

Carriage by Air Act, 2012

Act No. IV of 2012

An Act to give effect in Pakistan to the Conventions concerning international carriage by air known as the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999 and consolidate the law and applicable international conventions in relation to international carriage by air.

WHEREAS it is expedient to give effect in Pakistan to the Convention concerning international carriage by air known as the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, 1999, and to enable the rules contained in that Convention to be applied, subject to exceptions adaptations and modifications, to carriage by air in Pakistan which is not international carriage within the meaning of the Convention, and to provide for matters connected herewith or ancillary thereto;

AND WHEREAS it is expedient to consolidate the existing law and applicable international conventions in relation to international carriage by air;

It is hereby enacted as follows:-

1. Short title, extent and commencement.- (1) This Act may be called the Carriage by Air Act, 2012.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

(4) The applicable provisions of the Carriage by Air Conventions shall have the force of law in Pakistan in relation to any carriage by air to which they apply, irrespective of the nationality of the aircraft performing that carriage.

Provided that the provisions of Carriage by Air Conventions shall not apply to international carriage by air performed and operated directly by the Islamic Republic of Pakistan for non-commercial purposes in respect of its functions and duties as a sovereign state and to the carriage of persons, cargo and baggage for the military authorities on the aircraft registered in or leased by the Islamic Republic of Pakistan, the whole capacity of which has been reserved by or on behalf of such authorities.

(5) Subsection (4) is subject to the other provisions of this Act.

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(a) “applicable provisions” means,-

(i) the provisions of the Warsaw Convention, 1929, as set out in the First Schedule,

- (ii) the provisions of the Warsaw Convention as amended at the Hague, 1955, as set out in the Second Schedule;
- (iii) the provisions of the Guadalajara Convention, 1961, as set out in the Third Schedule; and
- (iv) the provisions of the Montreal Convention, 1999, as set out in the Forth Schedule,

so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees and other persons;

(b) "Carriage by Air Conventions" means,-

- (i) the Convention known as the Warsaw Convention, 1929;
- (ii) the Convention known as the Warsaw Convention as amended at the Hague, 1955;
- (iii) the Convention supplementary to that Convention known as the Guadalajara Convention 1961; and
- (iv) the Convention known as the Montreal Convention 1999.

(c) "Schedule" means the Schedule to this Act.

3. Application of the Carriage by Air Conventions, as amended, to Pakistan.- (1) The rules contained in the First Schedule, being the provisions of the Convention for the unification of certain rules relating to international carriage by air relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, known as the Warsaw Convention, 1929, shall, subject to the provisions of this Act, have the force of law in Pakistan in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(2) The rules contained in the Second Schedule, being the provisions of the Convention for the unification of certain rules relating to international carriage by air known as the Warsaw Convention as amended at the Hague, 1955, shall, subject to the provisions of this Act, have the force of law in Pakistan in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(3) The rules contained in the Third Schedule, being the provisions of the Convention supplementary to the Warsaw Convention, 1929 for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, known as the Guadalajara Convention, 1961, shall, subject to the provisions of this Act, have the force of law in Pakistan in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage and the rules contained in the Third Schedule shall be

supplementary to, and form part of, the rules contained in the First Schedule or, as the case may be, the Second Schedule, and shall have effect accordingly.

(4) The rules contained in the Fourth Schedule, being the provisions of the Convention for the unification of certain rules relating to international carriage by air known as the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, 1999, shall, subject to the provisions of this Act, have the force of law in Pakistan in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage.

(5) Notwithstanding anything contained in the Fatal Accidents Act 1855 (XIII of 1855), or any other law for the time being in force, the rules contained in the First, Second, Third or, as the case may be, Fourth Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Sixth Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(6) Any sums mentioned in rules 21, 22, 23 or 24 of the Fourth Schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

(7) Any sum in francs mentioned in rule 22 of the First Schedule and as the case may be, rule 22 of the Second Schedule, shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

(8) Any reference in the First, Second, Third and Fourth Schedules,-

(a) to the territory of any High Contracting Party or Parties or State Party or Parties to the Convention shall be construed as a reference to all the territories in respect of which he is a party; and

(b) agents of the carrier shall be construed as including a reference to servants of the carrier.

(9) The applicability of the Carriage by Air Conventions to any international carriage by air, as defined by the First, Second or, as the case may be, the Fourth Schedule, shall be dependent on the High Contracting Party or Parties or State Party or Parties, as the case may be, being a signatory or signatories to the same Carriage by Air Convention.

(10) If more than one of the Carriage by Air Conventions apply to a carriage by air, the applicable provisions that shall have the force of law shall be those of whichever is the most recent applicable Carriage by Air Convention in force.

