrier only if agreed to by him expressly and in writing. Whether or not the actual carrier has so agreed the carrier nevertheless remains bound by the obligations or waivers resulting from such special agreement.

PART III: LIABILITIES AND RIGHTS OF THE SHIPPER

Article 73: Basic Obligations of the Shipper

1. A shipper shall in accordance with the terms and conditions of the contract of carriage, deliver the goods ready for carriage and in such condition that they may stand the intended carriage.
2. The shipper shall provide to the contracting carrier all the information, instructions and documentation, which is reasonably necessary or of importance for the handling and carriage of goods, the compliance with rules, regulations and other requirements of authorities in connection with the intended carriage.

Article 74: Guarantee by the Shipper

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

Article 75: Dangerous Goods

The shipper is obliged to inform the carrier of goods of a dangerous nature to the shipment and, if necessary, of the precautions to be taken. Where the carrier, master or agent of the carrier has not consented with knowledge of the dangerous character of the goods, they may at any time before discharge be landed at any place, or destroyed or rendered innocuous by the carrier without compensation and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment. If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place, or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article 76: Liability

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 his servants.

PART IV: FREIGHT

Article 77: Due Time

1. Freight is deemed to be earned upon delivery of the goods to the consignee, unless the parties have agreed that the freight shall be earned, wholly or partly, at an earlier point in time or at an earlier occasion.
2. Unless otherwise agreed, no freight will become due for any goods which are lost before the freight for the goods is earned.
3. Freight is payable when it is earned, unless the parties have agreed that the freight is payable, wholly or partly, at an earlier or later point in time or at earlier or later occasion.

4. If subsequent to the moment that the freight has been earned the goods are lost, damaged, or otherwise not delivered to the consignee in accordance with the terms and conditions of the contract of carriage, freight shall remain payable if such loss, damage or failure in delivery is not due to the fault of the carrier.

5. Unless otherwise agreed, payment of freight is not subject to set-off deduction or discount on the grounds of any counterclaim that the shipper or consignee may have against the carrier.

Article 78: Right of the Carrier

1. Notwithstanding any agreement to the contrary, if and to the extent that the consignee is liable for the payments referred to below, a carrier is entitled to retain the goods until payment of

- a. the freight, demurrage, damages for detention and all other reimbursable costs incurred by the carrier in relation to the goods,
- b. any damages due to the carrier under the contract of carriage,
- c. any contribution in general average to the carrier relating to the goods

has been effected, or adequate security for such payment has been provided.

2. If the payment as referred to in the paragraph (1) will not, or not fully, be effected, the carrier has the right to ask the court to allow him to sell the goods. He will satisfy the amounts payable to him (including the costs of such recourse) from the proceeds of such sale. Any remainder of the proceeds of such sale shall be made available to the consignee.

PART V: BILL OF LADING

Article 79: Issue of Bill of Lading

1. When the carrier takes the goods in his charge he must, on demand of the shipper, issue to the shipper a bill of lading.

2. The bill of lading may be signed by a person having authority from the carrier. A bill of lading signed by the master of the ship carrying the goods is deemed to have been signed on behalf of the carrier.

3. The signature on the bill of lading may be in handwriting, printed in facsimile, perforated, stamped, in symbols, or made by any other mechanical or electronic means.

4. The person who issues a through bill of lading shall ensure that a separate bill of lading issued for a part of the carriage enunciates that the goods are carried according to the through bill of lading.

Article 80: Forms of Bill of Lading

1. A nominate bill of lading is a bill of lading in which it is stated that the goods are consigned or destined to a specified person.
2. An order bill of lading is a bill of lading in which it is stated that the goods are consigned or destined to the order of any person named in such bill. Any provision in such a bill or in any notice or in any contract that it is non-negotiable shall be null and void and shall not affect its negotiability within the meaning of the provision unless stated upon its face and agreed to in writing by the shipper.
3. A bearer bill of lading is a bill of lading that does not name the consignee but makes the goods deliverable to the bearer or to order or assigns, the space for the name of the consignee being left blank.

Article 81: Content of Bill of Lading

1. The bill of lading shall state particulars as follows:
 - a. the description of the goods, marks, number of packages or pieces, weight or quantity, and a statement, if applicable, as to the dangerous nature of the goods;
 - b. the name and principal place of business of the carrier;
 - c. the name of the ship;
 - d. the name of the shipper;
 - e. the name of the consignee;
 - f. the port of loading and the date on which the goods were taken over by the carrier at the port of loading;
 - g. the port of discharge under the contract of carriage by sea;
 - h. the place and date of issue of the bill of lading and the number of originals issued;
 - i. the signature of the carrier or of a person acting on his behalf.
2. In a bill of lading, the lack of one or more particulars referred to in the preceding paragraph does not affect the function of the bill of lading as such, provided that it nevertheless meets the requirements set forth in paragraph (7) of Article 62.

