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OBJECTS AND REASONS

This Bill will make provision for

- (a) the regulation of the carriage of goods by sea when combined with other modes of transport; and
- (b) the support and promotion of maritime-connected multimodal transport.

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BARBADOS

A Bill entitled

An Act to regulate the carriage of goods by sea when combined with other modes of transport and to support and promote maritime-connected multimodal transport;

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Merchant Shipping (Multimodal Transport) Act, 2024*.

Interpretation

2. In this Act,

“Barbados Maritime Single Window” has the meaning assigned to it under the *Facilitation of International Maritime Traffic Act, 2024* (Act 2024-2);

“Barbados Port Inc.” means the company incorporated under the *Companies Act* and referred to in the *Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act, Cap. 285B*;

“carrier” means a person who enters into a contract of carriage with a shipper;

“Chief Executive Officer” means the Chief Executive Officer of the Barbados Port Inc.;

“competent court” means a court in the jurisdiction of the parties to a multi-modal transport contract that may exercise jurisdiction over the dispute according to the rules on the internal allocation of jurisdiction among the courts of those states;

“consignee” means a person entitled to delivery of goods under a contract of carriage, transport document or electronic transport record;

“container” includes a transportable tank or flat, swap-body, or a similar unit load used to consolidate goods, and any equipment ancillary to such a unit load;

“contract of carriage” means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another by sea, or by sea and any additional mode of transport;

“contract particulars” means information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record;

“contracting party” means a party to a multimodal transport contract of carriage;

“controlling party” means a person identified in section 61 who is entitled to exercise the right of control under section 60;

“delivery” means

- (a) in the case of a negotiable transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any other person entitled to receive it;
- (b) in the case of a non-negotiable transport document, delivering of the consignment to, or placing the consignment at the disposal of, the consignee or any person authorised by the consignee to accept delivery of the consignment on his behalf;

“documentary shipper” means a person, other than the shipper, who accepts to be named as a shipper in a transport document or electronic transport record;

“domicile” means

- (a) the place where a company or other legal person or association of natural or legal persons has its
 - (i) statutory seat, place of incorporation or central registered office;
 - (ii) central administration; or
 - (iii) principal place of business; or
- (b) the habitual residence of a natural person;

“electronic communication” means communication generated, sent, received or stored by electronic, optical, digital or similar means that is accessible or retrievable for subsequent reference;

“electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issuance by the carrier, that

(a) evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage;

(b) evidences or contains a contract of carriage;

“endorsee” means the person in whose favour an endorsement is made, and in the case of successive endorsements, the person in whose favour the last endorsement is made;

“endorsement” means the signing by the consignee or the endorsee after adding a direction on a negotiable transport document to pass the property in the goods mentioned in such document to a specified person;

“freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage;

“goods” means the wares, merchandise and other articles that a carrier undertakes to carry under a contract of carriage, and includes the packing and any equipment or container not supplied by or on behalf of the carrier;

“Hague Rules” means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924;

“Hague-Visby Rules” means the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924, as amended by the Brussels Protocols of 1968 and 1979, respectively;

“Hamburg Rules” means the United Nations Convention on the Carriage of Goods by Sea, 1978;

“holder” means

- (a) a person who is in possession of a negotiable transport document and
 - (i) if the document is an order document, is identified in it as the shipper or the consignee or is the person to whom the document is duly endorsed; or
 - (ii) if the document is a blank endorsed order document or bearer document, is the bearer of it; or
- (b) a person to whom a negotiable electronic transport record has been issued or transferred in accordance with the procedures referred to in section 19;

“issuance” in relation to a negotiable electronic transport record, means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity;

“liner transportation” means a transportation service that is offered to the public through publication, and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates;

“maritime multimodal logistic park” means a freight-handling facility or group of freight-handling facilities with maritime and other modes of transport access, which operate to improve the freight logistics sector by

- (a) lowering overall freight costs and time;
- (b) reducing warehouse costs;
- (c) reducing vehicular pollution and congestion; and
- (d) enhancing tracking and traceability of consignments through infrastructural, procedural, and information technology interventions;

“maritime performing party” means a performing party that performs, or undertakes to perform, any of the carrier’s obligations during the period

between the arrival of goods at the port of loading of a ship and their departure from the port of discharge of a ship, and includes an inland carrier that performs, or undertakes to perform, its services exclusively within a port area;

“Minister” means Minister responsible for Shipping;

“mode of transport” means carriage of goods by road, rail, air, inland waterways or sea;

“multimodal transport” means the transport of goods under a single contract, but performed with more than one mode of transport, one of which includes transport by sea;

“multimodal transport operator” means any person who

- (a) concludes a multimodal transport contract on his own behalf or through another person acting on his behalf;
- (b) acts as principal, and not as an agent either of the sender or consignee or of the carrier participating in the multimodal transportation, and who assumes responsibility for the performance of the said contract; and
- (c) is otherwise generally engaged in multimodal transport activities; or
- (d) is a person falling under paragraph (a), (b) or (c), and is also registered in the Register of Multimodal Transport Operators;

“negotiable electronic transport record” means an electronic transport record

- (a) that indicates, by wording such as “to order”, “negotiable” or other wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of a shipper or consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and
- (b) the use of which meets the requirements of section 19;

“negotiable transport document” means a transport document that indicates, by wording such as “to order”, “negotiable” or other wording recognized as

having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”;

“non-liner transportation” means transportation that is not liner transportation;

“non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record;

“non-negotiable transport document” means a transport document that is not a negotiable transport document;

“performing party” means a person, other than a carrier, who performs or undertakes to perform a carrier’s obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage, keeping, care, unloading or delivery of goods, if the person acts, directly or indirectly, at the carrier’s request or under the carrier’s supervision or control, but does not include a person who is retained, directly or indirectly, by a shipper or documentary shipper, by the controlling party or by a consignee instead of by the carrier;

“right of control” in relation to goods, means the right under a contract of carriage of the goods to give the carrier instructions in respect of the goods in accordance with section 60;

“sender” means the party sending a shipment to be delivered whether by land, sea or air;

“ship” means a vessel used to carry goods by sea;

“shipper” means a person who enters into a contract of carriage with a carrier;

“transfer” in relation to a negotiable electronic transport record, means the transfer of exclusive control over the record;

“transport document” means a document issued by a carrier under a contract of carriage that

- (a) evidences the carrier’s or a performing party’s receipt of goods under the contract of carriage; or
- (b) evidences or contains a contract of carriage;

“vehicle” means a road or railroad cargo vehicle; and

“volume contract” means a contract of carriage that provides for the carriage of a specified quantity of goods, a minimum or maximum quantity, or a quantity within a specified range, in a series of shipments during an agreed period of time.

Purpose

3. The purpose of this Act is to provide the regulatory environment for the carriage of goods wholly or partly by sea, and to support and promote maritime-connected multimodal transport.

Conditions where delay in delivery applies

4. For the purposes of this Act, a delay in delivery is deemed to occur when goods have not been delivered within the agreed time-limit or when, failing an agreed time limit, the actual duration of the carriage having regard to the circumstances of the case and, in the case of partial loads, the time required for making up a complete load in the normal way, exceeds the time it would be reasonable to allow a diligent carrier.

Time limit as evidence of loss of goods

5. For the purposes of this Act, the fact goods have not been delivered within 30 days following the expiry of an agreed time limit or, if there is no agreed time limit, within 60 days from the time when the carrier took over the goods, is conclusive evidence of the loss of the goods, and the person entitled to make a claim may then treat them as lost.

Act binds the State

6. This Act shall bind the State.

Application

7.(1) Except where expressly provided otherwise, this Act applies to contracts of carriage in which the place of receipt and the place of delivery are in different states, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different states, if, according to the contract of carriage, any one of the following places is located in a state of the contracting party:

- (a) the place of receipt;
- (b) the port of loading;
- (c) the place of delivery; or
- (d) the port of discharge.

(2) This Act applies without regard to the nationality of the vessel, the carrier, the performing parties, the shipper, the consignee or any other interested parties.

Application of CMI multimodal transport rules

8. Subject to any regulations or orders made under this Act, the multimodal transport rules adopted by the Comité Maritime International shall apply and shall be complied with as far as reasonably practical.

Application of UNCTAD and UNCITRAL multimodal transport rules

9. Subject to any regulations or orders made under this Act

- (a) the multimodal transport rules adopted by the United Nations Conference on Trade and Development shall apply and shall be complied with as far as reasonably practical; and

- (b) any multimodal transport rules adopted by the United Nations Commission on International Trade Law shall apply and shall be complied with as far as reasonably practicable.

Application of the Carriage of Goods by Sea Act

10.(1) The *Hague Rules*, as implemented by the *Carriage of Goods by Sea Act*, Cap. 307 are applicable only to contracts of carriage covered by a bill of lading or another similar document of title insofar as the document relates to the carriage of goods by sea.

(2) The *Carriage of Goods by Sea Act*, Cap. 307 shall not apply to multimodal transport contractual agreements, as the *Hague Rules* as incorporated into that Act do not support multimodal carriage.

Specific exclusions

11.(1) This Act does not apply to the following contracts in liner transportation:

- (a) charter parties; and
- (b) other contracts for the use of a ship or of any space on it.

(2) This Act does not apply to contracts of carriage in non-liner transportation, except when

- (a) there is no charter-party or other contract between the parties for the use of a ship or of any space on it; and
- (b) a transport document or an electronic transport record is issued.

Application to certain parties

12.(1) Notwithstanding section 11, this Act applies to a carrier, consignee, controlling party or holder that is not an original party to a charter-party or other contract of carriage that is excluded from the application of this Act.

- (2) This Act does not apply to the original parties to a contract of carriage that is excluded under section 11.

Administration and the Multimodal Transport Plan

- 13.(1)** This Act shall be administered by Barbados Port Inc.
- (2) The Barbados Port Inc. shall develop and implement a Multimodal Transport Plan to ensure
- (a) smooth and efficient carriage of goods by sea when combined with other modes of transport;
 - (b) proper regulation and management of the multimodal transportation of goods, from any place in Barbados to a place outside Barbados, on the basis of a multimodal transport contract;
 - (c) the facilitation of importers and exporters and enhanced security in transport of their goods by different modes of transport;
 - (d) the support and promotion of maritime-connected multimodal transport; and
 - (e) effective management of multimodal transport related matters.
- (3) The multimodal transport plan shall be developed based on
- (a) the best available multimodal transport sector data;
 - (b) international best practices in the realm of maritime- connected maritime transport; and
 - (c) inputs from stakeholders.
- (4) The multimodal transport plan
- (a) shall be developed and implemented, subject to the approval of the Minister within 2 years after the entry into force of this Act;
 - (b) shall not take effect unless notice of the approval of the plan is published in the *Official Gazette*;

- (c) shall be reviewed no later than 5 years after notice of its approval is published in the *Official Gazette*;
- (d) may be withdrawn where the Minister, after consultation with the Chief Executive Officer, considers it necessary to do so and the plan shall cease to have effect when the notice of its withdrawal is published in the *Official Gazette*;
- (e) shall, where withdrawn under paragraph (d), be replaced with a new plan subject to the approval of the Minister and to publication in the *Official Gazette*.