4. Provisions regarding suits against High Contracting Party or Parties or State Party or Parties who undertake carriage by air.- (1) Every High Contracting

Party or Parties or State Party or Parties to the Carriage by Air Conventions shall, for the purposes of any suit brought in a Court in Pakistan in accordance with,-

- (a) the provisions of rule 28 of the First Schedule where a High Contracting Party to the Warsaw Convention, 1929, has not availed himself of the provisions of the Additional Protocol thereto; or
- (b) the provisions of rule 28 of the Second Schedule where a High Contracting Party to the Warsaw Convention as amended at the Hague, 1955, has not availed himself of the provisions of the Additional Protocol thereto; or
- (c) the provisions of rule 33 of the Fourth Schedule,

to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure, 1908 (Act V of 1908).

(2) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(3) Nothing in this section shall authorize any Court to attach or sell any property of a High Contracting Party or Parties or State Party or Parties to the Carriage by Air Conventions.

5. Application of Act to carriage by air which is not international.- (1) The rules contained in the fifth Schedule shall apply to all carriage by air, not being international carriage by air as defined in the First, Second, or as the case may be, Fourth Schedule.

(2) Notwithstanding anything contained in the Fatal Accidents Act 1855 (XIII of 1855), or any other law for the time being in force, the rules contained in the Fifth Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Sixth Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(3) The Federal Government, shall every three years, if not earlier, review all limits of liability provided for carriage by air, not being international carriage, in rules 21 and 22 of the fifth Schedule, any subsequent notifications thereto or any other law, and shall in the official Gazette, accordingly notify the reviewed amounts of all such limits of liability.

6. Issuance of substitution of electronic means for delivering documents of carriage.- (1) Nothing contained in this Act shall prevent the issuance of an individual or collective document of carriage through electronic means which preserves the information required by the applicable provisions contained, as the case may be, in the First, Second, Fourth and Fifth Schedules as a substitute for the delivery of the document referred to in those applicable provisions and if any such other means is used, the carrier shall offer to deliver to the passenger a written

statement of the information so preserved:

Provided that an electronic document of carriage shall be deemed to be a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881), and may be dealt with in any manner as a paper document of carriage and the Electronic Transactions Ordinance 2002(LI of 2002), shall apply to such electronic document of carriage notwithstanding the provisions of clause (a) of section (1) of section 31 thereof.

(2) Notwithstanding anything contained in section 31 of the Electronic Transactions Ordinance 2002 (LI of 2002), any document mentioned in this Act issued through electronic means 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 applicable provisions contained in the First, Second, Fourth and Fifth Schedules shall include their 'electronic form' and all such documents shall attract all the protections and exemptions provided for in the Electronic Transaction Ordinance 2002 (LI of 2002).

7. Repeal.— The Carriage by Air Act, 1934 (XX of 1934), the Carriage by Air (International Convention) Act, 1966 (X of 1966), and the Carriage by Air (Supplementary Convention) Act, 1968 (V of 1968) are hereby repealed.

THE FIRST SCHEDULE

[See section 3 (1)]

THE WARSAW CONVENTION, 1929

UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR
RELATING TO THE RIGHTS AND LIABILITIES OF CARRIERS, PASSENGERS, CONSIGNORS,
CONSIGNEES AND OTHER PERSONS.

RULES

CHAPTER I

SCOPE - DEFINITIONS

1. (1) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules "High Contracting Party" means a High Contracting Party to the Convention.

(3) For the purposes of these rules 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 the Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for purposes of these rules.

(4) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has 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.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules do not apply to carriage performed under the terms of any international postal Convention.

CHAPTER II

DOCUMENTS OF CARRIAGE

Part I.-Passenger ticket

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 carrier or carriers ;
- (e) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(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 these rules. 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 Schedule which exclude or limit his liability.

Part II. - Luggage ticket

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 rule 22 (2);
- (h) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(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 these rules. 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) of sub-rule (3), the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III. - Air consignment note

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 rule 9, be none the less governed by these rules.

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 an 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.

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.

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 numbers upon them;
- (i) the weight, the quantity and the volume or 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 rule 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 contained in this Schedule.

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

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 statements.

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 conditions 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.

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 rule 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.

13. (1) Except in the circumstances set out in rule 12, 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 of carriage 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.

14. The consignor and the consignee can respectively enforce all the rights given them by rules 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.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or 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 rules 12, 13 and 14 can only be varied by express provision in the air consignment note:

Provided that an electronic document of carriage shall be deemed to be a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881) and may be dealt with in any manner as a paper document of carriage and the Electronic Transactions Ordinance 2002 shall apply to such electronic document of carriage notwithstanding section 31(1)(a) of the Electronic Transactions Ordinance 2002.

16. (1) The consignor must furnish such information and attach to the 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 enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER

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.

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 transshipment, 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.

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

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 impossible 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.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

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 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 that 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 in this rule shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules 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 provisions of this Schedule.

24. (1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rule 17 the provisions of sub-rule (1) 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.

25. (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court 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.

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 despatched 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.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily 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.

29. The right of 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.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, 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.

(3) 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

31. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2) Nothing in this Schedule 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 Schedule are observed as regards the carriage by air.

CHAPTER V

GENERAL AND FINAL PROVISIONS

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 Schedule, 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 these rules, if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule 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 Schedule.

