

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A
BILL

to amend and update the law with respect to the carriage of goods by sea

WHEREAS it is expedient to amend, and update the law surrounding the carriage of goods by sea and the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading and other sea carriage documents in accordance with the International Convention for the Unification of Certain Rule of Law relating to Bills of Lading signed at Brussels on 25th August, 1924, as amended by the Protocol signed at Brussels on the 23rd February, 1968, and further amended by the Protocol signed at Brussels on the 21st December, 1979;

AND WHEREAS it is expedient that like provisions may be made in Pakistan;

It is hereby enacted as follows:-

1. Short title, extent and commencement. - (1) This Act may be called the Carriage of Goods by Sea Act, 2010.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Application of Hague-Visby Rules as amended. - (1) In this Act, the expression "the Rules" means the International Convention for the Unification of Certain Rule of Law relating to Bills of Lading signed at Brussels on 25th August, 1924, as amended by the Protocol signed at Brussels on the 23rd February, 1968, and further amended by the Protocol signed at Brussels on the 21st December, 1979, and as set out in the Schedule to this Act.

(2) The provisions of the Rules, shall have the force of law in Pakistan.

(3) Without prejudice to sub-section (2), the provisions of this Act and the Rules shall have effect in relation to, and in connection with, the carriage of goods by sea in ships carrying goods,-

(a) from any port in Pakistan to any other port in Pakistan;

(b) from any port in Pakistan to any port outside Pakistan; or

(c) from any port outside Pakistan to any port in Pakistan,

whether or not the carriage is between ports in two different States within the meaning of Article X of the Rules, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person and whatever may be the law

governing the contract of carriage:

Provided that the Federal Government may, by notification in the official Gazette, amend, modify or alter the application of this Act and the Rules to carriage of goods by sea from a port in Pakistan to any other port in Pakistan.

(4) Subject to sub-section (5), nothing in this section shall be construed as applying anything in the Rules to any contract for the carriage of goods by sea, unless the contract expressly or by implication provides for the issue of a sea carriage document.

(5) Without prejudice to clause (c) of Article X of the Rules, the Rules shall have the force of law in relation to, -

(a) any bill of lading; or

(b) any receipt for goods, including a sea waybill or a ship's delivery order, as if the receipt were a bill of lading;

Provided that the contract contained in or evidenced by it is a contract for the carriage of goods by sea; or

(c) any other document as may be specified by the Federal Government, by notification in the official Gazette:

Provided that in the case of documents to which clause (c) applies, this Act and the Rules shall apply with any necessary modification and in particular with the omission of paragraph 7 in Article III of the Rules and the omission of second sentence of paragraph 4 of Article III of the Rules.

(6) For the purposes of Article IV of the Rules, as set out in the Schedule to this Act, the value on a particular day of one special drawing right shall be treated as equal to such a sum in rupees as the International Monetary Fund have fixed as being the equivalent of one special drawing right,-

(a) for that day; or

(b) if no sum has been so fixed for that day, for the last day before that day for which a sum has been so fixed.

3. Documents to which this Act and the Rules as set out in the Schedule to this Act apply.- (1) With the exception of paragraph 7 and the second sentence of paragraph 4 of Article III of the Rules as set out in the Schedule to this Act, the expression "bill of lading" throughout the Rules as set out in this Act shall be read as "sea carriage document."

(2) Any reference in this Act and the Rules to sea carriage document shall include any,-

(a) bill of lading

(b) sea waybill;

(c) ship's delivery order; or

(d) other document as may be specified by the Federal Government, by notification in the official Gazette.

(3) For the purposes of this Act and the Rules any reference to,-

(a) a bill of lading, -

(i) does not include references to a document which is incapable of transfer either by indorsement or, as a bearer bill, by delivery without indorsement; but

(ii) subject to that, does include references to a received for shipment bill of lading;

(b) a sea waybill means any document which is not a bill of lading but,-

(i) is such a receipt for goods as contains or evidences a contract for the carriage of goods by sea; and

(ii) identifies the person to whom delivery of the goods is to be made by the carrier in accordance with that contract; and

(c) a ship's delivery order means any document which is neither a bill of lading nor a sea waybill but contains an undertaking which,-

(i) 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

(ii) is an undertaking by the carrier to a person identified in the document to deliver to that person the goods to which the document relates.

