



**CARRIAGE OF GOODS BY SEA ACT**

**A MARITIME LEGISLATION DRAFTING PROJECT SUBMITTED  
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE  
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## DRAFTING INSTRUCTIONS

In pursuance of the Resolution of the Parliament of the Republic of Latvia promulgated in relation to the renewal of independence of the country, the Ministry of Transport (before the reorganization of the Governmental system of Latvia in 1993 - Ministry of Maritime Affairs) is bound to create a legal and administrative framework with respect to maritime matters. The political decision was to break the undesirable close links with the previous Soviet legal system. One of the means to achieve this goal was the enactment of legislation strongly based on international law, particularly on international conventions. It was understood that uniformity of law throughout the world was very important for the welfare of maritime commerce. It still remains the principle which must determine the development of maritime legislation of the country. Besides that, following international practice allows Latvia to join Europe, a decision which has been made by the Parliament of Latvia. It is, therefore, essential for the Government to pursue legislative policies according to this decision.

Maritime law in Latvia does not have long-standing traditions if one compares it with the whole legal system of the country. It is, therefore, extremely necessary to create legislation which comprises the whole area of maritime law and establishes the basis for further development of legislative control over maritime affairs. It is prudent to use the experience of the world community in terms of what is reflected in

various conventions adopted by states and later incorporated in their domestic legislation. Latvia must develop its maritime legislation along these lines.

With respect to shipping law, the decision was made to draft the code which according to international law would comprise all matters falling under this domain. To fulfil this decision, the Maritime Code of Latvia was drafted based on the most recent international maritime conventions thus reflecting the development of modern maritime law. The Code came into force on 10th September, 1994 and, besides other issues, it includes two chapters relating to carriage of goods and carriage of passengers. Both chapters do not deal with respective subjects in great detail. It is acknowledged that the Maritime Code, as it is today, does not provide the necessary basis for legislative control over these matters.

Due to the reason mentioned above and taking into account the proposal of the Maritime Department to elaborate in detail the law relating to maritime carriage, the relevant chapters will be excluded from the Code according to the Act in Order to Amend the Maritime Code of Latvia, 1995. This Act will enter into force upon the promulgation of three Acts with respect to carriage of goods, carriage of passengers and contracts for the use of ships.

According to this Act, the Ministry of Transport is responsible for the preparation of the relevant Acts and their submission to Parliament. In pursuance of this Act, the Ministry of Transport has issued Order Nr.51 (the 20th March, 1995) by virtue of which the Maritime Department in co-operation with the Drafting Department is required to submit to the Minister the drafts of relevant Acts in three stages. The first stage is

determined to be the draft with respect to carriage of goods by sea due to be submitted by 1st June of this year.

Under paragraph 4 of the Order, the Maritime Department must prepare Drafting Instructions and submit them to the Drafting Department. The following requirements, therefore, are set forth which must be followed with respect to the drafting of the Carriage of Goods by Sea Act:

(1) The main objective of the Act is to provide a basis for the relationship between shipowners and cargo interests. Taking into account the fact that Latvia is predominantly a shipowning country, the draft must incorporate the Hague - Visby Rules (International Convention for Unification of Certain Rules of Law Relating to Bills of Lading, 1924, as amended by the Protocol, 1969, and by the Protocol, 1972). Latvia has not yet acceded to this convention. The question as to whether accession is desirable or not has been considered. This implies the need not to deviate from the language of the Hague-Visby Rules save the occasions where the use of different wording can bring about more clarity thus eliminating ambiguities. The context of the Rules should remain unaltered.

(2) The Rules must be incorporated in the main text of the Act. Thus inconsistencies should be avoided which may arise between the provisions of the Act and the Schedule if the Rules are included in the Schedule to the Act. The general scheme of the Rules must be preserved. Minor changes in the order of articles or paragraphs within an article are permissible if it is felt that it will contribute to clarifications of the meanings of provisions and thus facilitate the application of the Rules. Nevertheless, the draft legislation should not affect the scheme provided by the Rules. It is advisable to pay reasonable attention to the articles

which contain more than four paragraphs. The Working Group of the Maritime Department on Drafting Instructions (Records of 22nd March) has arrived at the conclusion that the articles of the draft must not exceed the limit of three to four paragraphs unless the context of a provision otherwise requires. In order to maintain consistency with the structure of the Maritime Code the articles have to be grouped in sections provided that the amount of sections does not exceed six.

