

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to amend and update the law with respect to sea carriage shipping documents

WHEREAS it is expedient to amend and update the law with respect to the documents for carriage of goods by sea with a view to clarifying the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading, and certain other shipping documents, and matters ancillary thereto or connected therewith;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.**— (1) This Act may be called the Sea Carriage Shipping Documents Act, 2018.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions** - (1) In this Act,-

(a) "bill of lading", "sea waybill" and "ship's delivery order" shall be construed in accordance with section 3;

(b) "contract of carriage",-

(i) in relation to a bill of lading or sea waybill, means the contract contained in or evidenced by that bill of lading or sea waybill; and

(ii) in relation to a ship's delivery order, means the contract under or for the purposes of which the undertaking contained in the ship's delivery order is given; and

(c) "holder", in relation to a bill of lading, shall be construed in accordance with sub-sections (2) and (3).

(2) Any reference in this Act to the holder of a bill of lading shall be a reference to any of the following persons, namely:

(a) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;

(b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill; and

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- (c) a person with possession of the bill as a result of any transaction by virtue of which he would have become a holder falling within clause (a) or (b) had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates.

(3) A person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading whenever he has become the holder of the bill in good faith.

(4) Any reference in this Act to a person being identified in a document shall include references to his being identified by a description which allows for the identity of the person in question to be varied, in accordance with the terms of the document, after its issue; and the reference in paragraph (b) of sub-section (3) of section 3 of this Act to a document's identifying a person shall be construed accordingly.

(5) Without prejudice to subsection (2) of section 4 and section 6, nothing in this Act shall preclude its operation in relation to a case where the goods to which a document relates,-

- (a) cease to exist after the issue of the document; or
- (b) cannot be identified whether because they are mixed with other goods or for any other reason;

and references in this Act to the goods to which a document relates shall be construed accordingly.

(6) The provisions of this Act shall have effect without prejudice to the application, in relation to any case, of the Hague-Visby Rules which for the time being have the force of law by virtue of the Carriage of Goods by Sea Bill, 2009.

3. Shipping documents to which this Act applies.- (1) This Act shall apply to the following shipping documents, namely:-

- (a) Any bill of lading;
- (b) any sea waybill;
- (c) any ship's delivery order; and
- (d) any other document as may be specified by the Federal Government, by notification in the official Gazette.

(2) References in this Act to a bill of lading,-

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

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(b) subject to that, do include references to a received for shipment bill of lading.

(3) References in this Act to a sea waybill shall be references to any document which is not a bill of lading but,-

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

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

(4) References in this Act to a ship's delivery order shall be references to any document which is neither a bill of lading nor a sea waybill but contains an undertaking which,-

(a) 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

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

(5) Notwithstanding section 31 of the Electronic Transactions Ordinance, 2002 (LI of 2002), any documents mentioned in this section shall be deemed to be documents for the purposes of the Electronic Transactions Ordinance, 2002 (LI of 2002), and all references to such documents in this Act 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. Rights under shipping documents.- (1) Subject to sub-sections (2), (3), (4) and (5), a person who becomes,-

(a) the lawful holder of a bill of lading;

(b) the person who (without being an original party to the contract of carriage) is the person to whom delivery of the goods to which a sea waybill relates is to be made by the carrier in accordance with that contract; or

(c) the person to whom delivery of the goods to which a ship's delivery order relates is to be made in accordance with the undertaking contained in the order,

shall (by virtue of becoming the holder of the bill or, as the case may be, the person to whom delivery is to be made) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

(2) Where, when a person becomes the lawful holder of a bill of lading, possession of the bill shall no longer give a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of sub-section (1) unless he becomes the holder of the bill,-

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(a) by virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or

(b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.

(3) The rights vested in any person by virtue of the operation of sub-section (1) in relation to a ship's delivery order, -

(a) shall be so vested subject to the terms of the order; and

(b) where the goods to which the order relates form a part only of the goods to which the contract of carriage relates, shall be confined to rights in respect of the goods to which the order relates.

(4) Where, in the case of any document to which this Act applies,-

(a) a person with any interest or right in or in relation to goods to which the document relates sustains loss or damage in consequence of a breach of the contract of carriage; but

(b) subsection (1) of this section operates in relation to that document so that rights of suit in respect of that breach are vested in another person,

the other person shall be entitled to exercise those rights for the benefit of the person who sustained the loss or damage to the same extent as they could have been exercised if they had been vested in the person for whose benefit they are exercised.

(5) Where rights are transferred by virtue of the operation of sub-section (1) in relation to any document, the transfer for which that sub-section provides, shall extinguish any entitlement to those rights which derives,-

(a) where that document is a bill of lading, from a person's having been an original party to the contract of carriage; or

(b) in the case of any document to which this Act applies, from the previous operation of that subsection in relation to that document,

but the operation of sub-section (1) shall be without prejudice to any rights which derive from a person's having been an original party to the contract contained in, or evidenced by, a sea waybill and, in relation to a ship's delivery order, shall be without prejudice to any rights deriving otherwise than from the previous operation of that sub-section in relation to that order.

5. Liabilities under shipping documents.- (1) Where sub-section (1) of section 4 operates in relation to any document to which this Act applies and the person in whom rights are vested by virtue of that sub-section,-

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- (a) takes or demands delivery from the carrier of any of the goods to which the document relates;
 - (b) makes a claim under the contract of carriage against the carrier in respect of any of those goods; or
 - (c) is a person who, at a time before those rights were vested in him, took or demanded delivery from the carrier of any of those goods,

that person shall (by virtue of taking or demanding delivery or making the claim or, in a case falling within clause (c), of having the rights vested in him) become subject to the same liabilities under that contract as if he had been a party to that contract.

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

(3) This section, so far as it imposes liabilities under any contract on any person, shall be without prejudice to the liabilities under the contract of any person as an original party to the contract.

6. Representations in a bill of lading.- A bill of lading which,-

- (a) represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and
- (b) has been signed by the master of the vessel or by a person who was not the master but had the express, implied, apparent or ostensible authority of the carrier to sign bills of lading,

shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of the shipment of the goods or, as the case may be, of their receipt for shipment.

7. Repeal and savings.- (1) The Bills of Lading Act, 1856 (IX of 1856), is hereby repealed.

(2) Nothing in this Act shall have effect in relation to any document issued before the coming into force of this Act.

STATEMENT OF OBJECTS AND REASONS

The bill of lading is used as the contract of carriage for transportation of goods by sea. It is a negotiable document of title and serves as receipt for carriage of goods, and is transferable by endorsement. The propriety in the goods passes to the endorsee. The rights and liabilities of the consignees and the endorsee are defined in the Bill of Lading Act 1856 of British India, which has been inherited by Pakistan.

However, with passage of time transport documents other than bill of lading have also come in common use. At present the holders of transport documents other than the bill of lading do not have the necessary legal cover. To provide legal cover to the sea waybill, the ship's delivery order and other transport documents that may be notified by the government, the Sea Carriage Shipping Documents Bill, 2009 has been drafted to replace the Bill of Lading Act 1856.

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Member-in-Charge