PART II

TRADE AND MULTIMODAL TRANSPORT

Trade Liberalization and Multimodal Transport

14.(1) Article 109 of the CARIFORUM-EU EPA shall be applied in respect of international maritime transport activities, including multimodal transport.

(2) The Minister may by notice published in the *Official Gazette* issue a maritime trade facilitation directive in relation to affairs concerning international maritime transport services, to ensure continued and effective regulation of such services, as well as to ensure liberalization of such services, in accordance with Article 109 CARIFORUM-EU EPA.

(3) “CARIFORUM-EU EPA” means the economic partnership agreement between CARIFORUM and the European Union, signed in Barbados on October 15, 2008 and ratified on July 27, 2015.

Maritime Multimodal Logistics Park Scheme

15.(1) There is established a Maritime Multimodal Logistics Parks Scheme to improve shipping and logistics in Barbados in the domains of

- (a) economy;
- (b) trade facilitation;
- (c) efficiency, technology and innovation;
- (d) environment; and
- (e) people development and opportunity creation.

(2) The Maritime Multimodal Logistics Parks Scheme shall be managed by Barbados Port Inc.

(3) A Maritime Multimodal Logistics Park may be established as

- (a) a freight-handling facility, with
 - (i) various modes of transport access;
 - (ii) mechanized warehouses;
 - (iii) specialized cargo storage solutions;
 - (iv) facilities mechanized for material handling;
 - (v) intermodal transfer container terminals;
 - (vi) bulk and break-bulk cargo terminals;
 - (vii) other amenities to support shipping and logistics; or
- (b) a series of freight-handling facilities working as a group to collectively provide the services specified at subsection (3)(a) to various stakeholders in the multimodal transport value chain.

Multimodal Transport Operators

16.(1) Barbados-based companies providing transportation services for goods using multiple modes of transportation, as part of a multimodal transport contract, shall register in accordance with section 17 in order to participate in, and benefit from, the Maritime Multimodal Logistics Parks Scheme.

(2) Registration fees paid by multimodal transport operators shall be allocated towards maintaining the Maritime Multimodal Logistics Parks Scheme.

(3) Nothing in this section shall be construed to mean that a person not registered in the Maritime Multimodal Logistics Parks Scheme is prohibited from engaging in multimodal transport activities.

Registration of Multimodal Transport Operators

17.(1) A person may apply for registration to the Chief Executive Officer to join the Maritime Multimodal Logistics Parks Scheme.

(2) An application under subsection (1) shall be made in such form as may be specified by the Chief Executive Officer and shall be accompanied by

(a) a fee specified by Barbados Port Inc.; and

(b) any other information as may be requested by the Chief Executive Officer.

(3) On receipt of application for registration in the Register of Multimodal Transport Operators, the Chief Executive Officer shall ensure that the applicant satisfies the following conditions:

(a) that the applicant is a company engaged either in the business of shipping, or freight forwarding in Barbados or a country other than Barbados;

(b) that the applicant is a company which does not fall into the category of shipping company or freight-forwarding company, but is desirous of engaging in the business of multimodal transport;

- (c) the applicant has offices, agents or representatives in not less than two other countries besides Barbados.
- (4) Where the conditions set out in subsection (3) are satisfied, the Chief Executive Officer shall register the applicant in the Register of Multimodal Transport Operators.
- (5) An applicant who is not a resident of Barbados shall not be granted registration unless
 - (a) he has a place of business in Barbados; or
 - (b) he has an agent based in Barbados acting on his behalf.
- (6) Multimodal Transport Operator Certificate of Registration shall be issued to an applicant upon registration by the Chief Executive Officer.
- (7) The Multimodal Transport Operator Certificate of Registration is valid throughout its lifetime, subject to payment of annual Maritime Multimodal Logistics Parks Scheme participant fees, as specified by Barbados Port Inc.
- (8) In setting fees pursuant to subsection (7), Barbados Port Inc. shall
 - (a) take into account the purpose of the fees; and
 - (b) consult with relevant stakeholders.
- (9) Barbados Port Inc. shall not vary fees referred to in subsection (7) without consultation with participants in the Maritime Multimodal Logistics Parks Scheme.
- (10) The Chief Executive Officer shall renew the Multimodal Transport Operator Certificate of Registration if the applicant continues to fulfil the registration conditions.
- (11) The Chief Executive Officer may where
 - (a) any statement in, or in relation to, any application for registration under this section or its renewal is incorrect or false in any material particular;

- (b) any of the provisions of this Act or statutory instruments made thereunder has been contravened by the multimodal transport operator; or
- (c) the multimodal transport operator has not entered into any multimodal transport contract during the preceeding 2 years after his registration, cancel the certificate of registration and shall inform the multimodal transport operator in writing of his decision.

(12) Where the Chief Executive Officer has cancelled the registration of a multimodal transport operator under subsection (11), he shall remove the particulars of that operator from the Register of Multimodal Transport Operators.

(13) A person who is aggrieved by a decision made by the Chief Executive Officer under subsection (11) may appeal to a judge in chamber within 14 days of receipt of the decision.

(14) The Minister may by regulations or a maritime trade facilitation directive provide for further matters in respect of maritime multimodal logistics parks.

PART III

ELECTRONIC TRANSPORT RECORDS

Use and effect of electronic transport records

18. Subject to the requirements set out in this Act

- (a) anything that is required by this Act to be in a transport document may be recorded in an electronic transport record, if the issuance and subsequent use of an electronic transport record by persons not acting in an official governmental or similar capacity is with the consent of the carrier and the shipper; and

- (b) the issuance, exclusive control or transfer of an electronic transport record has the same effect as the issuance, possession or transfer of a transport document.

Procedures for use of negotiable electronic transport records

19. The use of a negotiable electronic transport record shall be subject to procedures, set out in the contract, that provide for

- (a) the method for the issuance and the transfer of the record to an intended holder;
- (b) an assurance that the negotiable electronic transport record retains its integrity;
- (c) the manner in which the holder is able to demonstrate that he is the holder; and
- (d) the manner of providing confirmation that delivery to the holder has been effected.

Replacement of negotiable transport document or electronic transport record

20.(1) If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record

- (a) the holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
- (b) the carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
- (c) the negotiable transport document then ceases to have any effect or validity.

(2) If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document

(a) the carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and

(b) the electronic transport record then ceases to have any effect or validity.

PART IV

OBLIGATIONS OF THE CARRIER

Carriage and delivery of the goods

21. A carrier shall, subject to this Act and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

Period of responsibility of the carrier

22.(1) Subject to subsections (2) and (3), the period of responsibility of the carrier for goods under this Act begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

(2) If the law of the place of receipt of goods requires the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party.

(3) If the law of the place of delivery of goods requires the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

(4) For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods, but a provision in a contract of carriage is void to the extent that it provides that

- (a) the time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
- (b) the time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

Specific obligations

23.(1) A carrier of goods shall, during the period of its responsibility specified in section 22 and subject to section 36, properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

(2) Notwithstanding subsection (1), and without prejudice to the other provisions in this Part and Parts V to VII, a carrier and a shipper may agree, by contract, that the loading, handling, stowing or unloading of goods is to be performed by the shipper, a documentary shipper or a consignee.

Specific obligations applicable to the voyage by sea

24. A carrier is bound before, at the beginning of, and during a voyage by sea to exercise due diligence to

- (a) make and keep the carrier's ship seaworthy;
- (b) properly crew, equip and supply the ship and keep the ship properly crewed, equipped and supplied throughout the voyage; and
- (c) make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

Goods that may become a danger

25. Notwithstanding sections 16 and 18, a carrier or a performing party may decline to receive or load goods, and may take such other measures as are reasonable, including unloading, destroying or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, a danger to persons, property or the environment.

Sacrifice of the goods during the voyage by sea

26. Notwithstanding sections 16, 18 and 19, a carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

PART V

LIABILITY OF THE CARRIER FOR LOSS, DAMAGE OR DELAY

Basis of liability

27.(1) A carrier of goods is liable for loss of or damage to the goods, or for a delay in delivery, if the claimant proves that the loss, damage or delay, or the event or circumstance that caused or contributed to it, took place during the period of the carrier's responsibility as defined in Part IV.

- (2) A carrier is relieved of all or part of its liability under subsection (1) if
- (a) it proves that the cause, or one of the causes, of the loss, damage or delay is not attributable to its fault or to the fault of any person referred to in section 28; or
 - (b) it proves that one or more of the following events or circumstances caused or contributed to the loss, damage or delay:
 - (i) an act of God;

- (ii) perils, dangers or accidents of the sea or other navigable waters;
- (iii) war, hostilities, armed conflict, piracy, terrorism, riots or civil commotions;
- (iv) quarantine, public health or governmental restrictions;
- (v) interference by, or impediments created by, governments, public authorities, rulers or other persons, including public health emergencies, detention, arrest or seizure not attributable to the carrier or any person referred to in section 28;
- (vi) strikes, lockouts, stoppages or restraints of labour;
- (vii) fire on the ship;
- (viii) latent defects not discoverable by due diligence;
- (ix) an act or omission of the shipper, documentary shipper or controlling party, or any other person for whose acts the shipper or documentary shipper is liable under section 43 or 44;
- (x) loading, handling, stowing or unloading of the goods performed pursuant to an agreement in accordance with section 28, unless the carrier or a performing party performs that activity on behalf of the shipper, documentary shipper or consignee;
- (xi) wastage in bulk or weight, or any other loss or damage arising from an inherent defect, quality or vice of the goods;
- (xii) an insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
- (xiii) saving or attempting to save life at sea;
- (xiv) reasonable measures to save or attempt to save property at sea;
- (xv) reasonable measures to avoid or attempt to avoid damage to the environment; or

- (xvi) acts of the carrier under the powers conferred by sections 25 and 26.
- (3) Notwithstanding subsection (2), a carrier is liable for all or part of the loss, damage, or delay
- (a) if the claimant proves that the fault of the carrier or of a person referred to in section 28 caused or contributed to the event or circumstance on which the carrier relies; or
 - (b) if the claimant proves that an event or circumstance not listed in subsection (2)(b) contributed to the loss, damage or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in section 28.
- (4) The carrier is also liable, notwithstanding subsection (2), for all or part of the loss, damage, or delay if
- (a) the claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by
 - (i) the unseaworthiness of the ship;
 - (ii) the improper crewing, equipping and supplying of the ship; or
 - (iii) the fact that the holds or other parts of the ship in which the goods were carried, or any containers supplied by the carrier in or upon which the goods were carried, were not fit and safe for the reception, carriage and preservation of the goods; and
 - (b) the carrier is unable to prove either that
 - (i) none of the events or circumstances referred to in paragraph (a) caused the loss, damage, or delay; or
 - (ii) it complied with its obligation to exercise due diligence pursuant to section 24.

(5) When a carrier is relieved of part of its liability under this Part, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable pursuant to this Part.