(3) The provisions dealing with the scope of application of this Act must specify:

- 1) the voyages to which the Act applies; and
- 2) the documents to which the Act applies.

According to the decision taken by the Working Group (Records of 25th March) the scope of application of the Act, besides that provided for in the relevant Protocol to the Convention, must be extended to voyages where the port of shipment is a port in Latvia. The Act also must be applicable where, irrespective of the final destination of the voyage, there is an express incorporation clause as regards the Hague - Visby Rules, whether or not the port of destination is in Latvia, thus overriding any contradictory provision of the bill. With respect to documents to which the Act applies the scheme of the Hague-Visby Rules must be maintained.

(4) The definitions have to be construed along the lines of the Rules. In a case where a definition reflects the statement of law the departure from the structure of the Rules is permissible. The language, taking into account the long-standing practice of traditional maritime states which have been developed through interpreting the relevant Rules, should

remain substantially unaltered. Thus the Act will contribute to the uniformity of law governing the carriage of goods. In drafting this article, it should be noted that the term "unit of account" used in the amending Protocol, 1972 is defined in detail in Article 359 of the Maritime Code.

(5) The Working Group of the Maritime Department considers that articles dealing with rights and liabilities of the carrier are of utmost importance. Special attention should be given to clarity of expressions taking into account the fact that there are many new shipowners entering this business. This is due to the privatisation of the large state owned companies who are operators of merchant vessels. The new shipowners are not familiar either with old Soviet practice, which time to time may be relevant, or with western experience.

(6) It is recognized world-wide that the main obligation of the carrier is to exercise due diligence to provide a seaworthy ship. The law relating to seaworthiness of vessels is dealt with in Chapter 11 of the Maritime Code of Latvia. It must be clearly provided that there will not be any absolute undertaking by the carrier to provide a seaworthy ship, that is to say, if the carrier has exercised due diligence, his obligation is discharged.

(7) In drafting the articles with respect to the extent to which loading and discharging of goods are brought within the carrier's obligations, some flexibility must be provided for the parties themselves to agree. The principle of freedom of contract has to be restricted only to such a degree as to provide a balance between the parties involved. This was the initial intent of the drafting of the Rules governing carriage of goods covered by a bill of lading.

(8) The Civil Code of Latvia provides a longer time bar with respect to indemnity against a third party (two years). This certainly extends the period mentioned in the Rules. The parties acting under this Act, therefore, should gain full benefit from the regime of the Civil Code.

(9) It is essential to encourage unified application of the Act with regard to the clauses inserted in a bill of lading in order to exempt the carrier from liability or reduce such liability. To achieve this goal, it is advisable to draft the relevant article of the Act in such a manner as to reflect the position of the Rules. The relevant provisions of the Rules expressly provide nullity of any clause which relieves the carrier from liability otherwise than as provided in the Rules.

(10) Provisions governing exceptions to the carrier's liability should be treated from two stand-points:

- 1) by creating the list of recognized perils, attempts by the carrier to exempt his liability completely will be restricted,
- 2) statutory protection against pressure from cargo owners must be provided in favour of shipowners who after privatisation own one or two rather old vessels.

(11) Latvia is a member of the International Monetary Fund. Therefore, it is essential to incorporate into the law of Latvia, the Protocol of 1972 which introduces the notion of the special drawing right (SDR) into the regime of carriage of goods by sea. Secondly, as it was already mentioned, the Maritime Code in relevant articles dealing with limitation of liability also refers to the SDR.