4. Notwithstanding section 31 of the Electronic Transactions Ordinance, 2002 (LI of 2002), any document mentioned in sub-sections (2) and (3) shall be deemed to be a document for the purposes of the Electronic Transactions Ordinance, 2002 (LI of 2002), and all references to such document in this Act and the Rules shall include their electronic form and all such documents shall attract all the protections and exemptions provided for in the Electronic Transactions Ordinance, 2002 (LI of 2002).

4. Modification of clause (c) of Article I of the Rules.- (1) If and so far as the contract contained in or evidenced by a bill of lading or any other sea carriage document applies to deck cargo and live animals, the Rules shall have effect as if clause (c) of Article I of the Rules, did not exclude deck cargo and live animals:

Provided that if the shipper has specific stowage requirements for goods carried on or above deck, the shipper must inform the carrier in writing of those requirements at or before the time of booking the cargo.

(2) For the purposes of this section "deck cargo" means cargo which by the contract of carriage is stated as being carried on deck and is so carried.

5. Modification of Article IVbis of the Rules.- (1) Notwithstanding Article IVbis of the Rules, if a carrier carries the goods on or above deck, contrary to an express agreement with the shipper of the goods made at or before the time of booking the cargo, then, for any loss or damage to the goods that results solely from the goods being carried on or above deck, the carrier shall not be entitled to the benefit of,-

(a) any exception to or exemption from liability as provided for in the Rules; or

(b) any limitation of liability as provided for in the Rules for the loss or damage.

(2) Whenever loss or damage has resulted from carriage of the goods on deck, contrary to an express agreement with the shipper of the goods at or before the time of booking the cargo, the burden of proof shall be on the carrier to show that the loss or damage has not resulted solely from such unauthorized carriage of the goods on deck.

6. Period of responsibility.- (1) Notwithstanding clause (e) of Article I of the Rules, the responsibility of the carrier under the Rules shall arise when the carrier receives the goods or cargo at the port of loading and shall cease when the carrier delivers the goods or cargo to the consignee at the port of discharge.

(2) For the purposes of subsection (1) and the Rules, the goods or cargo shall be deemed to be received by the Carrier,-

(a) when received in accordance with the terms of the contract of carriage or any document referred to in sub-section (3) of section 3 stipulating the time and location of receipt of the cargo or goods; or

(b) where no such term stipulating the time and location of receipt of the cargo or goods is available in the contract of carriage or any document referred to in sub-section (3) of section 3,-

(i) in the case of dry bulk, liquid bulk or gas bulk cargo, when the bulk cargo has passed through the manifold, pipes, buckets, conveyors, or any other similar means and into the ship;

(ii) in the case of containerized cargo when,-

(a) the container is taken over by the carrier, his servants or agents, from the shipper or a person acting on his behalf; or

(b) the container is taken over by the carrier, his servants or agents, from an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment; or

(c) the goods which are to be loaded into a container by the carrier are taken over in accordance with paragraph (a) or paragraph (b); and

(iii) in the case of cargo other than those mentioned in clauses (ii) or (iii), when the goods are taken over by the carrier from,-

(a) the shipper, or a person acting on his behalf; or

(b) an authority or other third party to whom, pursuant to law or regulations applicable at the port of loading, the goods must be handed over for shipment;

(3) For the purposes of sub-section (1) and the Rules, the goods or cargo shall be deemed to be delivered to the Consignee,-

(a) when delivered in accordance with the terms of the contract of carriage or any document referred to in sub-section (3) of section 3 stipulating the time and location of delivery of the cargo or goods; or

(b) where no such term stipulating to the time and location of delivery of the cargo or goods is available in the contract of carriage or any document referred to in sub-section (3) of section 3,-

(i) in the case of dry bulk, liquid bulk or gas bulk cargo, when the bulk cargo is discharged out of the ship and into the manifold, pipes, buckets, conveyors, or any other similar means; and

(ii) in the case of containerised cargo when,-

(a) the container is handed over to the consignee or a person acting on his behalf; or

