



Tonga

# **CARRIAGE OF GOODS BY SEA ACT**

**Chapter 48.02**  
**2016 Revised Edition**





## CARRIAGE OF GOODS BY SEA ACT

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## CARRIAGE OF GOODS BY SEA ACT<sup>1</sup>

AN ACT RELATING TO THE CARRIAGE OF GOODS BY SEA AND TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO ACTS OF LADING.

Commencement [22<sup>nd</sup> June 2009]

### PART 1 - PRELIMINARY

#### 1 Short title

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

#### 2 Interpretation

(1) In this Act, unless the contrary intention appears —

“**Brussels Convention**” means the International Convention for the Unification of Certain Rules of Law relating to the bills of lading done at Brussels on 25 August 1924;

“**Hague-Visby Rules**” means the Hague-Visby Rules incorporating the English translation of the Brussels Convention, incorporating the English text to the Amendments to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and the SDR Protocol as set out in the Schedule;

“**SDR Protocol**” means the Protocol amending the Brussels Convention, as amended by the Visby Protocol done in Brussels on 21 December 1979;

“**Rules**” means the Hague-Visby Rules incorporating the English translation of the Brussels Convention, incorporating the English text to the Amendments to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and the SDR Protocol as set out in the Schedule;

“**Visby Protocol**” means the Protocol amending the Brussels Convention done at Brussels on 23 February 1968.

- (2) A reference in this Act to a non-negotiable document includes a reference to sea waybill.
- (3) A reference in this Act to the Rules is a reference to the English translation of Articles 1 to 10 (inclusive) of the Brussels Convention 1924, incorporating the English text to the amendments made to that Convention by Articles 1 to 5 inclusive of the Visby Protocol and Article 11 of the SDR Protocol as set out in the Schedule.

## **PART 2 - APPLICATION OF THE HAGUE-VISBY RULES**

### **3 The Hague-Visby Rules to have the force of law**

The provisions of the Rules, as set out in the Schedule, shall have the force of law in the Kingdom.

### **4 Application of the Hague-Visby Rules to contracts**

The Rules shall apply to a contract of carriage of goods by sea that —

- (a) is made on or after the commencement of this Act; and
- (b) is a contract —
  - (i) of a kind referred to in Article 10 of the Hague-Visby Rules;
  - (ii) for the carriage of goods by sea from a port or place in the Kingdom to another port or place in the Kingdom, being a contract that is contained in or evidenced by a bill of lading or similar document of title; or
  - (iii) contained in or evidenced by a non-negotiable document (other than a bill of lading or similar document of title), being a contract that contains express provision to the effect that the Rules shall govern the contract as if the document as if the document were a bill of lading.

### **5 Minister to specify amounts**

- (1) The Minister of Finance may specify and vary from time to time the respective amounts that, for the purpose of Article 4, paragraph 5 of the Schedule, are to be taken as the equivalent to the sums expressed in Special Drawing Right which are mentioned in sub-paragraph (a) and (d) of that paragraph.

- (2) Where the Minister of Finance has not made a specification under subsection (1), the respective amounts referred to in subsection (1) shall be specified by the Reserve Bank of the Kingdom.

## **6 Absolute warranty of sea worthiness not to be implied**

There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply by virtue of this Act any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

## **7 Construction and Jurisdiction**

- (1) All parties to —
  - (a) a bill of lading or similar document of title; or
  - (b) a non-negotiable document described in section 4(b)(iii) relating to such carriage of goods, relating to the carriage of goods from any place in the Kingdom to any place whether in or outside the Kingdom are deemed to have intended to contract according to the laws in force at that place of shipment.
- (2) Any stipulation or agreement (whether made in the Kingdom or elsewhere) shall be illegal, null and void and of no effect in so far as it purports to —
  - (a) preclude, lessen or limit the effect of subsection (1) in respect of a bill of lading or a document mentioned in subsection (1)(b);
  - (b) preclude, lessen or limit the jurisdiction of the courts of the Kingdom in respect of a bill of lading or a document mentioned in subsection (1)(b); or
  - (c) preclude, lessen or limit the jurisdiction of the courts of the Kingdom in respect of a bill of lading or a similar document of title or a non-negotiable document described in section 4(b)(iii) relating to the carriage of goods from any place within or outside the Kingdom to any place in the Kingdom.

## **8 Saving**

Nothing in this Act shall affect the operation of any law for the time being in force limiting the liability of ship owners or others.

## **9 Binding on the Crown**

The provision of the Act shall be binding upon the Crown whenever the Crown is engaged in the carriage of goods by sea in a ship owned or chartered by the Crown.

## ENDNOTES

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<sup>1</sup> **Act 6 of 2008**, commencement 22 June 2009