(12) According to the decision of the Working Group (Records of 25th March) the date on which the units of account are to be converted to Lati ought to be the date agreed upon by the parties. If the parties fail to agree, the date of judgement should be the relevant date. Thus, consistency will be provided with the regime of carriage of passengers based on the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 1976.

(13) The remainder of the Act should be drafted along the lines of the Rules. According to opinions expressed during the discussions of the Working Group, the text of the Act must reflect the provisions of the Rules as closely as possible.

(14) It is contemplated that the work on the whole set of Acts dealing with carriage of goods, carriage of passengers and contracts for the use of ships will be completed by the end of October this year and will all enter into force on the 1st of January 1996.



# CARRIAGE OF GOODS BY SEA ACT

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## CARRIAGE OF GOODS BY SEA ACT

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### **SECTION 1 INTRODUCTION**

#### **Article 1 Citation**

This Act may be cited as the Carriage of Goods by Sea Act 1995.

#### **Article 2 Definitions**

For the purposes of this Act unless the context otherwise requires:

*Carrier* includes the owner of the vessel or the charterer who enters into a contract of carriage with a shipper;

*Goods* includes goods, wares, merchandise, and articles of every kind whatsoever, but does not include:

- 1) live animals;
- 2) cargo which by the contract of carriage is stated as being carried on deck and is so carried;

*Hague - Visby Rules* means International Convention for Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on 25th August, 1924, as amended by the Protocol signed at Brussels on

23rd February, 1968, and by the Protocol signed at Brussels on 21st December, 1972;

*Ship* means any vessel used for the carriage of goods by sea.

*Shipped bill of lading*, subject to paragraph 2 of Article 13, means a bill of lading issued by the carrier, or the master or agent of the carrier, to the shipper, if the shipper so demands, after the goods are loaded.

*Unit of account* means the Special Drawing Right as defined by the Maritime Code, 1994.

### **Article 3 Scope of application**

1. Where a dispute concerning the bill of lading relating to the carriage of goods by sea between ports of two different States is brought before the court, this Act shall apply if:

- 1) the bill of lading is issued in a State party to the Hague-Visby Rules;
- 2) the carriage is from a port in a State party to the Hague-Visby Rules.

2. Without prejudice to paragraph 1 of this Article this Act shall apply in relation to and in connection with the carriage of goods by sea if:

- 1) the port of shipment is a port in Latvia;
- 2) the contract contained in or evidenced by the bill of lading expressly provides that the Hague-Visby Rules shall govern the contract,

whether or not the carriage is between ports of two different States within the meaning of paragraph 1 of this Article.

3. The provisions of this Act shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party such bills of lading shall comply with the provisions of this Act.

#### ***Article 4* Carriage**

Carriage of goods by sea covers the period from the time when the goods are loaded on a ship to the time they are discharged from the ship.

#### ***Article 5* Contract of carriage**

With regard to carriage of goods by sea the contract of carriage covers:

- 1) a contract of carriage covered by a bill of lading or similar document of title;
- 2) any bill of lading or any similar document of title as provided in paragraph 1 of this Article issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document regulates the relations between a carrier and a holder of the same.

### ***SECTION II* RIGHTS AND OBLIGATIONS**

#### ***Article 6* Liabilities and rights of the carrier**

Subject to the provisions of Article 26, the carrier under every contract of carriage of goods by sea in relation to the loading, handling, storage, carriage, custody, care, and discharge of such goods shall be subject to

the responsibilities and liabilities, and entitled to the rights and immunities as provided by this Act.

**Article 7 Obligations of the carrier**

1. The carrier shall be bound before and at the beginning of the voyage to exercise due diligence to:

- 1) make the ship seaworthy;
- 2) properly man, equip, and supply the ship;
- 3) make the holds, refrigerating and cold 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 Articles 15 to 21, the carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

3. There shall not be implied in any contract of carriage of goods by sea any absolute undertaking by the carrier to provide a seaworthy ship.