34. This Schedule 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.

35. The expression "days" when used in these rules means current days, not working days.

36. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that the first paragraph of Article 2 of the 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, these rules shall not apply to international carriage by air so performed.

THE SECOND SCHEDULE

[See section 3(2)]

THE WARSAW CONVENTION AS AMENDED AT THE HAGUE, 1955

UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR.

RULES

CHAPTER I

SCOPE - DEFINITIONS

1. (1) These rules apply to all international carriage of persons, baggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(2) In these rules “High Contracting Party” means a High Contracting Party to the Convention.

(3) For the purposes of these rules 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 these rules.

(4) Carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, 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 the territory of the same State.

2. (1) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) These rules shall not apply to carriage of mail and postal packages.

CHAPTER II.

DOCUMENTS OF CARRIAGE

PART I. - Passenger ticket

3. (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.

(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 these rules. 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 sub-rule 1(c) of this rule, the carrier shall not be entitled to avail himself of the provisions of rule 22.

PART II. - *Baggage check*

4. (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 rule 3, sub-rule (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.

(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 these rules. 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 rule 3, sub-rule 1 (c), does not include the notice required by sub-rule 1 (c) of this rule, he shall not be entitled to avail himself of the provisions of rule 22, sub-rule (2).

PART III. - *Air Waybill*

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 waybill"; 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 rule 9, be none the less, governed by these rules.

6. (1) The air waybill 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 prior to the loading of the goods on board the aircraft.

(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 waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

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

8. 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 loss of or damage to goods.

9. If, with the consent of the carrier, goods are 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 rule 8, paragraph (c), the carrier shall not be entitled to avail himself of the provisions of rule 22, sub-rule (2).

10. (1) The consignor is responsible for the correctness of the particulars and statement relating to the goods which he inserts in the air waybill.

(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.

11. (1) The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(2) The statements in the air waybill 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 waybill to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

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 waybill, 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 consignor 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 waybill 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 waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the air waybill or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. (1) Except in the circumstances set out in rule 12, 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 waybill and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

(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.

14. The consignor and the consignee can respectively enforce all the rights given them by rules 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.

15. (1) Rules 12, 13 and 14 do not affect either the relations of the consignor or 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 rule 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in these rules prevents the issue of a negotiable air waybill:

Provided that an electronic document of carriage shall be deemed to be a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881) and may be dealt with in any manner as a paper document of carriage and the Electronic Transactions Ordinance 2002 shall apply to such electronic document of carriage notwithstanding section 31(1)(a) of the Electronic Transactions Ordinance 2002.

16. (1) The consignor must furnish such information and attach to the air waybill 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 enquire into the correctness or sufficiency of such information or documents.

CHAPTER III.

LIABILITY OF THE CARRIER

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.

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 sub-rule 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 transshipment, 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.

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

20. The carrier is not liable if he proves that he and his servants or agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

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. 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 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 goods, 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 goods, 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 goods, 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 rule 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 sum 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 rule 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

23. (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules 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 provisions of this Schedule.

(2) Sub-rule (1) of this rule shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the goods carried.

24. (1) In the cases covered by rules 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(2) In the cases covered by rule 17 the provisions of sub-rule (1) 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.

25. The limits of liability specified in rule 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.

25A. (1) If an action is brought against a servant or agent of the carrier arising out of damage to which these rules relate, 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 rule 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 sub-rules (1) and (2) of this rule 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.

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 seven days from the date of receipt in the case of baggage and fourteen 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 twenty-one days from the date on which the baggage 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.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily 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.

29. The right of 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.

30. (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (4) of rule 1, each carrier who accepts passengers, baggage or goods is subjected to the rules set out in this Schedule, 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.

(3) As regards baggage 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.

PROVISIONS RELATING TO COMBINED CARRIAGE

31. (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

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

CHAPTER V

GENERAL AND FINAL PROVISIONS

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 Schedule, 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 these rules, if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule 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 Schedule.

34. The provisions of rules 3 to 9 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression "days" when used in these rules means current days, not working days.

36. For the purposes of these rules 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.

37. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that the first paragraph of Article 2 of the 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 these rules shall not apply to international carriage by air so performed.

THE THIRD SCHEDULE

[See section 3(3)]

THE GUADALAJARA CONVENTION 1961

UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR
PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER.

RULES

1. In these rules,-

- (a) “Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) “Contracting Carrier” means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) “actual carrier” means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

2. If an actual carrier performs the whole or part of carriage which according to the agreement referred to in Article 1, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in these rules, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

3. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

4. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

5. Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the

contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

6. In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under these rules to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

7. In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under these rules, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

8. In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the Court seized of the case.

9. Any action for damages contemplated in rule 8 must be brought at the option of the plaintiff, either before a Court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention or before the Court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

10. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under these rules or to fix a lower limit than that which is applicable according to these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of these rules.