Liability of the carrier for other persons

28. A carrier is liable for a breach of its obligations under this Act caused by the acts or omissions of

- (a) a performing party;
- (b) the master or crew of the ship;
- (c) employees of the carrier or of a performing party; or
- (d) any other person who performed or undertook to perform, any of the carrier's obligations under the contract of carriage, to the extent that the person acted, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

Liability of maritime performing parties

29.(1) A maritime performing party is subject to the obligations and liabilities imposed on a carrier under this Act and is entitled to the carrier's defences and limits of liability as provided for in this Act, if

- (a) the maritime performing party received the goods for carriage in the state of the contracting party, delivered them in the state of the contracting party, or performed its activities with respect to the goods in a port in the state of a contracting party; and
- (b) the occurrence that caused the loss, damage or delay took place
 - (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship;
 - (ii) while the maritime performing party had custody of the goods;or

(iii) at any other time the maritime performing party was participating in the performance of any of the activities contemplated by the contract of carriage.

(2) If a carrier agrees to assume obligations other than those imposed on the carrier under this Act, or agrees that the limits of its liability are higher than the limits specified under this Act, a maritime performing party is not bound by that agreement unless it expressly agrees to accept those obligations or higher limits.

(3) A maritime performing party is liable for the breach of its obligations under this Act caused by the acts or omissions of any person to whom it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in subsection (1).

(4) Nothing in this Act imposes liability on the master or crew of a ship or on an employee of a carrier or of a maritime performing party.

Joint and several liability

30.(1) If a carrier and one or more maritime performing parties are liable for the loss of, damage to or delay in delivery of goods, their liability is joint and several up to the limits provided for under this Act.

(2) Without prejudice to section 71, the aggregate liability of all such persons shall not exceed the overall limits of liability under this Act.

Delay

31. Delay in delivery occurs when goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

Calculation of compensation

32.(1) Subject to section 69 the compensation payable by a carrier for loss of or damage to goods is calculated by reference to the value of the goods at the place and time of delivery established in accordance with section 53.

- (2) The value of goods is fixed
- (a) according to the commodity exchange price;
 - (b) if there is no commodity exchange price, according to their market price; or,
 - (c) if there is no commodity exchange price or market price, by reference to the normal value of goods of the same kind and quality at the place of delivery.
- (3) In case of loss of or damage to goods, the carrier is not liable for payment of any compensation beyond what is provided for in section 32(1) and (2), except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of Part XVI.

Notice in case of loss, damage or delay

33.(1) A carrier is presumed, in absence of proof to the contrary, to have delivered goods according to their description in the contract particulars, unless notice of loss of or damage to the goods, indicating the general nature of the loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery or, if the loss or damage is not apparent, within 7 working days after the delivery of the goods.

(2) A failure to provide a notice referred to in subsection (1) to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this Act or affect the allocation of the burden of proof set out in section 27.

(3) A notice referred to in subsection (1) is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to whom they have been delivered and the carrier or maritime performing party against whom liability is being asserted.

(4) No compensation in respect of delay is payable unless notice of the loss due to the delay was given to the carrier within 21 days of delivery of the goods.

(5) When a notice referred to in this section is given to a performing party who delivered the goods, it has the same effect as if that notice was given to the carrier, and a notice given to the carrier has the same effect as a notice given to a maritime performing party.

(6) In the case of any actual or apprehended loss or damage to goods, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

PART VI

PARTICULAR STAGES OF CARRIAGE

Deviation

34. When under the applicable law a deviation constitutes a breach of the carrier's obligations, the deviation shall not deprive the carrier or a maritime performing party of any defence or limitation of this Act, except to the extent provided in section 71.

Deck cargo on ships

35.(1) Goods may be carried on the deck of a ship only if

- (a) the carriage is required by law;
- (b) they are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or
- (c) the carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

(2) The provisions of this Act relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck in accordance

with subsection (1), but the carrier is not liable for loss of or damage to the goods, or for any delay in their delivery, caused by the special risks involved in their carriage on deck in the circumstances referred to in paragraphs (1)(a) or (c).

(3) If the goods have been carried on deck in a manner other than that permitted under subsection (1), the carrier is liable for any loss of or damage to the goods or any delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in section 27.

(4) A carrier is not entitled to invoke paragraph (1)(c) against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

(5) If a carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage or delay resulted from their carriage on deck.

Carriage preceding or subsequent to sea carriage

36. When loss of or damage to goods, or a circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but before their loading onto the ship or after their discharge from the ship, the provisions of this Act do not prevail over the provisions of another international instrument that, at the time of the loss, damage or event or circumstance causing delay, if the provisions of the international instrument

- (a) would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
- (b) specifically provide for the carrier's liability, limitation of liability or time for suit; and

- (c) cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

PART VII

OBLIGATIONS OF THE SHIPPER TO THE CARRIER

Delivery for carriage

- 37.(1)** A shipper shall deliver goods in such a condition that
- (a) they will withstand the intended carriage, including their loading, handling, stowing, lashing, securing and unloading; and
 - (b) they will not cause harm to persons or property.
- (2) Unless otherwise agreed in the contract of carriage, a shipper shall deliver goods ready for carriage.
- (3) A shipper shall properly and carefully perform any obligation assumed under an agreement made under section 23(2).
- (4) When a container is packed or a vehicle is loaded by a shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle in such a way that they will not cause harm to persons or property.

Cooperation in providing information and instructions

- 38.** A carrier and a shipper shall respond to requests from each other to provide information and instructions required for the proper handling and carriage of goods, if the information is in the requested party's possession or the instructions are within the requested party's reasonable ability to provide and they are not otherwise reasonably available to the requesting party.

Shipper's obligation to provide information, instructions and documents

39.(1) A shipper shall provide to the carrier in a timely manner any information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are necessary

- (a) for the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and
- (b) for the carrier to comply with laws, regulations or other requirements of public authorities in connection with the intended carriage,

if the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

(2) Nothing in this Part affects any obligation to provide information, instructions or documents related to goods pursuant to a law, regulations or other requirements of public authorities in connection with the intended carriage.

Basis of shipper's liability to carrier

40.(1) A shipper is liable for loss or damage sustained by the carrier, if the carrier proves that the loss or damage was caused by a breach of the shipper's obligations under this Act.

(2) Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to section 40(2) and section 42, a shipper is relieved of all or part of its liability if the cause, or one of the causes, of the loss or damage is not attributable to its fault or to the fault of any person referred to in section 44.

(3) When a shipper is relieved of part of its liability under this section the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of a person referred to in section 44.

Information for compilation of contract particulars

41.(1) A shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including

- (a) the particulars referred to in section 46(1);
- (b) the name of the party to be identified as the shipper in the contract;
- (c) the name of the consignee, if any; and
- (d) the name of any person to whose order the transport document or electronic transport record is to be issued.

(2) A shipper is deemed to have guaranteed the accuracy, at the time of receipt by the carrier, of the information that is provided under subsection (1), and shall indemnify the carrier against loss or damage resulting from the inaccuracy of that information.

Special rules on dangerous goods

42.(1) When goods by their nature are, or reasonably appear likely to become, a danger to persons, property or the environment, the shipper shall inform the carrier of the dangerous nature of the goods in a timely manner before they are delivered to the carrier or a performing party.

(2) If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of the dangerous nature of the goods, the shipper is liable to the carrier for loss or damage resulting from the failure.

(3) A shipper shall mark or label dangerous goods in accordance with any laws, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods.

(4) If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from the failure.

Assumption of shipper's rights and obligations by a documentary shipper

43.(1) A documentary shipper is subject to the obligations and liabilities imposed on the shipper under this Part and under section 65, and is entitled to the shipper's rights and defences provided by this Part and by Part XIII.

(2) Subsection (1) does not affect the obligations, liabilities, rights or defences of the shipper.

Liability of the shipper for other persons

44. A shipper is liable for the breach of its obligations under this Act caused by the acts or omissions of any person, including employees, agents and sub-contractors, to whom it has entrusted the performance of any of its obligations, but the shipper is not liable for the acts or omissions of a carrier, or of a performing party acting on behalf of a carrier, to which the shipper has entrusted the performance of its obligations.

PART VIII**TRANSPORT DOCUMENTS AND ELECTRONIC TRANSPORT RECORDS****Issuance of a transport document or electronic transport record**

45. Unless a shipper and a carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option

- (a) a non-negotiable transport document or, subject to section 18(a), a non-negotiable electronic transport record; or

- (b) an appropriate negotiable transport document or, subject to section 18(a), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

Contract particulars

46.(1) The contract particulars in the transport document or electronic transport record referred to in section 45 shall include the following information, as furnished by the shipper:

- (a) a description of the goods appropriate for the transport;
- (b) the leading marks necessary for identification of the goods;
- (c) the number of packages or pieces, or the quantity of goods; and
- (d) the weight of the goods, if furnished by the shipper.

(2) The contract particulars in the transport document or electronic transport record referred to in section 45 shall also include

- (a) a statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage;
- (b) the name and address of the carrier;
- (c) the date on which the carrier or a performing party received the goods, on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued;
- (d) if the transport document is negotiable and more than one original is issued, the number of originals of the negotiable transport document;
- (e) the name and address of the consignee, if named by the shipper;
- (f) the name of a ship, if specified in the contract of carriage;
- (g) the place of receipt and, if known to the carrier, the place of delivery;

- (h) the port of loading and the port of discharge, if specified in the contract of carriage;
 - (i) the intended journey route, modes of transport and places of transshipment, if known;
 - (j) any other particulars which the parties have agreed to.
- (3) For the purposes of subsection (2)(a),
- “apparent order and condition of the goods” means the order and condition of the goods based on
- (a) a reasonable external inspection of the goods, as packaged at the time the shipper delivers them to the carrier or a performing party; and
 - (b) any additional inspection that the carrier or a performing party performs before issuing the transport document or electronic transport record.

Identity of the carrier

47.(1) If a carrier is identified by name in a contract, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.

(2) If no person is identified in a contract as the carrier, as required under section 46(2)(b), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies the bareboat charterer and indicates its address, in which case the bareboat charterer is presumed to be the carrier.

(3) A registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address, and a bareboat charterer may rebut a presumption of being the carrier in the same manner.

(4) Nothing in this section prevents a claimant from proving that a person other than a person identified in the contract particulars or under subsection (2) or (3) is the carrier.

Signature

48.(1) A transport document shall be signed by the carrier or a person acting on its behalf.

(2) An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf.

(3) An electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier's authorization of the electronic transport record.

Deficiencies in the contract particulars

49.(1) The absence or inaccuracy of a contract particular referred to in section 46 does not affect the legal character or validity of the transport document or of the electronic transport record.

(2) If contract particulars include a date but fail to indicate its significance, the date is deemed to be

(a) if the contract particulars indicate that the goods have been loaded on board a ship, the date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship;
or

(b) if the contract particulars do not indicate that the goods have been loaded on board a ship, the date on which the carrier or a performing party received the goods.

(3) If contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or performing party received them.

Qualifying the information relating to the goods in the contract particulars

50.(1) A carrier shall qualify the information referred to in section 46(1) to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if the carrier has knowledge, or reasonable grounds to believe, that any material statement in the transport document or electronic transport record is false or misleading.

(2) Without prejudice to subsection (1), a carrier may qualify the information referred to in section 46(1), in the circumstances and in the manner set out in sections 46(3) and (4), to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

(3) When goods are not delivered for carriage to a carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and a carrier or performing party inspects them, the carrier may qualify the information referred to in section 46(1), if

- (a) the carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or
- (b) the carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers to be accurate information.

