



Tonga

# **CARRIAGE BY AIR ACT**

**Chapter 49.04**

**2016 Revised Edition**





## CARRIAGE BY AIR ACT

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# CARRIAGE BY AIR ACT

## AN ACT RELATING TO CARRIAGE BY AIR<sup>1</sup>

[17th October, 1991]

### 1 Short title

This Act may be cited as the Carriage by Air Act.

### 2 Crown to be bound

This Act binds the Crown.

### 3 Convention to have the force of law

- (1) The provisions of the Convention set out in the First Schedule to this Act shall, so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons and subject to the provisions of this section, have the force of law in the Kingdom of Tonga in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.
- (2) Cabinet may by Order from time to time certify who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention and who are parties to the Protocol set out in the Second Schedule, and any such Order shall, except in so far as it has been superseded by a subsequent Order, be conclusive evidence of the matters so certified.<sup>2</sup>

- (3) Any reference in the said First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to the territories subject to his sovereignty, suzerainty, mandate or authority, in respect of which he is a party.
- (4) References in section 2 of the Fatal Accidents Act<sup>3</sup> to a wrongful act, neglect or default include references to any occurrence which gives rise to a liability under Article 17 of the First Schedule.
- (5) The Minister of Finance shall from time to time by notice in the Gazette specify the respective amounts which for the purposes of Articles 22 of the First Schedule are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.
- (6) If there is any inconsistency between the text in English or the text in Tongan of the Schedules to this Act and the corresponding text in French, the corresponding text in French shall prevail.

#### **4 Submission to jurisdiction in certain cases**

Every High Contracting Party to the Convention who has not availed himself of the provisions of the additional Protocol thereto shall, for the purposes of any action brought in a Court in the Kingdom of Tonga in accordance with the provisions of Article 28 of the said First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this section shall authorize the issue of execution against the property of any High Contracting Party.

#### **5 Limitation of liability**

- (1) The limitations on liability referred to in Article 22 of the First Schedule apply whatever the nature of the proceedings by which the liability may be enforced and in particular, the limitation for each passenger in paragraph (1) of the said Article 22 applies to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of the Kingdom with any proceedings brought against him outside the Kingdom.
- (2) A Court before which proceedings are brought to enforce a liability which is limited by that Article 22 may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of that Article 22 and of any other proceedings which have been or are like to be, commenced in the Kingdom or elsewhere to enforce the liability in whole or in part.
- (3) Without prejudice to the last preceding subsection, a Court before which proceedings are brought to enforce a liability which is limited by the said Article 22 shall, where the liability is, or may be, partly enforceable in other proceedings, in the Kingdom or elsewhere, have jurisdiction to award an

amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

## **6 Extended application of Convention**

Cabinet may by Order apply the provisions of the First Schedule to this Act and any provision of section two of this Act to such carriage by air, not being international carriage by air as defined in the said First Schedule, as may be specified in the Order, subject however to such exceptions, adaptations and modifications, if any, as may be so specified.<sup>4</sup>

## **7 Consequential provisions**

An Order made under the last preceding section may contain such consequential provisions as Cabinet thinks fit, and may be varied or revoked by a subsequent Order.<sup>5</sup>

## **8 Convention as amended to have force of law**

The provisions of the Convention set out in the First Schedule, as amended by the Protocol set out in the Second Schedule, in so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, have the force of law in the Kingdom of Tonga in relation to any carriage by air to which the Convention as amended applies, irrespective of the nationality of the aircraft performing that carriage.

## **9 References to First Schedule**

In this Act except in sections 3(1) and (3) and section 8 a reference to the First Schedule or to any article or provision there of shall —

- (a) in relation to any carriage by air to which the Convention as amended by the Protocol set out in the Second Schedule applies; or
- (b) in relation to the application of the provisions of the First Schedule and any provision of section 3 to any carriage by air not being international carriage by air as defined in the First Schedule,

be read as though for the provisions of the Convention set out in the First Schedule there were substituted the provisions of the Convention as amended by the Protocol set out in the Second Schedule and a reference to “international carriage by air as defined in the First Schedule” shall be read as a reference to international carriage as defined in the First Schedule or in the Convention as amended by the Protocol set out in the Second Schedule.

**FIRST SCHEDULE****THE WARSAW CONVENTION****CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO  
INTERNATIONAL CARRIAGE BY AIR****CHAPTER I****SCOPE - DEFINITIONS****ARTICLE 1**

- (1) This Convention applies to all invitational carriages of persons, luggage or goods performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
- (2) For the purposes of this Convention the expression “International carriage” means any carriage in which according to the contract made by the parties, the place of departure and the place of destination whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the High Contracting Party is not deemed to be international for the purposes of this Convention.
- (3) A carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

**ARTICLE 2**

- (1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
- (2) This Convention does not apply to carriage performed under the terms of any international postal Convention.