11. In respect of the carriage performed by the actual carrier, rule 10 shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

12. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe these rules, 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 cargo arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in one of the jurisdictions referred to in rule 9.

13. Except as provided in rule 8, nothing in these rules shall affect the rights and obligations of the two carriers between themselves.

THE FOURTH SCHEDULE

[See section 3(4)]

THE MONTREAL CONVENTION FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR 1999 UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR.

RULES

CHAPTER I

GENERAL PROVISIONS

1. **Scope of application.**- (1) This Schedule applies to all international carriage of persons, baggage or cargo 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 Schedule, 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 States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Schedule.

(3) Carriage to be performed by several successive carriers is deemed, for the purposes of this Schedule, 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 the territory of the same State.

(4) This Schedule applies also to carriage as set out in Chapter V, subject to the terms contained therein.

2. **Carriage performed by State and carriage of postal items.**- (1) This Schedule applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(2) In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.

(3) Except as provided in paragraph 2 of this rule, the provisions of this Schedule shall not apply to the carriage of postal items.

CHAPTER II

DOCUMENTATION AND DUTIES OF THE PARTIES RELATING TO THE CARRIAGE OF PASSENGERS, BAGGAGE AND CARGO

3. Passengers and baggage.- (1) In respect of carriage of passengers, an individual or collective document of carriage 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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

(2) Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

(3) The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

(4) The passenger shall be given written notice to the effect that where this Schedule is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

(5) Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Schedule including those relating to limitation of liability.

4. Cargo.- (1) In respect of the carriage of cargo, an air waybill shall be delivered.

(2) Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

5. Contents of air waybill or cargo receipt.- The air waybill or the cargo receipt shall include:

- (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 State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- (c) an indication of the weight of the consignment.

6. Document relating to the nature of the cargo.- The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

7. Description of air waybill.- (1) The air waybill shall be made out by the consignor in three original parts.

(2) The first part shall be marked "for the carrier"; it 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. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

(3) The signature of the carrier and that of the consignor may be printed or stamped.

(4) If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

8. Documentation for multiple packages.- When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of rule 4 are used.

9. Non-compliance with documentary requirements.- Non-compliance with the provisions of rules 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

10. Responsibility for particulars of documentation.- (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of rule 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

(2) The consignor shall indemnify the carrier against all damage suffered by it, 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 or on its behalf.

(3) Subject to the provisions of paragraphs 1 and 2 of this rule, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to

whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of rule 4.

11. Evidentiary value of documentation.- (1) The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.

(2) Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, 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 cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

12. Right of disposition of cargo.- (1) Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

(3) If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 waybill or the cargo receipt.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

13. Delivery of the cargo.- (1) Except when the consignor has exercised its right under rule 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

14. Enforcement of the rights of consignor and consignee.- The consignor and the consignee can respectively enforce all the rights given to them by rules 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

15. Relations of consignor and consignee or mutual relations of third parties.- (1) Rules 12, 13 and 14 do not affect either the relations of the consignor and 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 rules 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

(3) Nothing in these rules prevents the issue of a negotiable air waybill:

Provided that an electronic air waybill shall be deemed to be a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881) and may be dealt with in any manner as a paper air waybill and the Electronic Transactions Ordinance 2002 shall apply to such electronic air waybill notwithstanding section 31(1)(a) of the Electronic Transactions Ordinance 2002.

16. Formalities of customs, police or other public authorities.- (1) The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo 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, its servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGE

17. Death and injury of passengers - damage to baggage.- (1) The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

(2) The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused

the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

(3) If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

(4) Unless otherwise specified, in this Schedule the term “baggage” means both checked baggage and unchecked baggage.

18. Damage to cargo.- (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

(2) However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
- (c) an act of war or an armed conflict;
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

(3) The carriage by air within the meaning of paragraph 1 of this rule comprises the period during which the cargo is in the charge of the carrier.

(4) The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

19. Delay.- The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents

took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

20. Exoneration.- If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This rule applies to all the liability provisions in this Schedule, including paragraph 1 of rule 21.

21. Compensation in case of death or injury of passengers.- (1) For damages arising under paragraph 1 of rule 17 not exceeding 100,000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under paragraph 1 of rule 17 to the extent that they exceed for each passenger 100,000 Special Drawing Rights if the carrier proves that:

- (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
- (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

22. Limits of liability in relation to delay, baggage and cargo.- (1) In the case of damage caused by delay as specified in rule 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4,150 Special Drawing Rights.

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1,000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the 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 it proves that the sum is greater than the consignor's actual interest in delivery at destination.

(4) In the case of destruction, loss, damage or delay of part of the 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 destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of rule 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(5) The foregoing provisions of paragraphs 1 and 2 of this rule shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its 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 such servant or agent was acting within the scope of its employment.

(6) The limits prescribed in rule 21 and in this rule 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, including interest. 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 sum 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.

23. Conversion of monetary units.- (1) The sums mentioned in terms of Special Drawing Right in this Schedule shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party 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 of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.