(b) in cases where the consignee does not receive the container from the carrier, by placing them at the disposal of the consignee or a person acting on his behalf in accordance with the contract or the usage of the particular trade, applicable at the port of discharge; or

(c) the container is handed over to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over for onward delivery to the consignee or a person acting on his behalf; or

(d) the goods which are to be unloaded from a container by the carrier are taken over in accordance with paragraph (a), (b) or paragraph (c);

(iii) in the case of cargo other than those mentioned in clauses (ii) or (iii), when the carrier delivers the goods to the consignee,-

(a) by handing over the goods to the consignee; or

(b) 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

(c) by handing over the goods to an authority or other third party to whom, pursuant to law or regulations applicable at the port of discharge, the goods must be handed over;

(4) For the purposes of this section where goods are packed, "goods" includes such article of transport or packaging if supplied by the shipper.

(5) Nothing in this section, this Act or the Rules shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier for the loss or damage to, or in connection with, the custody and care and handling of the cargo or goods prior to the receipt by the carrier of the cargo or goods at the port of loading or subsequent to the delivery to the consignee of the cargo or goods at the port of discharge.

Explanation:- The provisions of this section extend the period of the application of the Rules beyond the provisions of clause (e) of Article I of the Rules and up to the period of responsibility under subsection (1), as also provided for under Article VII of the Rules.

7. Modification of paragraphs 4 and 5 of Article III of the Rules in relation to bulk cargo.- Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading or other sea carriage document is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading or other sea carriage document, then, notwithstanding anything in the Rules, the bill of lading or other sea carriage document shall not be deemed to be prima facie evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading or other sea carriage document, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper.

8. Absolute warranty of seaworthiness not to be implied in any contract to which the Rules apply.- 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.

9. Act not to override certain provisions of the Merchant Shipping Ordinance, 2001, or any other law limiting the liability of owners of sea-going vessels.- Nothing in this Act shall affect the operation of sections 382 to 387, both inclusive, and sections 534 to 548, both inclusive, of the Merchant Shipping Ordinance, 2001 (LII of 2001), or the operation of any other law for the time being in force limiting the liability of the owners of sea-going vessels, and it is hereby declared that for the purposes of Article VIII of the Rules, the afore mentioned sections of the Merchant Shipping Ordinance, 2001(LII of 2001), or the operation of any other law for the time being in force are provisions relating to limitation of liability.

10. Repeal and savings.- (1) **The Carriage of Goods by Sea Act, 1925 (XXVI of 1925),** is hereby repealed.

(2) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea nor to any bill of lading or other sea carriage document issued in pursuance of any such contract before the commencement of this Act.

THE SCHEDULE

[See section 2 subsection (1)]

Article I

Definitions

In these Rules the following words are employed, with the meanings set out below: -

(a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

(b) "Contract of carriage" applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such relates to the carriage of goods by sea, including any bill of lading or any similar document of title as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same.

(c) "Goods" includes goods, wares, merchandise and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried.

(d) "Ship" means any vessel used for the carriage of goods by sea.

(e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time they are discharged from the ship.

Article II

Risks

Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities hereinafter set forth.

Article III

Responsibilities and Liabilities

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 IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge the carrier or the master or agent of the carrier shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things, -

(a) 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 such marks are stamped or otherwise shown clearly, upon the goods if uncovered, or 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;

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

(c) the apparent order and condition of the goods.

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

4. Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs 3(a), (b) and (c).

However, proof to the contrary shall not be admissible when the bill of lading has been transferred to a third party acting in good faith.

5. 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, 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.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading.

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

Subject to paragraph 6bis 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. This period may, however, be extended if the parties so agree after the cause of action has arisen.

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.

6 bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master or agent 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, if it shows the particulars mentioned in paragraph 3 of Article III, the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

8. 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 in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance in favour of the carrier or similar clause shall be deemed to be a clause relieving the carrier from liability.

Article IV

Rights and Immunities

Neither the carrier nor the ship shall 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 paragraph 1 of Article III.