**CHAPTER II****DOCUMENT OF CARRIAGE**



## SECTION 1 - PASSENGER TICKET

## ARTICLE 3

- (1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars —
  - (a) the place and date of issue;
  - (b) the place of departure and of destination;
  - (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
  - (d) the name and address of the carrier or carriers;
  - (e) a statement that the carriage is subject to the rules relating to liability established by the Convention.
- (2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Convention which exclude or limit his liability.

## SECTION 2 - LUGGAGE TICKET ARTICLE 4

- (1) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.
- (2) The luggage ticket shall be made out in duplicate, one part for the passenger and the other part for the carrier.
- (3) The luggage ticket shall contain the following particulars —
  - (a) the place and date of issue;
  - (b) the place of departure and of destination;
  - (c) the name and address of the carrier or carriers;
  - (d) the number of the passenger ticket;
  - (e) a statement that delivery of the luggage will be made to the bearer of the luggage ticket;
  - (f) the number and weight of the packages;
  - (g) the amount of the value declared in accordance with Article 22(2);
  - (h) a statement that the carriage is subject to the Rules relating to liability established by the Convention.

- (4) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Convention. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

### SECTION 3 - AIR CONSIGNMENT NOTE

#### ARTICLE 5

- (1) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an “air consignment note”; every consignor has the right to require the carrier to accept this document.
- (2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

#### ARTICLE 6

- (1) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.
- (2) The first part shall be marked “for the carrier,” and shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.
- (3) The carrier shall sign on acceptance of the goods.
- (4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.
- (5) If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

#### ARTICLE 7

The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

#### ARTICLE 8

The air consignment note shall contain the following particulars —

- (a) the place and date of its execution;
- (b) the place of departure and of destination;

- (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the goods;
- (h) the number of the packages, the method of packing and the particular marks or number upon them;
- (i) the weight, the quantity and the volume of dimensions of the goods;
- (j) the apparent condition of the goods and of the packing;
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;
- (l) if the goods are sent for payment on delivery, the price of the goods, and, if the case so requires, the amount of the expenses incurred;
- (m) the amount of the value declared in accordance with Article 22 (2);
- (n) the number of parts of the air consignment note;
- (o) the documents handed to the carrier to accompany the air consignment note;
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
- (q) a statement that the carriage is subject to the rules relating to liability established by this Convention.

#### ARTICLE 9

If the carrier accepts goods without an air consignment note having been made out, or if the air consignment notes does not contain all the particulars set out in Article 8 (a) to (i) inclusive and (q), the carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability,

#### ARTICLE 10

- (1) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.
- (2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statement.

#### ARTICLE 11

- (1) The air consignment note is prima facie evidence of the conclusion of the contract of the receipt of the goods and of the condition of carriage.
- (2) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are prima facie evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

#### **ARTICLE 12**

- (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
- (2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
- (3) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.
- (4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with the consignor resumes his right of disposition.

#### **ARTICLE 13**

- (1) Except in the circumstances set out in the preceding Articles, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions set out in the air consignment note.
- (2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.
- (3) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

**ARTICLE 14**

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

**ARTICLE 15**

- (1) Articles 12, 13 and 14 do not affect either the relations of the consignor of the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
- (2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air consignment note.

**ARTICLE 16**

- (1) The consignor must furnish such information and attach to air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.
- (2) The carrier is under no obligation to inquire into the correctness or sufficiency of such information or documents.

**CHAPTER III****LIABILITY OF THE CARRIER****ARTICLE 17**

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

**ARTICLE 18**

- (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.
- (2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft or in the case of a landing outside an aerodrome, in any place whatsoever.

- (3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or trans-shipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

#### **ARTICLE 19**

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

#### **ARTICLE 20**

- (1) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was possible for him or them to take such measures.
- (2) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

#### **ARTICLE 21**

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

#### **ARTICLE 22**

- (1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the Court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
- (2) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that the sum is greater than the actual value to the consignor at delivery.
- (3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.
- (4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65 1/2 milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

**ARTICLE 23**

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provision of this Convention.

**ARTICLE 24**

- (1) In the cases covered by Article 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.
- (2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

**ARTICLE 25**

- (1) The carrier shall not be entitled to avail himself of the provisions of this Convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the Court seized of the case, is considered to be equivalent to wilful misconduct.
- (2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

**ARTICLE 26**

- (1) Receipt by the person entitled to delivery of luggage or goods without complaint is prima facie evidence that the same have been delivered in good condition and in accordance with the document of carriage.
- (2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.
- (3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing dispatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

**ARTICLE 27**

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

#### **ARTICLE 28**

- (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the Court having jurisdiction where the carrier is ordinary resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination.
- (2) Questions of procedure shall be governed by the law of the Court seized of the case.