(4) When goods are delivered for carriage to a carrier or a performing party in a closed container or vehicle

- (a) the carrier may qualify the information referred to in section 46(1) (a), (b) or (c), if
 - (i) the goods inside the container or vehicle have not been inspected by the carrier or a performing party; and

- (ii) neither the carrier nor a performing party otherwise has knowledge of its contents before issuing the transport document or the electronic transport record; and
- (b) the carrier may qualify the information referred to in section 46(1)(d), if
 - (i) neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or
 - (ii) there was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

Evidentiary effect of the contract particulars

51. Except to the extent that contract particulars have been qualified in the circumstances and in the manner set out in section 50

- (a) a transport document or an electronic transport record is *prima facie* evidence of the carrier's receipt of the goods as stated in the contract particulars;
- (b) proof to the contrary by the carrier in respect of any contract particulars shall not be admissible, when the contract particulars are included in
 - (i) a negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or
 - (ii) a non-negotiable transport document that indicates that it shall be surrendered in order to obtain delivery of the goods and that is transferred to the consignee acting in good faith; and
- (c) proof to the contrary by the carrier shall not be admissible against a consignee who in good faith has acted in reliance on any of the

following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:

- (i) the contract particulars referred to in section 46(1), when the contract particulars are furnished by the carrier;
- (ii) the number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; or
- (iii) the contract particulars referred to in section 46(2).

Freight prepaid

52. If contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against a holder or the consignee who is not the shipper the allegation that the freight has not been paid.

PART IX

DELIVERY OF GOODS

Obligation to accept delivery

53. When goods have arrived at their destination, a consignee who demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time, or within the time period, and at the location, agreed in the contract of carriage or, in the absence of such an agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

Obligation to acknowledge receipt

54.(1) On the request of a carrier or performing party who delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or performing party in the manner that is customary at the place of delivery.

(2) A carrier may refuse delivery if the consignee refuses to acknowledge that receipt.

Negotiable transport document or negotiable electronic transport record not issued

55. When no negotiable transport document or negotiable electronic transport record has been issued

- (a) the carrier shall deliver the goods to the consignee at the time and location referred to in section 53;
- (b) if the name and address of the consignee are not referred to in the contract, the controlling party shall, prior to or upon the arrival of the goods at the place of destination, advise the carrier of the consignee's name and address;
- (c) without prejudice to section 58(1), if the goods are not deliverable because
 - (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in section 53, claim delivery of the goods from the carrier after their arrival at the place of destination;
 - (ii) the carrier refuses delivery because the person claiming to be the consignee does not provide proper identification; or
 - (iii) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions,

the carrier may so advise the controlling party and request instructions in respect of the delivery of the goods;

- (d) a carrier who delivers the goods at the instruction of the controlling party, the shipper or the documentary shipper under paragraph (c) is discharged from any obligation to deliver the goods under the contract of carriage;

- (e) a carrier may refuse delivery if a person claiming to be the consignee does not provide proper identification on the request of the carrier;
- (f) if, after a reasonable effort, a carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods; and
- (g) if, after a reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods.

Delivery when a non-negotiable transport document requiring surrender is issued

56. When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods

- (a) the carrier shall deliver the goods at the time and location referred to in section 53 to the consignee who provides proper identification, on the request of the carrier and on the surrender of the non-negotiable document;
- (b) the carrier may refuse delivery, if the person claiming to be the consignee fails to provide proper identification on the request of the carrier;
- (c) the carrier shall refuse delivery if the non-negotiable document is not surrendered;
- (d) if more than one original of the non-negotiable document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity;
- (e) without prejudice to section 58(1), if the goods are not deliverable because
 - (i) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in section 53,

claim delivery of the goods from the carrier after their arrival at the place of destination;

- (ii) the carrier refuses delivery because the person claiming to be the consignee does not provide proper identification or does not surrender the document; or
- (iii) the carrier is, after a reasonable effort, unable to locate the consignee in order to request delivery instructions,

the carrier may so advise the shipper and request instructions in respect of the delivery of the goods or, if after a reasonable effort the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods; and

- (f) the carrier that delivers the goods upon instruction of the shipper or the documentary shipper under paragraph (b) is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the non-negotiable transport document has been surrendered.

Delivery when a negotiable transport document or a negotiable electronic transport record is issued

57.(1) When a negotiable transport document or a negotiable electronic transport record has been issued

- (a) the holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of destination, in which event the carrier shall deliver the goods to the holder at the time and location referred to in section 53.
 - (i) upon surrender of the negotiable transport document and, if the holder is the shipper, the consignee or a person to whom the document was duly endorsed, upon the holder providing proper identification; or

- (ii) upon demonstration by the holder, in accordance with the procedures referred to in section 19(1), that it is the holder of the negotiable electronic transport record;
 - (b) the carrier shall refuse delivery if the requirements of paragraph (a)(i) or (ii) are not met;
 - (c) if more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity; and
 - (d) when a negotiable electronic transport record has been used, the record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by section 19(1).
- (2) Without prejudice to section 58(1), if a negotiable transport document or the negotiable electronic transport record expressly states that goods may be delivered without the surrender of the transport document or the electronic transport record, the following rules apply:
- (a) if the goods are not deliverable because
 - (i) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in section 48, claim delivery of the goods from the carrier after their arrival at the place of destination;
 - (ii) the carrier refuses delivery because the person claiming to be a holder does not properly identify himself as the shipper, the consignee or a person to whom the document was duly endorsed; or
 - (iii) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions,

the carrier may so advise the shipper and request instructions in respect of the delivery of the goods or, if after a reasonable effort the carrier is unable to locate

the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods;

- (b) a carrier that delivers goods upon instruction of the shipper or the documentary shipper in accordance with paragraph (a) is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in section 19(1), that he is the holder;
 - (c) the person giving instructions under subsection (2)(a) shall indemnify the carrier against any loss arising from its being held liable to the holder under subsection (2)(e) and the carrier may refuse to follow those instructions if the person fails to provide such adequate security as the carrier may reasonably request;
 - (d) a person who becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to contractual or other arrangements acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods, if the contractual or other arrangements were made prior to the delivery of the goods; and
 - (e) notwithstanding paragraphs (b) and (d), a holder that becomes a holder after delivery of the goods, and who did not have, and could not reasonably have had, knowledge of the delivery at the time of becoming a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record.
- (3) For the purpose of subsection (2)(e), when a contract states the expected time of arrival of goods, or indicates how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time of becoming a holder had, or could reasonably have had, knowledge of the delivery of the goods.

Goods remaining undelivered

58.(1) For the purposes of this section, goods are deemed to have remained undelivered only if, after their arrival at the place of destination

- (a) the consignee does not accept delivery of the goods under this Part at the time and location referred to in section 53;
- (b) the controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions under section 55, 56 or 57;
- (c) the carrier is entitled or required to refuse delivery under section 54, 55, 56 or 57;
- (d) the carrier is not allowed to deliver the goods to the consignee under the laws of the place at which delivery is requested; or
- (e) the goods are otherwise undeliverable by the carrier.

(2) Without prejudice to any other rights that a carrier may have against a shipper, controlling party or consignee, if goods remain undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including

- (a) storing the goods at any suitable place;
- (b) unpacking or moving the goods; or
- (c) selling or destroying the goods in accordance with the practices, laws of the place where the goods are located at the time.

(3) A carrier may exercise the rights under subsection (2) only after it has given reasonable notice of the intended action under that subsection to

- (a) the person stated in the contract as the person, if any, to be notified of the arrival of the goods at the place of destination; and
- (b) the consignee, the controlling party or the shipper, if known to the carrier, in that order.

(4) If goods are sold under subsection (2)(c), the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, but may deduct any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

(5) A carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered under this section, unless the claimant proves that the loss or damage resulted from a failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew, or ought to have known, that the loss or damage to the goods would result from its failure to take such steps.

Retention of goods

59. Nothing in this Act affects a right of the carrier or a performing party that may exist, pursuant to the contract of carriage or the applicable law, to retain the goods to secure the payment of sums due.

PART X

RIGHTS OF THE CONTROLLING PARTY

Exercise and extent of right of control

60.(1) A right of control may be exercised only by a controlling party and is limited to

- (a) the right to give or modify instructions, in respect of the goods, that do not constitute a variation of the contract of carriage;
- (b) the right to obtain delivery of goods at a scheduled port of call or, in respect of inland carriage, at any place *en route*; and
- (c) the right to replace a consignee by any other person, including the controlling party.

- (2) A right of control exists during the entire period of responsibility of the carrier provided in section 22, and ceases when that period expires.

Identity of the controlling party and transfer of the right of control

- 61.(1)** Subject to subsections (2) to (4),
- (a) the shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates a consignee, documentary shipper or other person as the controlling party;
 - (b) the controlling party is entitled to transfer the right of control to another person, which becomes effective with respect to the carrier when it is notified of the transfer by the transferor, at which time the transferee becomes the controlling party; and
 - (c) the controlling party shall properly identify itself when it exercises the right of control.
- (2) When a non-negotiable transport document has been issued that indicates that it shall be surrendered in order to obtain delivery of the goods,
- (a) the shipper is the controlling party and may transfer the right of control to a consignee named in the transport document by transferring the document to that person without endorsement and, if more than one original of the document was issued, by transferring all originals to that person; and
 - (b) in order to exercise its right of control, a controlling party shall produce the document and properly identify itself and, if more than one original of the document was issued, shall produce all originals.
- (3) When a negotiable transport document is issued,
- (a) the holder or, if more than one original of the negotiable transport document is issued, the holder of all originals, is the controlling party;
 - (b) the holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with

section 67 and, if more than one original of that document was issued, by transferring all originals to that person; and

- (c) in order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier and
 - (i) if the holder is the shipper, consignee or a person to whom the document was duly endorsed, shall provide proper identification; and
 - (ii) if more than one original of the document was issued, shall produce all originals.
- (4) When a negotiable electronic transport record is issued,
 - (a) the holder is the controlling party;
 - (b) the holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in section 19(1); and
 - (c) in order to exercise the right of control, the holder shall demonstrate that it is the holder, in accordance with the procedures referred to in section 19(1).

Carrier's execution of instructions

62.(1) Subject to subsections (3) and (4), a carrier shall execute the instructions referred to in section 60 if

- (a) the person giving the instructions is entitled to exercise the right of control;
- (b) the instructions can reasonably be executed according to their terms when they reach the carrier; and
- (c) the instructions will not interfere with the normal operations of the carrier, including its delivery practices.

(2) The controlling party shall reimburse the carrier for any reasonable expense that the carrier has incurred and shall indemnify the carrier against loss or damage that the carrier suffers as a result of diligently executing any instruction under this section, including compensation that the carrier becomes liable to pay for loss of or damage to other goods being carried.

(3) The carrier is entitled to obtain security from the controlling party for the amount of any expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction under this Part, and the carrier may refuse to carry out the instructions if no such security is provided.

(4) The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation under subsection (1) is subject to sections 27 to 33, and the amount of the compensation payable by the carrier is subject to sections 69 to 71.