Article 82: Reservation in Bill of Lading

Where a carrier or other person issuing the bill of lading on his behalf has knowledge or reasonable grounds to suspect that the particulars contained in the bill of lading concerning the description, mark, number of packages or pieces, weight or quantity do not accurately represent the goods actually received, or if he has no reasonable means of checking, the carrier or such other person may make a reservation in the bill of lading specifying those inaccuracies, the grounds for suspicion or the lack of reasonable means of checking.

If the carrier or the other person issuing the bill of lading on his behalf fails to make a note in the bill of lading regarding the apparent order and condition of the goods, the goods shall be deemed to be in apparent good order and condition.

Article 83: Transfer of Bill of Lading in a Set

Where a bill of lading is issued in a set, any one of the set being accomplished the others will be void. If the shipper is in possession of more than one part he shall not transfer the different parts to different persons so as to give each of them an indefeasible right to claim the goods from the carrier.

Article 84: Negotiation of Nominate Bill of Lading

The nominate bill of lading cannot be transferred except by a subsequent act of assignment.

Article 85: Negotiation of Order Bill of Lading by Endorsement

An order bill of lading may be negotiated by the endorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such endorsement may be in blank or to a specified person, it may be negotiated again by the endorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

Article 86: Negotiation of Order Bill of Lading by Delivery

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

Article 87: Negotiation of Order Bill by Person in Possession

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

Article 88: Negotiation of Bearer Bill of Lading

A bearer bill of lading may be transferred by delivery without endorsement.

PART VI: SEA WAYBILL

Article 89: Rights and Obligations of the Shipper

1. Unless the shipper has exercised his option under paragraph (2) below, he shall be the only party entitled to give the carrier instructions in relation to the contract of carriage. He shall be entitled to change the name of the consignee at any time up to the consignee claiming delivery of the goods after their arrival at destination, provided he gives the carrier reasonable notice in writing, or by some other means acceptable to the carrier, thereby undertaking to indemnify the carrier against any additional expense caused thereby.

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

Article 90: Delivery of Goods

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

PART VII: SHIP'S DELIVERY ORDER

Article 91: Liability

Where the goods to which a ship's delivery order relates form only a part of the goods to which the contract of carriage relates, the liabilities to which any person is subject by virtue of the operation of this Chapter in relation to that order shall exclude liabilities in respect of any goods to which the order does not relate.

Article 92: Delivery of Goods

The carrier shall deliver the goods to the holder of the delivery order against presentation of that document.

PART VIII: ELECTRONIC SHIPPING DOCUMENTS

Article 93: Status

All provisions of Articles 79-92 apply to a contract of carriage by sea performed by data messages, if a paper document has not been issued. Subject to Article 94 below, any transaction using one or more data messages shall be equivalent to writing.

Article 94: Rights and Obligations

1. The right may be granted to, or the obligation may be acquired by, and the right or obligation may be conveyed by using one or more data messages provided that a reliable method is used to render such data message or messages unique.
2. For the purposes of paragraph (1) above, the standard of reliability required shall be assessed in the light of the purpose for which the right or obligation was conveyed and in the light of all the circumstances, including any relevant agreement between parties.

Article 95: Delivery of Goods

The carrier shall deliver the goods to the consignee upon production of proper identification in accordance with the delivery instructions, which verified by private key. The delivery shall automatically cancel the private key.

PART IX: DELIVERY TO THE CONSIGNEE

Article 96: Obligations of the Consignee and the Carrier

1. The consignee who claims the goods from the carrier shall accept their delivery in accordance with the terms and conditions of the contract of carriage or, failing any specific provision relating to the delivery of the goods in such contract, in accordance with the customs or usages in the trade or at the place of destination. In the absence of any such specific provision in the contract of carriage or of such customs or usages, such consignee shall accept delivery of the goods upon their discharge.

In the event the carrier has to hand over the goods in the discharge port to an authority or other third party to whom, pursuant to laws or regulations applicable at the discharge port, such handing over will be regarded as delivery of the goods by the carrier to the consignee.

2. If the goods have been delivered before their discharge from the vessel, the carrier shall remain liable for their loss or damage in accordance with the liability provisions of this Chapter until the moment that they have been discharged.

Article 97: Notice of Loss, Damages or Delay

1. Delivery is prima facie evidence of the delivery by the carrier of the goods as described in the contract of carriage.