#### **ARTICLE 29**

- (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
- (2) The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

#### **ARTICLE 30**

- (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
- (2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

### **CHAPTER IV**

#### **PROVISIONS RELATING TO COMBINED CARRIAGE ARTICLE 31**

- (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage the provisions of this Convention apply only to the



carriage by air, provided that the carriage by air falls within the terms of Article 1.

- (2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **CHAPTER V**

### **GENERAL AND FINAL PROVISIONS**

#### **ARTICLE 32**

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

#### **ARTICLE 33**

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

#### **ARTICLE 34**

This Convention does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

#### **ARTICLE 35**

The expression "days" when used in this Convention means current days not working days.

#### **ARTICLE 36**

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry of Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

#### **ARTICLE 37**

- (1) This Convention shall be ratified. The instrument of ratification shall be deposited in the archives of the Ministry of Foreign Affairs of Poland, which

will notify the deposit to the Government of each of the High Contracting Parties.

- (2) As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Parties who deposits his instrument of ratification on the ninetieth day after the deposit.
- (3) It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which the Convention comes into force as well as the date of the deposit of each ratification.

#### **ARTICLE 38**

- (1) This Convention shall, after it has come into force, remain open for accession by any State.
- (2) The Accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.
- (3) The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

#### **ARTICLE 39**

- (1) Any of the High Contracting Parties may denounce this Convention by notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.
- (2) Denunciations shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

#### **ARTICLE 40**

- (1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
- (2) Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.
- (3) Any High Contracting Party may denounce this Convention in accordance with its provisions, separately or for all or any of his colonies, protectorates,

territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

#### ARTICLE 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until 31st January, 1930.

(Here follow the signatures on behalf of the following countries Germany, Austria, Belgium, Brazil, Denmark, Spain, France, Great Britain and Northern Ireland, the Commonwealth of Australia, the Union of South Africa, Greece, Italy, Japan, Latvia, Luxembourg, Norway, the Netherlands, Poland, Romania. Switzerland, Czechoslovakia, the Union of Soviet Socialist Republics, and Yugoslavia).

#### ADDITIONAL PROTOCOL

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

(This additional Protocol was signed on behalf of the same countries as those above mentioned).

**SECOND SCHEDULE**

Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929.

**THE HAGUE**

*28 September 1955*

The Governments Undersigned

Considering that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929.

Have Agreed as follows:

**CHAPTER 1****AMENDMENTS TO THE CONVENTION****ARTICLE I**

In Article 1 of the Convention —

- (a) paragraph (2) shall be deleted and replaced by the following:
- “(2) For the purposes of this Convention, the expression “international carriage” means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.”
- (b) paragraph (3) shall be deleted and replaced by the following
- “(3) Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contract is to be performed entirely within the territory of the same State.”

**ARTICLE II**

In Article 2 of the Convention - paragraph (2) shall be deleted and replaced by the following:

“(2) This Convention shall not apply to carriage of mail and postal packages.”

### ARTICLE III

In Article 3 of the Convention —

(a) paragraph (1) shall be deleted and replaced by the following:

“(1) In respect of the carriage of passengers a ticket shall be delivered containing:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, and indication of at least one such stopping place;
- (c) a notice to the effect that, if the passenger’s journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.”

(b) paragraph (2) shall be deleted and replaced by the following:

“(2) The passenger ticket shall constitute “prima facie” evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1) (e) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22,”

### ARTICLE IV

In Article 4 of the Convention —

(a) paragraph (1), (2) and (3) shall be deleted and replaced by the following: “(1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph (1), shall contain:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping

places being within the territory of another State, an indication of at least one such stopping place;

- (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.”
- (b) paragraph (4) shall be deleted and replaced by the following:
  - “(2) The baggage check shall constitute “prima facie” evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3. paragraph (1)(c) does not include the notice required by paragraph (1) (c) of this Article, he shall not be entitled to avail himself of the provisions of the Article 22, paragraph (2).”

#### **ARTICLE V**

In Article 6 of the Convention —

paragraph. (3) shall be deleted and replaced by the following:

“(3) the carrier shall sign prior to the loading of the cargo on board the aircraft.”

#### **ARTICLE VI**

Article 8 of the Convention shall be deleted and replaced by the following:

“The air waybill shall contain:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of the loss of or damage to cargo,”

#### **ARTICLE VII**

Article 9 of the Convention shall be deleted and replaced by the following: “If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill

having been made out, or if the air waybill does not include the notice required by Article 8, paragraph (c), the carrier shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).”