Deemed delivery

63. Goods that are delivered under an instruction in accordance with section 60(1) are deemed to be delivered at the place of destination, and Part IX applies to the delivery of those goods.

Variations to the contract of carriage

64.(1) A controlling party is the only person who may agree with the carrier to variations to the contract of carriage other than those referred to in sections 60(1)(b) and (c).

(2) Variations to a contract of carriage, including those referred to in sections 60(1)(b) and (c), shall be stated in a negotiable transport document or in a non-negotiable transport document that requires it be surrendered, incorporated in a negotiable electronic transport record or, upon the request of the controlling party, stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record.

(3) If variations are incorporated in a negotiable electronic transport record, the variations shall be signed in accordance with section 48.

Providing additional information, instructions or documents to carrier

65.(1) A controlling party, on the request of a carrier or performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

(2) If a carrier, after a reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them.

(3) If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide the information, instructions or documents.

Variation by agreement

66. The parties to the contract of carriage may vary the effect of section 60(1)(b),(c),(2) or section 62 or restrict or exclude the transferability of the right of control referred to in section 61(1)(b).

PART XI

TRANSFER OF RIGHTS

Issuance of negotiable transport document or negotiable electronic transport record

67.(1) When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person

- (a) duly endorsed either to the other person or in blank, if it is an order document; or
- (b) without endorsement, if it is
 - (i) a bearer document or a blank endorsed document; or
 - (ii) a document made out to the order of a named person and the transfer is between the first holder and the named person.

(2) When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it is made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in section 19(1).

Liability of holder

68.(1) Without prejudice to section 65, a holder that is not the shipper and that does not exercise any right under a contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

(2) A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that those liabilities are incorporated in, or ascertainable from, the negotiable transport document or the negotiable electronic transport record.

- (3) For the purposes of subsections (1) and (2), a holder that is not the shipper does not exercise any right under a contract of carriage solely because
- (a) it agrees with the carrier, under section 20, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
 - (b) it transfers its rights under section 67.

PART XII

LIMITS OF LIABILITY

Limits of liability

- 69.**(1) Subject to sections 70 and 71(1), a carrier's liability for breaches of its obligations under this Act is limited to 875 units of account per package or other shipping unit, or 3 units of account per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher limitation of liability has been agreed upon between the carrier and the shipper.
- (2) When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on that article of transport or vehicle are deemed to be packages or shipping units.
- (3) If goods referred to in subsection (2) are not so enumerated, the goods in or on the article of transport or vehicle are deemed to be one shipping unit.
- (4) The amounts referred to in this Part are to be converted into the national currency of a state according to the value of the currency at the date of judgement or award or the date agreed upon by the parties.

(5) In determining a special drawing right, the value of a national currency of a contracting party that is a member of the International Monetary Fund is to be calculated in accordance with the method of valuation applied by the International Monetary Fund for its operations and transactions in effect at the date in question.

(6) In determining a special drawing right, the value of a national currency of a contracting party that is not a member of the International Monetary Fund is to be calculated in a manner to be determined by that party.

(7) In this section,

“unit of account” means a special drawing right defined by the International Monetary Fund.

Limits of liability for loss caused by delay

70.(1) Subject to subsection (2), compensation for loss of or damage to goods due to delay shall be calculated in accordance with section 32 and liability for economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed.

(2) The total amount payable under this section and section 69(1) shall not exceed the limit established under section 69(1) in respect of the total loss of the goods.

Loss of the benefit of limitation of liability

71.(1) Neither the carrier nor a person referred to in section 28 is entitled to the benefit of the limitation of liability provided in section 69, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier’s obligation under this Act was attributable to a personal act or omission of the person claiming the benefit that was done with the intent to cause the loss or was done recklessly and with knowledge that the loss would probably result.

(2) Neither the carrier nor a person referred to in section 28 is entitled to the benefit of the limitation of liability provided in section 70 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming the benefit that was done with the intent to cause the loss due to delay or that was done recklessly and with knowledge that the loss would probably result.

PART XIII

TIME FOR SUIT

Period of time for suit

72.(1) No judicial or arbitral proceedings in respect of claims or disputes arising from a breach of an obligation under this Act may be instituted after the expiration of a period of 2 years after the day on which the carrier delivered the goods or, where no goods were delivered or only part of the goods were delivered, on the last day on which the goods should have been delivered.

(2) Notwithstanding the expiration of the period set out in subsection (1), a party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

Extension of time for suit

73.(1) The period provided in section 72 shall not be subject to suspension or interruption, but the person against whom a claim is made may at any time during the running of the period extend, or further extend, that period by a declaration to the claimant.

(2) A declaration under subsection (1) is deemed to be given where an unequivocal statement is made or published in a written form, including in electronic or digital form or by facsimile, by the party against which the claimant was entitled to access the goods or obtain them by lawful means.

Action for indemnity

74. An action for indemnity by a person held liable may be instituted after the expiration of the period provided in section 72, if the indemnity action is instituted within the later of

- (a) the time allowed by the applicable law in the jurisdiction where the proceedings are instituted; and
- (b) 90 days after the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

Actions against the person identified as the carrier

75. An action against a bareboat charterer or a person identified as a carrier under section 47(2), may be instituted after the expiration of the period provided in section 72 if the action is instituted within the later of

- (a) the time allowed by the applicable law in the jurisdiction where proceedings are instituted; and
- (b) 90 days after the day when the carrier was identified, or the registered owner or bareboat charterer rebutted the presumption that it is the carrier, under section 47(2).

PART XIV

JURISDICTION

Actions against the carrier

76. Unless the contract of carriage contains an exclusive choice of court agreement or arbitration agreement that complies with section 77 or 82, a

claimant has the right to institute judicial proceedings under this Act against a carrier

- (a) in a competent court within the jurisdiction in which one of the following is situated:
 - (i) the domicile of the carrier;
 - (ii) the place of receipt agreed in the contract of carriage;
 - (iii) the place of delivery agreed in the contract of carriage;
 - (iv) the port where the goods are initially loaded on a ship; or
 - (v) the port where the goods are finally discharged from a ship; or
- (b) in a competent court designated by an agreement between the shipper and the carrier for the purpose of deciding claims against the carrier that may arise under this Act.

Choice of court agreements

77.(1) The jurisdiction of a court chosen in accordance with section 76(b) is exclusive for disputes between the parties to the contract only if the parties so agree and the agreement conferring jurisdiction

- (a) is contained in a volume contract that clearly states the names and addresses of the parties and
 - (i) is individually negotiated; or
 - (ii) contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing that agreement; and
- (b) clearly designates the courts of one contracting party or one or more specific courts of one contracting party.

- (2) A person who is not a party to a volume contract is bound by an exclusive choice of court agreement concluded in accordance with subsection (1) only if
- (a) the court is in one of the places designated in section 76(a);
 - (b) that agreement is contained in the transport document or electronic transport record;
 - (c) that person is given timely and adequate notice of the court where the action is to be brought and that the jurisdiction of that court is exclusive; and
 - (d) the law of that place recognizes that that person may be bound by the exclusive choice of court agreement.

Actions against the maritime performing party

78. A plaintiff has the right to institute judicial proceedings under this Act against a maritime performing party in a competent court within the jurisdiction in which one of the following is situated:

- (a) the domicile of the maritime performing party;
- (b) the port where the goods are received by the maritime performing party;
- (c) the port where the goods are delivered by the maritime performing party; or
- (d) the port in which the maritime performing party performs its activities with respect to the goods.

No additional bases of jurisdiction

79. Subject to sections 76 and 77, no judicial proceedings under this Act against the carrier or a maritime performing party may be instituted in a court not designated under section 71 or 73.

Arrest and provisional or protective measures

80.(1) Nothing in this Act affects jurisdiction with regard to provisional or protective measures, including arrest.

(2) A court in a state in which a provisional or protective measure was taken does not have jurisdiction to determine the case upon its merits unless

- (a) the requirements of this Part are fulfilled; or
- (b) an international convention that applies in that state so provides.

Consolidation and removal of actions

81.(1) Except when there is an exclusive choice of court agreement that is binding under section 77 or 82, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated under both sections 76 and 78 or, if there is no such court, in a court designated under section 73(b), if there is such a court.

(2) Except when there is an exclusive choice of court agreement that is binding under section 77 or 82, a carrier or a maritime performing party that institutes an action seeking a declaration of non-liability or any other action that would deprive a person of his right to select the forum under section 76 or 78 shall, at the request of the defendant, withdraw that action once the defendant has chosen a court designated under section 76 or 78 where the action may be recommenced.

Other competent courts

82.(1) After a dispute has arisen, the parties to the dispute may agree to resolve it in any competent court.

(2) A competent court before which a defendant appears without contesting jurisdiction in accordance with the rules of that court has jurisdiction.

Recognition and enforcement

83.(1) A decision made in the state of one contracting party by a court having jurisdiction under this Act shall be recognized and enforced in the state of the other contracting party in accordance with the law of the other contracting party, when both parties have made a declaration in accordance with section 86.

(2) A court may refuse recognition and enforcement based on the grounds for the refusal of recognition and enforcement available under its law.

(3) This Part shall not affect the application of the rules of a regional economic integration organization that is a party to the

(a) *Hague Rules*;

(b) *Hague-Visby Rules*;

(c) *Hamburg Rules*; or

(d) any other regionally or internationally transport rules in force,

as concerns the recognition or enforcement of judgments between member states of the regional economic integration organization, whether adopted prior to or after the entry into force of this Act.

PART XV**ARBITRATION****Arbitration agreements**

84.(1) Subject to this Part and notwithstanding Part XIV, parties may agree that any dispute that may arise relating to the carriage of goods under this Act shall be referred to arbitration.

- (2) Arbitration proceedings shall, at the option of the person asserting a claim against the carrier, take place at
- (a) a place designated for that purpose in the arbitration agreement; or
 - (b) any other place situated in a state in which any of the following is located:
 - (i) the domicile of the carrier;
 - (ii) the place of receipt agreed in the contract of carriage;
 - (iii) the place of delivery agreed in the contract of carriage;
 - (iv) the port where the goods are initially loaded on a ship; or
 - (v) the port where the goods are finally discharged from a ship.
- (3) The designation of the place of arbitration in an agreement is binding for disputes between the parties to the agreement, if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and
- (a) is individually negotiated; or
 - (b) contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.
- (4) When an arbitration agreement has been concluded in accordance with subsection (3), a person who is not a party to the volume contract is bound by the designation of the place of arbitration in that agreement only if
- (a) the place of arbitration designated in the agreement is situated in one of the places referred to in subsection (2)(b);
 - (b) the agreement is contained in the transport document or electronic transport record;
 - (c) the person to be bound is given timely and adequate notice of the place of arbitration; and

- (d) applicable law permits that person to be bound by the arbitration agreement.
- (5) Subsections (1) to (4) are deemed to be part of every arbitration clause or agreement, and any term of a clause or agreement that is inconsistent with them is void to the extent of the inconsistency.
- (6) Where the parties in a dispute subject to an arbitration clause are members of the Shipping Association of Barbados or another Barbados-based private sector shipping organization, the parties have been unable to agree on an arbitrator and the arbitration clause or agreement does not otherwise provide for the selection or appointment of the arbitrator, either party may request the Shipping Association of Barbados or other private sector shipping organization to appoint an arbitrator, and any arbitrator so selected shall be taken as the arbitrator for the dispute between the parties.