2. Unless notice of loss and damage is made before or at the time of the delivery of the goods to the person entitled to receive them under the contract of carriage or within 3 days after the delivery if the loss or damage is not apparent on delivery, the goods will be deemed to be in good condition upon delivery.

3. The notice in writing need not be given if the state of the goods at the time they were delivered to the consignee has been the subject of a joint survey or inspection by the parties.
4. The consignee is entitled to make a notice for the loss of the goods if he has not received the goods within 60 consecutive days after the day when the goods should have been delivered.
5. No compensation shall be payable for economic loss resulting from delay in delivery unless a notice has been given in writing to the carrier within 60 consecutive days after the day when the goods were delivered to the consignee.

PART X: BREACH OF CONTRACT OF CARRIAGE BY SEA

Article 98: The Shipper's Breach of Contract

If the shipper repudiates the contract of carriage before the carriage has commenced, the carrier is entitled to compensation for loss of freight and any other loss.

If the goods have not been delivered in due time, the carrier may cancel the contract of carriage if the delay is a condition for cancellation of contract as expressly agreed between the carrier and the shipper. If the carrier wishes to cancel the contract he must notify the shipper thereof within a reasonable period after the shipper made an enquiry, though not later than when the goods are received for carriage. If he does not do so the right of cancellation is lost. If the contract is cancelled as aforesaid the carrier is entitled to compensation for loss.

Article 99: The Carrier's Breach of Contract

The shipper may cancel the contract of carriage due to the carrier's delay or other breach of contract if the breach of contract is a condition for cancellation of contract as expressly agreed between the shipper and the carrier. After the goods have been delivered to the carrier the shipper may not cancel the contract if the redelivery of the goods by the carrier would involve fundamental loss or inconvenience to any other shipper.

If the shipper wishes to cancel the contract he must notify his intention within reasonable time from when he must be assumed to have known of the breach. If he does not do so the right of cancellation is lost. If the contract is cancelled as aforesaid the shipper is entitled to compensation for loss.

PART XI: CLAIMS AND ACTIONS

Article 100: Rights of Suit

1. Rights under the contract of carriage may only be asserted against the carrier either:
 - a. by the shipper, or
 - b. by the consignee, or
 - c. by any third party to whom the shipper or the consignee has transferred its right, depending on which of the above persons is interested in the right, or
 - d. by any third party who has acquired rights under the contract of carriage by legal subrogation under the applicable national law.

In case of any passing of rights as referred to under sub-paragraphs (c) or (d) above, the carrier is entitled to all defences and limitation of liability which are available to it under the contract of carriage and under this Chapter towards such third party.

2. In the event that a negotiable transport document is issued the holder is entitled to assert rights under the contract of carriage against the carrier without having to prove that it is the party interested in these rights itself. If such holder has no interest in these rights itself, it shall be deemed to act on behalf of the person, which is the interested party.

Article 101: Time Bar

Suits under the provisions of this Chapter must be brought within one year of the delivery of goods or of the date when the goods should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

Article 102: Arbitration

1. Parties may provide by agreement evidenced in writing that any dispute that arises relating to the contract of carriage of goods by sea shall be referred to arbitration.
2. The arbitration proceedings may be instituted in Viet Nam if:
 - a. the principal place of business of the defendant is in Viet Nam or, in the absence thereof, the habitual residence of the defendant is in Viet Nam; or
 - b. the place where the contract was made is in Viet Nam; or
 - c. the port of loading or the port of discharge is in Viet Nam; or
 - d. Viet Nam arbitration is designated for that purpose in the arbitration clause or agreement.

3. Nothing in this Article affects the validity of an agreement relating to arbitration made by the parties after the claim under the contract of carriage by sea has arisen.

Article 103: Jurisdiction

1. The plaintiff may institute action in the People's Provincial Civil Courts of Viet Nam if

- a. one of the following places is situated in Viet Nam:
 - (i) the principal place of business or, in the absence thereof, the habitual residence of the defendant; or
 - (ii) the place where the contract was made provided that the defendant has there a place of business, branch or agency through which the contract was made; or
 - (iii) the port of loading or the port of discharge; or
- b. Viet Nam court is designated for that purpose in the contract of carriage by sea.

2. Notwithstanding the provisions of the preceding paragraph, an agreement made by the parties, after a claim under the contract of carriage by sea has arisen, which designates the place where the claimant may institute an action is effective.

CHAPTER XVIII: FINAL PROVISIONS

Article.....: Entry into Force

The amendments come into force on/...../ 2001.

Article.....: Repeal

Chapter 5 of the Viet Nam Maritime Code 1990 is hereby repealed by these amendments.

**Chairman of the National Assembly of
the Socialist Republic of Viet Nam**

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