**Article 8 Bill of lading**

1. Subject to paragraph 2 of this Article, the carrier or the master or agent of the carrier, after receiving the goods into his charge, shall, on demand by the shipper, issue to the shipper a bill of lading showing, among other things:

- 1) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided that such marks are stamped or otherwise shown clearly:

- a) in a case of uncovered goods upon the goods, or

b) in a case of packed goods on the cases or coverings in which such goods are contained,

in such a manner as should ordinarily remain legible until the end of the voyage;

2) either the number of packages or units, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

3) the apparent order and condition of the goods.

2. The carrier, or the master or agent of the carrier, shall not be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting do not accurately represent the goods actually received or which he has had no reasonable means of checking.

3. The bill of lading issued in accordance with provisions of paragraphs 1 and 2 of this Article shall be *prima facie* evidence of the receipt by the carrier of the goods. Proof to the contrary, however, shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

### ***Article 9*    Obligations of the shipper**

1. 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, as furnished by him.

2. The shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars.

3. 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 10 Notice of loss or damage**

1. Removal of goods into the custody of the person entitled to delivery thereof under the contract of carriage shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading unless the notice of loss or damage and the general nature of such loss or damage is given in writing to the carrier or his agent at the port of discharge:

1) before or at the time of such removal; or

2) if the loss or damage is not apparent within three days.

2. The notice in writing need not to be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

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

### **Article 11 Time bar**

1. Subject to the provisions of Article 12, the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered.

2. The period set forth in paragraph 1 of this Article may be extended if parties so agree after the cause of action has arisen.



***Article 12* Indemnity against a third person**

An action for indemnity against a third person may be brought after the expiration of the one year period set forth in Article 11 if it is brought in accordance with the provisions of the Civil Code of Latvia.

***Article 13* A shipped bill of lading**

1. If the shipper has previously taken up any document of title to goods before they are loaded, he shall, after the goods are loaded, surrender such document of title as against the issue of the shipped bill of lading.
2. At the option of the carrier such document of title may be noted at the port of shipment by the carrier, or the master or agent of the carrier, with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted, provided that it shows the particulars mentioned in paragraph 1 of Article 8, such document of title for the purposes of this Article shall be deemed to constitute a shipped bill of lading.

***Article 14* Invalidity of contractual provisions**

1. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to, or in connection with, goods arising from negligence, fault or failure in the duties and obligations provided for in this Act or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect.
2. Benefit of insurance in favour of the carrier or a similar clause shall be deemed to be a clause relieving the carrier from liability.

### **SECTION III    EXCEPTIONS**

#### **Article 15    Exceptions of the carrier's responsibility**

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by lack 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 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 paragraph 1 of Article 7.

2. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under paragraph 1 of this Article.

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

1) act, neglect, or default of the master, mariner, pilot, or the servant of the carrier in the navigation or in the management of the ship;

2) fire, unless caused by the actual fault or privity of the carrier;

3) perils, dangers and accidents of the sea or other navigable waters;

4) act of God;

5) act of War;

6) act of public enemies;

7) arrest or restraint of princes, rulers or people, or seizure under legal process;

- 8) quarantine restrictions;
- 9) act or omission of the shipper or owner of the goods, his agent or representative;
- 10) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- 11) riots and civil commotions;
- 12) saving or attempting to save life or property at sea;
- 13) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- 14) insufficiency in packing;
- 15) insufficiency or inadequacy of marks;
- 16) latent defects not discoverable by due diligence;
- 17) subject to paragraph 2 of this Article, 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.

4. The burden of proof shall be on the person claiming the benefit of the exception set forth in paragraph 3. 17 of this Article to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

5. Neither the carrier nor the ship shall in any event be responsible for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the declaration of the shipper in the bill of lading made according to paragraph 1 of Article 18.

#### ***Article 16*** Reasonable deviation

Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or

breach of this Act or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

**Article 17 Exception of the shipper's responsibility**

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

**SECTION IV LIMIT OF LIABILITY**

**Article 18 Limit of liability**

1. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to, or in connection with, the goods in an amount exceeding 666.67 units of account per package or unit, or 2 units of account per kilogram of gross weight of the goods lost or damaged, whichever is higher, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. Such declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

2. The total amount recoverable shall be calculated by reference to the value of the goods at the place and time at which such goods are discharged from the ship in accordance with the contract or should have been discharged.