(2) Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this rule may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in rule 21 is fixed at a sum of 1,500,000 monetary units per passenger in judicial proceedings in their territories; 62,500 monetary units per passenger with respect to paragraph 1 of rule 22; 15,000 monetary units per passenger with respect to paragraph 2 of rule 22; and 250 monetary units per kilogramme with respect to paragraph 3 of rule 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency

concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

(3) The calculation mentioned in the last sentence of paragraph 1 of this rule and the conversion method mentioned in paragraph 2 of this rule shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in rules 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this rule. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this rule, or the result of the conversion in paragraph 2 of this rule as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Schedule and whenever there is a change in either.

24. Review of limits.- (1) Without prejudice to the provisions of rule 25 of this Schedule and subject to paragraph 2 below, the limits of liability prescribed in rules 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of the Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of rule 23.

(2) If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 percent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.

(3) Notwithstanding paragraph 1 of this rule, the procedure referred to in paragraph 2 of this rule shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 percent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this rule will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

25. Stipulation on limits.- A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Schedule or to no limits of liability whatsoever.

26. Invalidity of contractual provisions.- Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this

Schedule 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 provisions of this Schedule.

27. **Freedom to contract.**- Nothing contained in this Schedule shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Schedule, or from laying down conditions which do not conflict with the provisions of this Schedule.

28. **Advance payments.**- In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

29. **Basis of claims.**- In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Schedule or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Schedule without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

30. **Servants, agents - Aggregation of claims.**- (1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Schedule.

(2) The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

(3) Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this rule 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.

31. **Timely notice of complaints.**- (1) Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of rule 3 and paragraph 2 of rule 4.

(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 checked 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 or her disposal.

(3) Every complaint must be made in writing and given or dispatched within the times aforesaid.

(4) If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

32. Death of person liable.- In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Schedule against those legally representing his or her estate.

33. Jurisdiction.- (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

(2) In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this rule, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

(3) For the purposes of paragraph 2,

- (a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;
- (b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.

34. Arbitration.- (1) Subject to the provisions of this rule, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Schedule shall be settled by arbitration. Such agreement shall be in writing.

(2) The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in rule 33.

(3) The arbitrator or arbitration tribunal shall apply the provisions of this Schedule.

(4) The provisions of paragraphs 2 and 3 of this rule shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

35. Limitation of actions.- The right to damages shall be extinguished if an action is not brought within a period of 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.

36. Successive carriage.- (1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of rule 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Schedule and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

(2) In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which 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.

(3) As regards baggage or cargo, 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 which 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.

37. Right of recourse against third parties.- Nothing in this Schedule shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

COMBINED CARRIAGE

38. Combined carriage.- (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule shall, subject to paragraph 4 of rule 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(2) Nothing in this Schedule 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 Schedule are observed as regards the carriage by air.

CHAPTER V

CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

39. **Contracting carrier - Actual carrier.**- The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Schedule with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Schedule. Such authority shall be presumed in the absence of proof to the contrary.

40. **Respective liability of contracting and actual carriers.**- If an actual carrier performs the whole or part of carriage which, according to the contract referred to in rule 39, is governed by this Schedule, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Schedule, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

41. **Mutual liability.**- (1) The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

(2) The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in rules 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Schedule or any waiver of rights or defences conferred by this Schedule or any special declaration of interest in delivery at destination contemplated in rule 22 shall not affect the actual carrier unless agreed to by it.

42. **Addressee of complaints and instructions.**- Any complaint to be made or instruction to be given under this Schedule to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in rule 12 shall only be effective if addressed to the contracting carrier.

43. **Servants and agents.**- In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Schedule to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Schedule.

44. **Aggregation of damages.**- In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the

contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

45. Addressee of claims.- In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings.

46. Additional jurisdiction.- Any action for damages contemplated in rule 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in rule 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

47. Invalidity of contractual provisions.- Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 provisions of this Chapter.

48. Mutual relations of contracting and actual carriers.- Except as provided in rule 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

OTHER PROVISIONS

49. Mandatory application.- Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

50. Insurance.- States Parties shall require their carriers to maintain adequate insurance covering their liability under this Schedule. A carrier may be required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Schedule.

51. Carriage performed in extraordinary circumstances.- The provisions of rules 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

52. Definition of days.- The expression "days" when used in this Schedule means calendar days, not working days.

CHAPTER VII

FINAL CLAUSES

53. Signature, ratification and Entry Into Force,- (1) This Convention shall be open for signature in Montreal on 28 May, 1999 by States participating in the International Conference on Air law held at Montreal from 10 to 28 May, 1999. After 28 May, 1999, the Convention shall be open to all States for signature at the headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.

(2) The Convention shall similarly be open for signature by Regional Economic Integration Organizations. For the purpose of the Convention, a "Regional Economic Integration Organization" means any organization which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State Party" or "States Parties" in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organization. For the purpose of Article 24, the reference to "a majority of the States Parties" and "one-third of the States Parties" shall not apply to the Regional Economic Integration Organization.