Arbitration agreement in non-liner transportation

85.(1) Nothing in this Act affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this Act applies by reason of

- (a) the application of section 12; or
 - (b) the parties' voluntary incorporation of the provisions of this Act in a contract of carriage that would not otherwise be subject to this Act.
- (2) Notwithstanding subsection (1), an arbitration agreement in a transport document or electronic transport record to which this Act applies by reason of the application of section 12 is subject to this Part, unless the transport document or electronic transport record
- (a) identifies the parties to, and the date of, the charter party or other contract excluded from the application of this Act by reason of the application of section 11; and
 - (b) incorporates by reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

Agreement to arbitrate after a dispute has arisen

86. Notwithstanding the provisions of this Part and Part XIV, after a dispute has arisen, the parties to the dispute may agree to resolve it by arbitration in any place.

PART XVI

VALIDITY OF CONTRACTUAL TERMS

General provisions

87.(1) Unless otherwise provided in this Act, a term in a contract of carriage is void to the extent that it

- (a) directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this Act;
- (b) directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this Act;
- (c) assigns a benefit of insurance of goods in favour of the carrier or a person referred to in section 28;
- (d) directly or indirectly excludes, limits or increases the obligations under this Act of the shipper, consignee, controlling party, holder or documentary shipper; or
- (e) directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this Act.

Special rules for volume contracts

88.(1) Notwithstanding section 87, a volume contract to which this Act applies may provide for greater or lesser rights, obligations and liabilities as between the carrier and the shipper than those imposed by this Act.

(2) This section applies only when

- (a) the volume contract contains a prominent statement that it derogates from this Act;
- (b) the volume contract is
 - (i) individually negotiated; or
 - (ii) prominently specifies the sections of the volume contract containing the derogations;
- (c) the shipper is given an opportunity, and notice of the opportunity, to conclude a contract of carriage on terms and conditions that comply with this Act without any derogation under subsection (1); and
- (d) the derogation is neither
 - (i) incorporated by reference from another document; nor
 - (ii) included in a contract of adhesion that is not subject to negotiation.

(3) A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract under section 86(1), but a volume contract may incorporate such documents by reference as terms of the contract.

(4) Section 86(1) does not apply to rights and obligations provided in section 24(a) or (b), section 39 or 42, or to liability arising from their breach or any liability arising from an act or omission referred to in section 71.

- (5) The terms of a volume contract that derogate from this Act, if the volume contract satisfies the requirements of subsection (2), apply between the carrier and any person other than the shipper if
- (a) the person received information that prominently states that the volume contract derogates from this Act and gave his express consent to be bound by the derogations; and
 - (b) the consent is not solely set forth in the carrier's public schedule of prices and services, transport document or electronic transport record.
- (6) A party claiming the benefit of a derogation bears the burden of proof that the conditions for derogation have been fulfilled.

Special rules for live animals and certain other goods

- 89.(1)** Notwithstanding section 87 and without prejudice to section 88, a contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if
- (a) the goods are live animals; or
 - (b) the character or condition of the goods, or the circumstances and terms and conditions under which the carriage is to be performed, reasonably justify a special agreement, if the contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.
- (2) Any such exclusion or limitation in relation to live animals will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission of the carrier or of a person referred to in section 28
- (a) done with the intent to cause the loss of or damage to the goods or a loss due to delay; or

- (b) done recklessly and with knowledge that such a loss or damage would probably result.

PART XVII

MATTERS NOT GOVERNED BY THE ACT

Global limitation of liability

90. Nothing in this Act affects the application of any international convention regulating the global limitation of liability of vessel owners or the limits of liability under the *Merchant Shipping (Liability and Compensation) Act, 2024* (Act 2024-).

General average

91. Nothing in this Act affects the application of terms in a contract of carriage or provisions of national law regarding the adjustment of general average.

Passengers luggage

92. The Act does not apply to a contract of carriage for passengers and their luggage.

Damage caused by nuclear incident

93. No liability arises under this Act for damage caused by a nuclear incident, if the operator of a nuclear installation is liable for such damage under

- (a) the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29th July, 1960, as amended by the Additional Protocol of 28th January 1964 and by the Protocols of 16th November, 1982 and 12th February, 2004, or any future amendment;

- (b) the Vienna Convention on Civil Liability for Nuclear Damage of 21st May, 1963, as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21st September, 1988 and the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12th September, 1997, or any future amendment;
- (c) the Convention on Supplementary Compensation for Nuclear Damage of 12th September, 1997, or any future amendment;
- (d) any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident; or
- (e) national law applicable to the liability for such damage, provided that the law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

PART XVIII

CARRIAGE OF GOODS BEYOND THE SEA: BY ROAD

Application - Part XVIII

94.(1) The provisions of this Act specific to the carriage of goods by road shall apply to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties, and includes carriage carried out by states or by governmental institutions or organizations.

(2) This Part shall not apply to

- (a) carriage performed under the terms of an international postal convention;

- (b) funeral consignments; or
- (c) furniture removal.

Definitions - Part XVIII

95. For the purposes of this Part,

“consignment note” means a document regarding the carriage of goods by road that declares the contract of carriage, includes the instructions given to the carrier and proves the contract of carriage;

“successive carrier” means a carrier

- (a) that is subject to a single contract, entered into between the principal carrier and the shipper; and
- (b) that has accepted goods and a consignment note; and

“vehicle” means a motor vehicle, articulated vehicle, trailer or semi-trailer as defined in Article 4 or the Convention on Road Traffic, 1949.

Vehicles containing goods

96.(1) Subject to subsection (2) and section 108, where a vehicle containing goods is carried over part of the journey by sea, rail, inland waterways or air and the goods are not unloaded from the vehicle, this Act shall apply to the whole of the carriage.

(2) If it is proved that any loss, damage or delay in delivery of the goods that occurs during the carriage by a means of transport other than road was not caused by an act or omission of the carrier by road, but by some event that could have occurred only in the course of and by reason of the carriage by that other means of transport, the liability of the carrier by road shall be determined not by this Act but in the manner in which the liability of the carrier by the other means of transport would have been determined if a contract for the carriage of the goods had been made by the sender with the carrier by the other means of transport

alone in accordance with the conditions prescribed by law for the carriage of goods by that means of transport.

(3) If, however, there are no such prescribed conditions, the liability of the carrier by road shall be determined by this Act.

(4) If the carrier by road is also the carrier by the other means of transport, liability shall be determined in accordance with subsections (1) to (3), but as if, in its capacities as carrier by road and as carrier by the other means of transport, it were two separate entities.

Persons for whom the Carrier is Responsible

Persons for whom the Carrier is Responsible Carrier's responsibility

97. A carrier is responsible for the acts and omissions of its agents and servants and of any other persons of whose services it makes use for the performance of the carriage, when those agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were the carrier's own.

Conclusion and Performance of Contract of Carriage

Consignment note

98.(1) A contract of carriage shall be confirmed by the making out of a consignment note.

(2) The absence, irregularity or loss of a consignment note shall not affect the existence or the validity of the contract of carriage, which shall remain subject to this Act.

Issuance of confinement note

99.(1) A consignment note shall be made out in three original copies signed by the sender and by the carrier.

- (2) A signature may be printed or replaced by the stamp of a sender or carrier if the law of the country in which the consignment note has been made out so permits.
- (3) One copy of the consignment shall be handed to the sender, one shall accompany the goods and one shall be retained by the carrier.
- (4) When goods that are to be carried have to be loaded in different vehicles, or are of different kinds or divided into different lots, the sender or the carrier may require a separate consignment note to be made out for each vehicle used, or for each kind or lot of goods.

Particulars of confinement note

- 100.(1)** A consignment note shall contain
- (a) the date of the consignment note and the place at which it is made out;
 - (b) the name and address of the sender;
 - (c) the name and address of the carrier;
 - (d) the place and the date of taking over of the goods and the place designated for delivery;
 - (e) the name and address of the consignee;
 - (f) the description of the nature of the goods, the method of packing and, in the case of dangerous goods, their generally recognized description;
 - (g) the number of packages and their special marks and numbers;
 - (h) the gross weight of the goods or their quantity otherwise expressed;
 - (i) charges relating to the carriage, including carriage charges, supplementary charges, customs duties and other charges incurred from the making of the contract to the time of delivery;
 - (j) the requisite instructions for customs and other formalities; and

- (k) a statement that the carriage is subject, notwithstanding any clause to the contrary, to this Act.
- (2) Where applicable, a consignment note shall also contain
- (a) a statement that trans-shipment is not allowed;
 - (b) the charges that the sender undertakes to pay;
 - (c) the amount of cash-on-delivery charges;
 - (d) a declaration of the value of the goods and the amount representing special interest in delivery;
 - (e) the sender's instructions to the carrier regarding insurance of the goods;
 - (f) the agreed time limit within which the carriage is to be carried out; and
 - (g) a list of the documents handed to the carrier.
- (3) The parties may enter in a consignment note any other particulars that they consider useful.

Sender's responsibility

101.(1) The sender shall be responsible for all expenses, loss and damage sustained by a carrier by reason of the inaccuracy or inadequacy of

- (a) the particulars specified in section 100(1), (b), (d), (e), (f), (g), (h) and (j) or (2); or
 - (b) any other particulars or instructions given by him to enable the consignment note to be made out or to be entered in it.
- (2) If, at the request of the sender, a carrier enters in a consignment note the particulars referred to in subsection (1), it is presumed to have done so on behalf of the sender.
- (3) If a consignment note does not contain the statement specified in section 100(1)(k), the carrier is liable for all expenses, loss and damage sustained by the person entitled to dispose of the goods through that omission.

Duty of carrier to validate goods

102.(1) On taking over goods, the carrier shall check

- (a) the accuracy of the statements in the consignment note as to the number of packages and their marks and numbers; and
- (b) the apparent condition of the goods and their packaging.

(2) Where a carrier has no reasonable means of checking the accuracy of the statements referred to in paragraph (1)(a), it shall enter its reservations in the consignment note together with the grounds on which they are based and specify the grounds for any reservations with regard to the apparent condition of the goods and their packaging.

(3) Such reservations shall not bind the sender unless the sender has expressly agreed to be bound by them in the consignment note.

(4) The sender may require the carrier to check the gross weight of the goods or their quantity otherwise expressed, and may require the contents of the packages to be checked.

(5) The result of any such checks shall be entered in the consignment note.

(6) The carrier may claim the cost of any checking done at the request of the sender.

Validity of the consignment note

103.(1) A consignment note is *prima facie* evidence of the making of the contract of carriage, the conditions of the contract and the receipt of the goods by the carrier.

(2) If a consignment note contains no specific reservations by the carrier, it is presumed that the goods and their packaging appeared to be in good condition when the carrier took them over and that the number of packages, their marks and numbers corresponded with the statements in the consignment note.

Liability of the sender

104. The sender of goods is liable to the carrier for damage to persons, equipment or other goods, and for any expenses due to defective packing of the goods, unless the defect was apparent or known to the carrier at the time when it took over the goods and it made no reservations concerning it.