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

(a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) Fire, unless caused by the actual fault or privity of the carrier;

(c) Perils, dangers and accidents of the sea or other navigable waters;

(d) Act of God;

(e) Act of war;

(f) Act of public enemies;

(g) Arrest or restraint of princes, rulers or people, or seizure under legal process;

(h) Quarantine restrictions;

(i) Act or omission of the shipper or owner of the goods, his agent or representative;

(j) Strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general;

(k) Riots and civil commotions;

(l) Saving or attempting to save life or property at sea;

(m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods;

(n) Insufficiency of packing;

(o) Insufficiency or inadequacy of marks;

(p) Latent defects not discoverable by due diligence; and

(q) Any other cause arising without the actual fault and 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 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.

4. 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 these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading, 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 kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

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

The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) 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 the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in sub-paragraph (a) of this paragraph shall be converted into national currency on the basis of the value of that currency on the date to be determined by the law of the Court seized of the case.

The value of the national currency, in terms of the Special Drawing Right, of a State which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979, or accession thereto or at any time thereafter, declare that the limits of liability provided for in this Convention to be applied in its territory shall be fixed as follows:-

(i) in respect of the amount of 666,67 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 10,000 monetary units; and

(ii) in respect of the amount of 2 units of account mentioned in sub-paragraph (a) of paragraph 5 of this Article, 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900. The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned. The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of that State as far as possible the same real value for the amounts in sub-paragraph (a) of this paragraph of this Article as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979, or of accession thereto and whenever there is a change in either.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph of this Article 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 damage would probably result.

(f) The declaration mentioned in sub-paragraph (a) of this paragraph, if embodied in the bill of lading, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper other maximum amounts than those mentioned in sub-paragraph (a) of this paragraph of this Article may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.

(h) Neither the carrier nor the ship shall 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 bill of lading.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, 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 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 IVbis

Application of Defences and Limits of Liability

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.
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 these Rules.
3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.
4. Nevertheless, 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 V

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities

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 the Rules, provided that such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules.

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

Article VI Special Conditions

Notwithstanding the provisions of the preceding articles, a carrier, master or agent of the carrier and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

An agreement so entered into shall have full legal effect.

Provided that 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 to justify a special agreement.

Article VII

Limitations on the Application of the Rules

Nothing herein contained shall prevent a carrier or a 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 VIII

Limitation of Liability

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

Article IX

Liability for Nuclear Damage

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

Article X

Application

The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different States if:

- (a) the bill of lading is issued in Pakistan or a Contracting State, or
- (b) the carriage is from a port in Pakistan or a Contracting State, or
- (c) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any State giving effect to them are to govern the contract, whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other interested person.

STATEMENT OF OBJECTS AND REASONS

To enforce liability of the ocean carriers for loss or damage to goods, The Hague Rules were adopted through an International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading held at Brussels in 1924. These Rules were drawn up to impose upon the ocean carriers the duty of carrying goods with care and of providing a seaworthy vessel at the commencement of the voyage. The Hague Rules were incorporated in the legislation of British India through the Carriage of Goods by Sea Act 1925. This Act was inherited by Pakistan and is the present law of Pakistan related to the carriage of goods by sea.

Under The Hague Rules the carrier's liability is limited to pounds sterling 100 in gold per "package or unit." Further, the Rules apply when a bill of lading has been issued and covers the period from loading of the goods until discharge from the vessel. Taking cognizance of the fall of the value of money and the development of containerization the contracting states of the Brussels Convention Relating to Bills of Lading agreed to certain amendments to The Hague Rules through the Brussels Protocol of 1968. The Hague Rules amended by the Brussels Protocol are generally known as The Hague Visby Rules. In 1979, a further Protocol adopted the Special Drawing Rights (SDR) as the monetary unit for The Hague Visby Rules.

The present legislation of Pakistan on carriage of goods by sea dates back to 1925 and needs to be modernized in keeping with the modern shipping practice and the International

Convention in force at present. The proposed Draft Carriage of Goods by Sea Act updates the existing legislation in accordance with the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading signed at Brussels on 25th August 1924, as further amended by the Protocol signed at Brussels on 23rd February 1968 and the Protocol signed at Brussels on 21st December 1979. The proposed Act provides for the use of electronic documents in accordance with the Electronic Transactions Ordinance 2002 and also recognizes the other transport documents like the sea waybill and the ship's delivery order to take care of the modern shipping practice.

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Minister for Ports & Shipping,
Member-in-Charge