#### **ARTICLE VIII**

In Article 10 of the Convention —

paragraph (2) shall be deleted and replaced by the following:

“(2) The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.”

#### **ARTICLE IX**

To Article 15 of the Convention —

the following paragraph shall be added:

“(3) Nothing in this Convention prevents the issue of a negotiable air waybill.”

#### **ARTICLE X**

Paragraph (2) of Article 20 of the Convention shall be deleted.

#### **ARTICLE XI**

Article 22 of the Convention shall be deleted and replaced by the following:

“ARTICLE 22

- (1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. There, in accordance with the law of the court seized of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
- (2)
  - (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of two hundred and fifty francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger’s or consignor’s actual interest in delivery at destination.

- (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
- (3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.
- (4) The limits prescribed in this article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and, other expenses of the litigation, does not exceed the sums which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
- (5) The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment."

#### **ARTICLE XII**

In Article 23 of the Convention, the existing provision shall be renumbered as paragraph 1 and another paragraph shall be added as follows

- "(2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried."

#### **ARTICLE XIII**

In Article 25 of the Convention —

paragraphs (1) and (2) shall be deleted and replaced by the following:

"The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment."

#### **ARTICLE XIV**



After Article 25 of the Convention, the following article shall be inserted:

“ARTICLE 25A

- (1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
- (3) The provisions of paragraphs (1) and (2) of this article shall not apply 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 XV**

In Article 26 of the Convention —

paragraph (2) shall be deleted and replaced by the following:

- “(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal”

**ARTICLE XVI**

Article 34 of the Convention shall be deleted and replaced by the following: “The provisions of Articles 3 to 9 inclusive relating to documents of carriages shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier’s business.”

**ARTICLE XVII**

After Article 40 of the Convention, the following Article shall be inserted:

“ARTICLE 40A

- (1) In Article 37, paragraph (2) and Article 40, paragraph (1), the expression “High Contracting Party” shall mean “State”. In all other cases, the expression “High Contracting Party” shall mean a State whose ratification of or adherence to the convention has become effective and whose denunciation thereof has not become effective.
- (2) For the purposes of the Convention the word “territory” means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.”

**CHAPTER II****SCOPE OF APPLICATION OF THE CONVENTION AS AMENDED****ARTICLE XVIII**

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place within the territory of another State.

**CHAPTER III****FINAL CLAUSES****ARTICLE XIX**

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the “Warsaw” Convention as amended at “The Hague, 1955”.

**ARTICLE XX**

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph (1), it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

**ARTICLE XXI**

- (1) This Protocol shall be subject to ratification by the signatory States.
- (2) Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
- (3) The instruments of ratification shall be deposited with the Government of the People’s Republic of Poland.

**ARTICLE XXII**

- (1) As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
- (2) As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People’s Republic of Poland.

**ARTICLE XXIII**

- (1) This Protocol shall, after it has come into force, be open for adherence by any non-signatory State,
- (2) Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
- (3) Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

#### ARTICLE XXIV

- (1) Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
- (2) Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.
- (3) As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

#### ARTICLE XXV

- (1) This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph (2) of this Article.
- (2) Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
- (3) Any State may subsequently, by notification to the Government of the People's Republic of Poland; extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph (2) of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
- (4) Any State Party to this Protocol may denounce it. in accordance with the provisions of Article XXIV, paragraph (1), separately for any or all of the territories for the foreign relations of which such State is responsible.

#### ARTICLE XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft,

registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

### **ARTICLE XXVII**

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;
- (c) of the date on which this Protocol comes into force in accordance with Article XXI, paragraph (1);
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XXV and the date thereof;
- (f) and of the receipt of any notification made under Article XXVI and the date thereof.

In Witness Whereof the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol,

Done at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX., it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations, and to the International Civil Aviation Organization.

Here follow the signatures on behalf of the Governments of Belgium, Brazil, Republic of Czechoslovakia, Egypt, France, Federal Republic of Germany, Greece, Hungarian People's Republic, Ireland, Israel, Italy, Laos, Liechtenstein, Luxembourg, Mexico, Norway, Netherlands, Philippines, Polish People's Republic, Portugal Romanian People's Republic, Salvador, Sweden, Switzerland, Union of Soviet Socialist Republics. and Venezuela. 1963, c. 33. s. 4.

## ENDNOTES

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<sup>1</sup> **Act 20 of 1991**

<sup>2</sup> Amended by Act 42 of 2010

<sup>3</sup> Cap. 14.09

<sup>4</sup> Amended by Act 42 of 2010

<sup>5</sup> Amended by Act 42 of 2010