(3) This Convention shall be subject to ratification by States and by Regional Economic Integration Organizations which have changed it.

(4) Any States or Regional Economic Integration Organization which does not sign this Convention may accept, approve or accede to it any time.

(5) Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depository.

(6) The Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depository between the States which have deposited such instrument. An instrument deposited by the Regional Economic Integration Organization shall not be counted for the purpose of this paragraph.

(7) For the States and for other Regional Economic Integration Organizations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.

(8) The Depository shall promptly notify all signatories and States Parties of:

(a) each signature of this Convention and date thereof;

(b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;

- (c) the date and entry into force of this Convention;
- (d) the date and entry into force of any revision of the limits of liability established under this Convention;
- (e) any denunciation under Article 54.

(54) Denunciation,- (1) Any State Party may denounce this Convention by written notification to the Depository.

(2) Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depository.

55. Relationship with other Warsaw Convention Instruments,--- This convention shall prevail over any rules which apply to international carriage by air;

(1) between State Parties to this convention by virtue of these States commonly being party to

- (a) the Convention for the Unification of Certain rules relating to International Carriage by Air signed at Warsaw on 12 October, 1929 (hereinafter called the Warsaw Convention);
- (b) the Protocol to amend the Convention for the Unification of Certain rules relating to International Carriage by Air signed at Warsaw on 12 October, 1929 done at The Hague on 28 September, 1955 (hereinafter called, The Hague Protocol);
- (c) the Convention, Supplementary to the Warsaw Convention for the Unification of Certain rules relating to International Carriage by Air performed by a person other than the Contracting Carrier, signed at Guadalajara on 18 September, 1961 (hereinafter called, the Guadalajara Convention);
- (d) the Protocol to amend the Convention for the Unification of Certain rules relating to International Carriage by Air signed at Warsaw on 12 October, 1929 as amended by the Protocol done at The Hague on 28 September, 1955, signed at Guatemala City on March 8, 1971 (hereinafter called, The Guatemala City Protocol);
- (e) Additional Protocol Nos.1 to 3 and Montreal Protocol No.4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended both The Hague Protocol and the Guatemala City Protocol, signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or

(2) within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraph (a) to (e) above.

56. States with more than one System of Law,- (1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may be at the time of signature, ratification,

acceptance, approval, or accession declare that this Convention shall extend to all its territorial units or only one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the Depository and shall state expressly the territorial units to which the Convention applies.

(3) In relation to a State Party which has made such a declaration:

- (a) reference in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and
- (b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State;

57. **Reservations**,--- No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depository that this Convention shall not apply to:

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has, been reserved by or on behalf of such authorities.

THE FIFTH SCHEDULE

[See section 5]

APPLICABLE RULES RELATING TO CARRIAGE BY AIR WHICH IS NOT INTERNATIONAL

RULES

CHAPTER I

GENERAL PROVISIONS

1. **Scope of application.**- (1) This Schedule applies to all carriage of passengers, baggage and cargo performed by aircraft for reward.

(2) This Schedule applies also to carriage as set out in Chapter V, subject to the terms contained therein.

2. **Carriage performed by State and carriage of postal items.**- These rules do not apply to the carriage of postal packets performed under terms of any international Postal Convention or of postal packets as defined under any law for the time being in force in Pakistan regarding transport of mail.

CHAPTER II

DOCUMENTATION AND DUTIES OF THE PARTIES RELATING TO THE CARRIAGE OF PASSENGERS, BAGGAGE AND CARGO

3. Passengers and baggage.- (1) In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing an indication of the places of departure and destination.

(2) Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.

(3) The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.

(4) The passenger shall be given written notice to the effect that where this Schedule is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.

(5) Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Schedule including those relating to limitation of liability.

4. Cargo.- (1) In respect of the carriage of cargo, an air waybill shall be delivered.

(2) Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access to the information contained in the record preserved by such other means.

5. Contents of air waybill or cargo receipt.- The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination; and
- (b) an indication of the weight of the consignment.

6. Document relating to the nature of the cargo.- The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities, to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

7. Description of air waybill.- (1) The air waybill shall be made out by the consignor in three original parts.

(2) The first part shall be marked "for the carrier"; it 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. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.

(3) The signature of the carrier and that of the consignor may be printed or stamped.

(4) If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

8. Documentation for multiple packages.- When there is more than one package:

(a) the carrier of cargo has the right to require the consignor to make out separate air waybills;

(b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Rule 4 are used.

9. Non-compliance with documentary requirements.- Non-compliance with the provisions of Rules 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

10. Responsibility for particulars of documentation.- (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Rule 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

(2) The consignor shall indemnify the carrier against all damage suffered by it, 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 or on its behalf.

(3) Subject to the provisions of paragraphs 1 and 2 of this Rule, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Rule 4.

11. Evidentiary value of documentation.- (1) The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein

(2) Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, 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 cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

12. Right of disposition of cargo.- (1) Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.

(3) If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its 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 waybill or the cargo receipt.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Rule 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

13. Delivery of the cargo.- (1) Except when the consignor has exercised its right under rule 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.