Sender's requirements in the delivery of goods

105.(1) For the purposes of customs or other formalities to be completed before delivery of the goods, the sender shall attach the necessary documents to the consignment note or place them at the disposal of the carrier and shall furnish it with all the information that it requires.

(2) The carrier shall not be under any duty to enquire into the accuracy or the adequacy of such documents and information.

(3) The sender is liable to the carrier for any damage caused by the absence, inadequacy or irregularity of such documents and information that is not caused by a wrongful act or neglect on the part of the carrier.

(4) The liability of the carrier for consequences arising from a loss, inadequacy or irregularity of the documents accompanying the consignment note or deposited with the carrier shall be that of an agent.

(5) Compensation payable by the carrier under subsection (4) shall not exceed that payable in the event of loss of the goods.

Sender's and consignee's rights of disposal of goods

106.(1) A sender has the right to

- (a) dispose of goods, including by asking the carrier to stop the goods in transit;
- (b) change the place at which delivery is to take place; or

- (c) deliver the goods to a consignee other than the consignee indicated in the consignment note.
- (2) A right of the sender under subsection (1) shall cease to exist when the second copy of the consignment note is handed to a consignee or when a consignee exercises a right under section 107(1), from which time onwards the carrier shall obey the orders of the consignee.
- (3) A consignee shall, however, have a right of disposal from the time when the consignment note is drawn up, if the sender makes an entry to that effect in the consignment note.
- (4) If, in exercising a right of disposal, a consignee has ordered the delivery of the goods to another person, that other person shall not be entitled to name other consignees.
- (5) A right of disposal may be exercised if
 - (a) the sender or, in the circumstances referred to in subsection (3), a consignee who wishes to exercise the right produces the first copy of the consignment note on which the new instructions to the carrier have been entered and indemnifies the carrier against all expenses, loss and damage involved in carrying out such instructions;
 - (b) the carrying out of such instructions is possible at the time when the instructions reach the person who is to carry them out and does not interfere with the normal working of the carrier's undertaking or prejudice the senders or consignees of other consignments; and
 - (c) the instructions do not result in a division of the consignment.
- (6) When a carrier cannot carry out the instructions that it receives in the circumstances referred to in subsection (5)(b), the carrier shall immediately notify the person who gave the instructions.
- (7) A carrier that has not carried out instructions in accordance with subsection (5), or that has carried them out without requiring the first copy of the

consignment note to be produced, is liable to the person entitled to make a claim for any loss or damage caused by that failure.

Requirement of carrier to the consignee upon delivery

107.(1) After arrival of goods at the place designated for delivery, a consignee may require the carrier to deliver to him, against a receipt, the second copy of the consignment note and the goods.

(2) If a loss of goods is established or if goods have not arrived after the expiry of the period provided for in **section 0**, a consignee may enforce in his own name against the carrier any rights arising from the contract of carriage

(3) A consignee who exercises the rights granted under subsection (1) shall pay the charges shown to be due on the consignment note.

(4) If there is a dispute regarding the charges due, the carrier is not required to deliver the goods unless security has been furnished by the consignee.

Where terms of contract cannot be fulfilled

108.(1) If it is or becomes impossible to carry out the contract in accordance with the terms laid down in the consignment note before the goods reach the place designated for delivery, the carrier shall ask for instructions from the person entitled to dispose of the goods in accordance with section 106.

(2) If the carriage can be carried out under conditions differing from those laid down in the consignment note and if the carrier has been unable to obtain instructions in a reasonable time from the person entitled to dispose of the goods in accordance with section 106, the carrier shall take such steps as seem to it to be in the best interests of the person entitled to dispose of the goods.

Where goods cannot be delivered after arrival

109.(1) Where circumstances prevent the delivery of goods after their arrival at the place designated for delivery, the carrier shall ask the sender for his instructions.

- (2) If a consignee refuses the goods, the sender may dispose of them without being obliged to produce the first copy of the consignment note.
- (3) If a consignee has refused the goods, the consignee may nevertheless require their delivery so long as the carrier has not received instructions to the contrary from the sender.
- (4) When circumstances preventing delivery of the goods arise after the consignee, in the exercise of a right under section 106(3), has given an order for the goods to be delivered to another person, subsections (1) to (3) shall apply as if the consignee were the sender and that other person were the consignee.

Carrier's entitlement to recover cost pertaining to instructions

- 110.(1)** A carrier is entitled to recover the cost of a request for instructions and any expenses entailed in carrying out such instructions, unless the expenses were caused by the wrongful act or neglect of the carrier.
- (2) In the circumstances referred to in section 108(1) or section 109, a carrier may immediately unload the goods for account of the person entitled to dispose of them, at which time the carriage is deemed to be at an end.
 - (3) A carrier who does so shall then hold the goods on behalf of the person entitled to dispose of them or entrust them to a third party, in which case the carrier shall not be under any liability except for the exercise of reasonable care in the choice of the third party.
 - (4) In the circumstances referred to in subsections (2) and (3), the charges due under the consignment note and all other expenses shall remain chargeable against the goods.
 - (5) A carrier may sell the goods, without awaiting instructions from a person entitled to dispose of them, if
 - (a) the goods are perishable or their condition warrants it; or
 - (b) when the storage expenses would be out of proportion to the value of the goods,

and, after the expiry of a reasonable period, it has not received from the person entitled to dispose of the goods instructions to the contrary that can reasonably be carried out.

(6) If goods have been sold under this section, the proceeds of sale, after deduction of the expenses chargeable against the goods, shall be placed at the disposal of the person entitled to dispose of the goods.

(7) If these charges exceed the proceeds of sale, the carrier is entitled to the difference.

(8) The procedure for the sale of goods shall be determined by the law or custom of the place where the goods are situated.

Liability of the Carrier

Liability of total or partial loss of goods in the carrier's care

111.(1) Subject to subsection (2), a carrier is liable for a total or partial loss of goods and for damage to them that occurred between the time when the carrier took over the goods and the time of delivery, as well as for any delay in delivery.

(2) A carrier is not liable if the loss, damage or delay was caused by

- (a) the wrongful act or neglect of the claimant;
- (b) the instructions of the claimant given otherwise than as the result of a wrongful act or neglect on the part of the carrier;
- (c) an inherent vice of the goods; or
- (d) circumstances that the carrier could not avoid and the consequences of which it was unable to prevent.

(3) A carrier shall not be relieved of liability by reason of

- (a) the defective condition of the vehicle used in order to perform the carriage; or

- (b) the wrongful act or neglect of a person from whom the carrier hired the vehicle or of the agents or servants of that person.
- (4) Subject to sections 112(2) to (5), a carrier is relieved of liability when the loss or damage arises from the risks inherent in
 - (a) the use of open un-sheeted vehicles, when their use has been expressly agreed and specified in the consignment note;
 - (b) the lack of, or defective condition of, packing of goods that, by their nature, are liable to wastage or to be damaged when not packed or properly packed;
 - (c) handling, loading, stowage or unloading of the goods by the sender, the consignee or persons acting on behalf of the sender or the consignee;
 - (d) goods whose nature particularly exposes them to total or partial loss or to damage, especially through breakage, rust, decay, desiccation, leakage, normal wastage or the action of moth or vermin;
 - (e) insufficiency or inadequacy of marks or numbers on the packages; or
 - (f) the carriage of livestock.
- (5) A carrier is liable only to the extent that the factors for which it is liable under this section have contributed to the loss, damage or delay.

Burden of proof

- 112.(1)** The burden of proving that a loss, damage or delay was due to one of the causes specified in section 111(2) shall rest upon the carrier.
- (2) If a carrier establishes that a loss or damage could be attributed to a risks referred to in section 111(4), it shall, subject to subsection (3), be presumed that it was so caused unless the claimant proves that the loss or damage was not, in fact, attributable either wholly or partly to one of those risks.

(3) The presumption referred to in subsection (2) shall not apply in the circumstances set out in section 111(4)(b), if there has been an abnormal shortage of packing, or a loss of any package.

(4) If the carriage is performed in vehicles specially equipped to protect the goods from the effects of heat, cold, variations in temperature or the humidity of the air, the carrier shall not be entitled to claim the benefit of section 111(4)(a), unless it proves that all steps incumbent on it in the circumstances with respect to the choice, maintenance and use of such equipment were taken and that it complied with any instructions issued to it.

(5) A carrier shall not be entitled to claim the benefit of section 111(4)(f), unless it proves that all steps normally incumbent on it in the circumstances were taken and that it complied with any instructions issued to it.

Recovery of lost goods

113.(1) A claimant may, on receipt of compensation for missing goods, request in writing that he shall be notified immediately if the goods are recovered in the course of the year following the payment of compensation.

(2) A request under subsection (1) shall be acknowledged in writing by the person to whom the claimant made the request.

(3) Within the 30 days following receipt of notification that goods have been recovered, the claimant may require the goods to be delivered to him against payment of the charges shown to be due on the consignment note and the refund of the compensation received, less those charges, but without prejudice to any claim to compensation for delay in delivery under section 116 or 119.

(4) In the absence of a request mentioned in subsection (1) or of any instructions given within the period of 30 days specified in subsection (3), or if the goods are not recovered until more than one year after the payment of compensation, the carrier is entitled to deal with them in accordance with the law of the place where the goods are situated.

Carrier liable to sender if cash on delivery not collected

114. If goods have been delivered to the consignee without collection of a cash-on-delivery charge that should have been collected by the carrier under the terms of the contract of carriage, the carrier is liable to the sender for compensation not exceeding the amount of that charge without prejudice to its right of action against the consignee.

Sender's obligation to inform carrier of dangerous goods

115.(1) When a sender hands goods of a dangerous nature to a carrier, he shall inform the carrier of the exact nature of the danger and indicate, if necessary, the precautions to be taken.

(2) If this information has not been entered in the consignment note, the burden of proving, by some other means, that the carrier knew the exact nature of the danger constituted by the carriage of the goods shall rest upon the sender or the consignee.

(3) Goods of a dangerous nature that were not entered in the consignment note and that the carrier did not know were dangerous may, at any time or place, be unloaded, destroyed or rendered harmless by the carrier without compensation to the sender and the sender is liable for all expenses, loss or damage arising out of their handing over for carriage or of their carriage.

Calculation of compensation for the carrier

116.(1) When a carrier is liable under this Act for compensation in respect of a total or partial loss of goods, the compensation shall, subject to subsection (3), be calculated by reference to the value of the goods at the place and time at which they were accepted for carriage.

(2) The value of goods shall be fixed according to

- (a) the commodity exchange price;
- (b) if there is no commodity exchange price, the current market price; or

- (c) if there is no commodity exchange price or current market price, the normal value of goods of the same kind and quality.
- (3) Compensation shall not exceed 25 francs per kilogram of gross weight short.
- (4) In subsection (3),
“franc” means a gold franc weighing 10/31 of a gramme and being of millesimal fineness 900.
- (5) Carriage charges, customs duties and other charges incurred in respect of the carriage of the goods shall be refunded in full in the case of a total loss, and in proportion to the loss sustained in the case of a partial loss.
- (6) In the case of a delay in delivery, if the claimant proves that damage has resulted from the delay, the carrier shall pay compensation for that damage in an amount not exceeding the carriage charges.
- (7) Compensation higher than that provided by this section may be claimed only where the value of the goods or a special interest in delivery has been declared in accordance with sections 117 and 119.