3. The value of the goods shall be fixed according to:

- 1) the commodity exchange price; or

- 2) if there is no price as set forth in sub-paragraph 1 of this paragraph, according to the current market price; or
  - 3) if there is no price as set forth in sub-paragraph 1 and 2 of this paragraphs, by reference to the normal value of goods of the same kind and quality.
4. Subject to paragraph 5 of this Article, where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed to be the number of packages or units for the purpose of this Article as far these packages or units are concerned.
5. Except as provided in paragraph 4 of this Article a container, pallet or similar article of transport shall be considered as the package or unit.
6. By agreement between the carrier, or the master or agent of the carrier, and the shipper other maximum amounts than those mentioned in paragraph 1 of this Article may be fixed. The maximum amount so fixed shall not be less than the appropriate maximum mentioned in paragraph 1 of this Article.

#### ***Article 19***    **Loss of right to limit liability**

Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in Article 18 if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that the damage would probably result.

**Article 20 Conversion of the unit of account**

The amounts mentioned in Article 18 shall be converted into Lati on the basis of the value of Lati on the date agreed upon by the parties to the dispute. If parties fail to agree so, then on the date of judgement.

**SECTION V MISCELLANEOUS**

**Article 21 Dangerous goods**

1. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, or the master or agent of the carrier, has not consented, with knowledge of their nature and character, 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 or resulting from such shipment.

2. If the goods mentioned in paragraph 1 of this Article are shipped with such knowledge and consent and become a danger to the ship or cargo, such goods 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, in any.

**Article 22 Defences of the carrier**

The defences and limits of liability provided for in this Act shall apply against the carrier in any action in respect of loss or damage to goods

covered by a contract of carriage whether the action is founded in contract or in tort.

***Article 23***    **Defences of a servant or agent of the carrier**

1. Subject to paragraph 2 of this Article if an action in respect of loss or damage to goods covered by a contract of carriage is brought against a servant or agent of the carrier, 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 Act.
2. Paragraph 1 of this Article shall not be applied if such servant or agent is an independent contractor.
3. A servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article, if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

***Article 24***    **Aggregation of claims**

The aggregate of the amounts recovered from the carrier, and servants and agents of the carrier, shall in no case exceed the limit provided for in this Act.

***Article 25***    **Supplementary provisions of the bill of lading**

1. The 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 provided for in this Act. Such surrender or increase shall be embodied in the bill of lading issued to the shipper.

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

### ***Article 26*** Special agreement

1. Subject to paragraph 3 of this Article and notwithstanding the provisions of the preceding articles, the carrier, or the master or agent of the carrier, and the shipper in regard to any particular goods shall be at liberty to enter into any agreement in any terms as to:

- 1) the responsibility and liability of the carrier for such goods; and
- 2) the rights and immunities of the carrier in respect of such goods; or
- 3) the obligation of the carrier as to seaworthiness, so far as this stipulation is not contrary to public policy; or
- 4) the care or diligence of servants or agents of the carrier in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea.

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

2. Any agreement so entered into shall have full legal effect.

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



## **SECTION VI FINAL PROVISIONS**

### ***Article 27* Limitation on the application of this Act**

Nothing in this Act shall prevent the carrier or the shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to, or in connection with, the custody and care and handling of goods prior to the loading on, and subsequent to the discharge from, the ship on which the goods are carried by sea.

### ***Article 28* Other laws related to limitation of liability**

This Act shall not affect the rights and obligations of the carrier under other laws of Latvia relating to the limitation of the liability of owners of sea-going vessels.

### ***Article 29* Nuclear damage**

This Act shall not affect the provisions of laws governing liability for nuclear damage.

### ***Article 30* Entry into force**

This Act shall enter into force on the 1st January, 1996.