(2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

14. Enforcement of the rights of consignor and consignee.- The consignor and the consignee can respectively enforce all the rights given to them by Rules 12 and 13, each in its own name, whether it is acting in its own interest or in the interest

of another, provided that it carries out the obligations imposed by the contract of carriage.

15. Relations of consignor and consignee or mutual relations of third parties.- (1) Rules 12, 13 and 14 do not affect either the relations of the consignor and 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 Rules 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

(3) Nothing in these rules prevents the issue of a negotiable air waybill:

Provided that an electronic airway bill shall be deemed to be a negotiable instrument as defined in section 13 of the Negotiable Instruments Act, 1881 (XXVI of 1881) and may be dealt with in any manner as a paper air waybill and the Electronic Transactions Ordinance 2002 shall apply to such electronic air waybill notwithstanding section 31(1)(a) of the Electronic Transactions Ordinance 2002.

16. Formalities of customs, police or other public authorities.- (1) The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police and any other public authorities before the cargo 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, its servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

CHAPTER III

LIABILITY OF THE CARRIER AND EXTENT OF COMPENSATION FOR DAMAGE

17. Death and injury of passengers - damage to baggage.- (1) The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

(2) The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

(3) If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.

(4) Unless otherwise specified, in this Schedule the term “baggage” means both checked baggage and unchecked baggage.

18. Damage to cargo.- (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.

(2) However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
- (c) an act of war or an armed conflict ;
- (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

(3) The carriage by air within the meaning of paragraph 1 of this Rule comprises the period during which the cargo is in the charge of the carrier.

(4) The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, 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. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

19. Delay.- The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

20. Exoneration.- If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the

damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Rule applies to all the liability provisions in this Schedule, including paragraph 1 of Rule 21.

21. Compensation in case of death or injury of passengers.- (1) For damages arising under paragraph 1 of Rule 17 not exceeding Rs. 50,00,000/- for each passenger, the carrier shall not be able to exclude or limit its liability.

(2) The carrier shall not be liable for damages arising under paragraph 1 of Rule 17 to the extent that they exceed for each passenger Rs. 50,00,000/- if it is proved that:

- (a) such damage was not due to the gross negligence, intent to cause damage, wilful misconduct or omission of the carrier or its servants or agents; or
- (b) such damage was solely due to the gross negligence, intent to cause damage, wilful misconduct or omission of a third party.

22. Limits of liability in relation to delay, baggage and cargo.- (1) The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo to the extent of the amount of any such damage which may be proved to have been sustained by reason of such delay or of an amount representing double the sum paid for the carriage, whichever amount may be smaller:

Provided that the carrier may, in special circumstances, by special and separate contract in writing expressly by drawing specific and highly conspicuous attention to such a clause exclude, increase or decrease the limit of his liability as above provided.

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, or damage is limited to Rs. 1000 per kilogramme for each passenger unless the passenger has made, at the time when the checked baggage 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 it proves that the sum is greater than the passenger's actual interest in delivery at destination.

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, or damage is limited to a sum of Rs. 1000 per kilogramme, unless the 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 it proves that the sum is greater than the consignor's actual interest in delivery at destination.

(4) In the case of destruction, loss, or damage of part of the 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 destruction, loss, or damage of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Rule 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(5) The foregoing provisions of paragraphs 1 and 2 of this Rule shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done as a result of gross negligence, wilful misconduct or with intent to cause damage:

Provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

(6) The limits prescribed in Rule 21 and in this Rule shall not prevent the court from awarding in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. 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 sum which the carrier has offered in writing to the plaintiff within a period of twelve months from the date of the occurrence causing the damage, or before the commencement of the action, whichever is later.

23 - Review of limits.- Without prejudice to the provisions of Rule 24 of this Schedule the limits of liability prescribed in Rules 21 and 22 shall be reviewed by the Federal Government as provided in section 4(5) of this Bill at five-year intervals.

24. Stipulation on limits.- A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Schedule or to no limits of liability whatsoever.

25. Invalidity of contractual provisions.- Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule 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 provisions of this Schedule.

26. Freedom to contract.- Nothing contained in this Schedule shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Schedule, or from laying down conditions which do not conflict with the provisions of this Schedule.

27. Advance payments.- In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

28. **Basis of claims.**- In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Schedule or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Schedule without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

29. **Servants, agents - aggregation of claims.**- (1) If an action is brought against a servant or agent of the carrier arising out of damage to which the Schedule relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Schedule.

(2) The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

(3) Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Rule shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done as a result of gross negligence, wilful misconduct or with intent to cause damage.

30. **Timely notice of complaints.**- (1) Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Rule 3 and paragraph 2 of Rule 4.

(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 checked baggage and seven 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 fourteen days from the date on which the baggage or cargo have been placed at his or her disposal.

(3) Every complaint must be made in writing and given or dispatched within the times aforesaid.

(4) If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

31. **Death of person liable.**- In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Schedule against those legally representing his or her estate.

32. **Arbitration.**- (1) Subject to the provisions of this Rule, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Schedule shall be settled by arbitration. Such agreement shall be in writing.

(2) The arbitrator or arbitration tribunal shall apply the provisions of this Schedule.

(3) The provisions of paragraph 2 of this Rule shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

33. Limitation of actions.- The right to damages shall be extinguished if an action is not brought within a period of 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.

34. Successive carriage.- (1) In the case of carriage to be performed by various successive carriers, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Schedule and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.

(2) In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which 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.

(3) As regards baggage or cargo, 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 which 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.

35. Right of recourse against third parties.- Nothing in this Schedule shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

CHAPTER IV

COMBINED CARRIAGE

36. Combined carriage.- (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule shall, subject to paragraph 4 of Rule 18, apply only to the carriage by air.

(2) Nothing in this Schedule 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 Schedule are observed as regards the carriage by air.

CHAPTER V

CARRIAGE BY AIR PERFORMED BY A PERSON OTHER THAN THE CONTRACTING CARRIER

37. **Contracting carrier - actual carrier.**- The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Schedule with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Schedule. Such authority shall be presumed in the absence of proof to the contrary.

38. **Respective liability of contracting and actual carriers.**- If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Rule 37, is governed by this Schedule, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Schedule, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

39. **Mutual liability.**- (1) The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

(2) The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Rules 21, 22, and 23. Any special agreement under which the contracting carrier assumes obligations not imposed by this Schedule or any waiver of rights or defences conferred by this Schedule or any special declaration of interest in delivery at destination contemplated in Rule 22 shall not affect the actual carrier unless agreed to by it.

40. **Addressee of complaints and instructions.**- Any complaint to be made or instruction to be given under this Schedule to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Rule 12 shall only be effective if addressed to the contracting carrier.

41. **Servants and agents.**- In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Schedule to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Schedule.

42. **Aggregation of damages.**- In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

43. **Addressee of claims.**- In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings.

44. **Invalidity of contractual provisions.**- Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter 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 provisions of this Chapter.

45. **Mutual relations of contracting and actual carriers.**- Except as provided in Rule 42, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

CHAPTER VI

OTHER PROVISIONS

46. **Mandatory application.**- Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

47. **Carriage performed in extraordinary circumstances.**- The provisions of Rules 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

48. **Definition of days.**- The expression "days" when used in this Schedule means calendar days, not working days.

49. **Insurance.**- (1) The carrier shall maintain adequate insurance covering all possible liability under this Schedule. A carrier may be required by the Federal Government to furnish evidence that it maintains adequate insurance covering its liability under this Schedule.

(2) The carrier shall comply with rules that may be notified through publication in the Official Gazette by the Federal Government regarding the obligation of the carrier to maintain adequate insurance coverage.

THE SIXTH SCHEDULE

[See sections 3(5) and 5(4)]

**PROVISIONS AS TO LIABILITY OF CARRIERS IN THE EVENT
OF THE DEATH OF A PASSENGER**

1. The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

In this rule the expression "member of a family" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child, grandchild:

Provided that, in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in Pakistan in respect of the death of any one passenger, and every such action by whosoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in Pakistan, or, not being domiciled there, express a desire to take the benefit of the action.

3. Subject to the provisions of the next succeeding rule the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

4. The Court before which any such action is brought may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of, as the case may be, the provisions of the First, Second, Third, Fourth and Fifth Schedules to this Bill limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside Pakistan in respect of the death of the passenger in question.

5. (1) Any person competent to bring an action under rule 2 of this Schedule may, instead of bringing such action, apply to the carrier to make payment of the amount which could have been recovered in any such action to the members of the passenger's family mentioned in the certificate granted under rule 6 to be divided between them in the proportions set out in the certificate.

(2) Where an application under sub-rule (1) is not accompanied by a certificate under rule 6, the carrier shall advise the applicant to obtain such certificate.

6. (1) Any person competent to bring an action under rule 2 may apply to the District Judge or the High Court, as the case may be, having jurisdiction to issue a succession certificate following the death of the passenger for the grant of a certificate to the effect that only the persons named therein are the members of the passenger's

family for whose benefit the liability is enforceable under rule 1.

(2) A certificate under sub-rule (1) shall set out the proportion in which each member mentioned therein shall receive the amount recoverable; and the proportion shall be such as may be agreed upon amongst the members or, in the absence of such agreement, as may be determined by District Judge or, as the case may be, the High Court.

7. For the purpose of the grant of a certificate under rule 6, the District Judge or the High Court, as the case may be, shall publish, or cause to be published, in such newspapers as he or it may think fit, a copy of the application for such certificate and shall follow, so far as may be, the same procedure as in the case of an application for a succession certificate under the Succession Act, 1925 (*XXXIX of 1925*), or any applicable law for the time being in force.

8. Payment made by the carrier in accordance with the certificate shall give him full and final discharge from his liability.