Payment of surcharged for goods exceeding limit

117. A sender may, on payment of a surcharge to be agreed upon, declare in the consignment note a value for the goods exceeding the limit laid down in section 116(3), in which case the amount of the declared value shall be substituted for that limit.

Carrier’s liability where goods have been diminished in value

118.(1) In the case of damage to goods, the carrier is liable for the amount by which the goods have diminished in value, calculated by reference to the value of the goods fixed in accordance with sections 116(1), (2) and (5).

- (2) Compensation under subsection (1) may not, however, exceed
- (a) if the whole consignment has been damaged, the amount payable in the case of a total loss; and
 - (b) if only part of the consignment has been damaged, the amount payable in the case of a loss of that part.

Sender's obligation on payment of a surcharge in case of loss or damage

119.(1) A sender may, on payment of a surcharge to be agreed upon, fix the amount of a special interest in delivery in the case of loss of or damage to the goods where the agreed time-limit for delivery is exceeded, by entering that amount in the consignment note.

(2) If a declaration of a special interest in delivery has been made, compensation for the loss or damage proved due to delay may be claimed, up to the total amount of the interest declared, in addition to the compensation provided for in sections 116, 117, and 118.

Claimant's right to claim interest on compensation payable

120.(1) A claimant is entitled to claim interest on compensation payable, calculated at 5 per cent per annum, accruing from the date on which the claim was sent in writing to the carrier or, if no such claim has been made, from the date on which legal proceedings were instituted.

(2) When the amounts on which the calculation of the compensation is based are not expressed in the currency of the country in which payment is claimed, conversion shall be at the rate of exchange applicable on the day and at the place of payment of compensation.

Circumstances in which carrier can exclude liability

121.(1) Where, under the applicable law, a loss, damage or delay arising out of carriage under this Act gives rise to an extra-contractual claim, the carrier may

avail itself of the provisions of this Act that exclude its liability or fix or limit the compensation due.

(2) Where an extra-contractual liability for loss, damage or delay of a person for whom the carrier is responsible under the terms of section 97 is in issue, that person may avail himself of the provisions of this Act that exclude the liability of the carrier or that fix or limit the compensation due.

Circumstances in which carrier cannot exclude or limit liability

122.(1) A carrier shall not be entitled to avail itself of the provisions of this Act that exclude or limit its liability or that shift the burden of proof, if the damage was caused by its wilful misconduct or by a default on its part.

(2) Subsection (1) applies to wilful misconduct or default committed by an agent or servant of the carrier, or by any other persons of whose services it makes use of for the performance of the carriage, when that agent, servant or other person is acting within the scope of his employment.

(3) An agent, servant or other person referred to in subsection (2) shall not be entitled to an exclusion or limitation of liability, or a shift in the burden of proof, referred to in subsection (1).

Claims and Actions

Consignee's obligation to check goods

123.(1) If a consignee takes delivery of goods without duly checking their condition with the carrier, or without sending the carrier a reservation giving a general indication of loss or damage, not later than at the time of delivery, in the case of apparent loss or damage, or within 7 days of delivery in the case of loss or damage that is not apparent, the fact of taking delivery shall be *prima facie* evidence that the consignee has received the goods in the condition described in the consignment note.

- (2) Where the loss or damage is not apparent, the reservation referred to in subsection (1) shall be made in writing.
- (3) If the condition of the goods has been duly checked by the consignee and the carrier, evidence contradicting the result of this check shall be admissible only if the loss or damage is not apparent and if the consignee has duly sent reservations in writing to the carrier within 7 days from the date of checking.
- (4) No compensation is payable for a delay in delivery unless a reservation has been sent in writing to the carrier within 21 days from the time that the goods were placed at the disposal of the consignee.
- (5) In calculating the time limits provided for in this Part, the date of delivery, the date of checking or the date when the goods were placed at the disposal of the consignee, as the case may be, shall not be included.
- (6) The carrier and the consignee shall give each other every reasonable facility for making the required investigations and checks.

Legal proceedings arising out of carriage

124.(1) In legal proceedings arising out of carriage subject to this Act, the plaintiff may bring an action only in a court or tribunal of a contracting country designated by agreement between the parties or in a court or tribunal of a country within whose territory

- (a) the defendant is ordinarily resident, or has his principal place of business;
 - (b) the branch or agency through which the contract of carriage was made; or
 - (c) the place where the goods were taken over by the carrier or designated for delivery is situated.
- (2) Where in respect of a claim referred to in subsection (1) an action is pending before a court or tribunal referred to in that subsection, or where in respect of such a claim a judgement has been entered by such a court or tribunal, no new

action shall be started between the same parties on the same grounds unless the judgement of the court or tribunal before which the first action was brought is not enforceable in the country in which the fresh proceedings are brought.

(3) When a judgement entered by a court or tribunal of a contracting country in an action referred to in subsection (1) has become enforceable in that country, it shall also become enforceable in each of the other states of the contracting parties, as soon as the formalities required in the country concerned have been complied with.

(4) The formalities referred to in subsection (3) shall not permit the merits of the case to be re-opened.

(5) Subsection (3) applies to judgements after trial, judgements by default, settlements confirmed by an order of the court and costs against a plaintiff who wholly or partly fails in his action, but does not apply to interim judgements or to awards of damages.

(6) Security for costs shall not be required, in proceedings arising out of carriage under this Act, from nationals of contracting countries who are resident or have their place of business in one of those countries.

Period of limitation for an action arising out of carriage

125.(1) The period of limitation for an action arising out of carriage under this Act shall be one year.

(2) Nevertheless, in the case of wilful misconduct, the period of limitation shall be 3 years.

(3) The period of limitation shall begin to run

- (a) in the case of a partial loss or damage to goods, or a delay in delivery, from the date of delivery;
- (b) in the case of a total loss, 30 days after the expiry of the agreed time limit or, where there is no agreed time limit, 60 days from the date on which the goods were taken over by the carrier; and

- (c) in all other cases, 3 months after the making of the contract of carriage.
- (4) A written claim shall suspend the period of limitation until the date that the carrier rejects the claim by notification in writing and returns the documents attached to it.
- (5) If a part of the claim is admitted, the period of limitation shall start to run again only in respect of the part of the claim that still in dispute.
- (6) The burden of proof of the receipt of a claim, of a reply and of the return of documents shall rest with the party relying upon these facts.
- (7) The running of a period of limitation shall not be suspended by further claims having the same object.
- (8) Subject to subsection (2), the extension of a period of limitation and the fresh accrual of rights of action shall be governed by the law of the court or tribunal seized of the case.
- (9) A right of action that has become barred by the lapse of time may not be exercised by way of a counter-claim or set-off.

Clause conferring competence within the contract of carriage

126. A contract of carriage may contain a clause conferring competence on an arbitration tribunal, if the clause provides that the tribunal shall apply this Act.

Carriage Performed by successive Carriers

Single contract performed by successive road carriers

127. If carriage governed by a single contract is performed by successive road carriers

- (a) each of them shall be responsible for the performance of the whole operation; and
- (b) the second carrier and each succeeding carrier is deemed to become a party to the contract of carriage, according to the terms of the

consignment note, by reason of acceptance of the goods and the consignment note.

Obligation of carrier accepting goods from a previous carrier

128.(1) A carrier that accepts the goods from a previous carrier shall give the latter a dated and signed receipt.

(2) The carrier accepting goods shall enter its name and address on the second copy of the consignment note.

(3) The carrier shall enter on the second copy of the consignment note and on the receipt any reservations provided for in section 102(2).

(4) Section 103 shall apply to the relations between successive carriers.

Counter-claim concerning claim on the same contract of carriage

129.(1) Except in the case of a counter-claim or a set-off raised in an action concerning a claim based on the same contract of carriage, legal proceedings in respect of liability for loss, damage or delay may be brought only against the first carrier, the last carrier or the carrier who was performing that portion of the carriage during which the event causing the loss, damage or delay occurred.

(2) An action may nonetheless be brought at the same time against more than one of the carriers referred to in subsection (1).

Carrier entitled to recover compensation

130. A carrier who has paid compensation under this Act is entitled to recover that compensation, together with interest and all costs and expenses incurred by reason of the claim, from the other carriers who have taken part in the carriage, but

- (a) only the carrier responsible for the loss or damage is liable to pay the compensation, interest, costs and expenses, whether paid by itself or by another carrier;

- (b) when the loss or damage has been caused by the action of two or more carriers, each of them shall pay an amount proportionate to its share of liability or, if it is impossible to apportion the liability, each carrier is liable in proportion to the share of the payment for the carriage that is due to it; and
- (c) if it cannot be ascertained to which carriers liability is attributable for the loss or damage, the amount of the compensation shall be apportioned between all the carriers in proportion to the share of the payment for the carriage that is due to each of them.

Where carrier is insolvent

131. If one of the carriers is insolvent, the share of the compensation due from it and unpaid by it shall be divided among the other carriers in proportion to the share of the payment for the carriage due to them.

Where carrier is not entitled to dispute validity of payment

132.(1) No carrier against whom a claim is made under section 130 or section 131 is entitled to dispute the validity of the payment made by the carrier making the claim, if the amount of the compensation was determined by a judicial authority after the carrier against whom the claim was made was given due notice of the proceedings and afforded an opportunity to enter an appearance.

(2) A carrier may enforce its right of recovery by making a claim before a competent court or tribunal of the country in which

- (a) one of the carriers concerned is ordinarily resident;
 - (b) the carrier has its principal place of business; or
 - (c) the branch or agency through which the contract of carriage was made is situated.
- (3) All the carriers concerned may be made defendants in a single action.

(4) Sections 119(3) and (4), shall apply to judgements entered in proceedings referred to in sections 130 and 131.

(5) Section 120 shall apply to claims between carriers, though the period of limitation shall begin to run on the date of the final judicial decision fixing the amount of compensation payable under this Act or, if there is no such judicial decision, from the date of payment.

Carriers freedom to agree

133. Carriers may agree among themselves on rights and obligations other than those laid down in sections 130 and 131.

Nullity of Stipulations Contrary to the Act

Where provisions are void

134.(1) Subject to section 133, any stipulation in a contract of carriage that would directly or indirectly derogate from the provisions of this Act, including a benefit-of-insurance clause in favour of the carrier or any other similar clause, or any clause shifting the burden of proof, is void.

(2) The nullity of a stipulation under subsection (1) does not nullify any other provisions of the contract.

PART XIX

SEAWAY BILLS

Application - Part XIX

135. This Part applies to contracts of carriage not covered by a bill of lading or similar document of title, whether the contract is in writing or not.

Definitions - Part XIX

136. In this Part,

“goods” means goods carried or received for carriage under a contract of carriage;

“carrier” means a party named and identifiable as such from a contract of carriage;

“consignee” means a party named in, or identifiable as such from, a contract of carriage, or any person substituted as consignee in accordance with Rule 6(i) of the Comité Maritime International Uniform Rules for Seaway Bills;

“right of control” means the rights and obligations referred to in Rule 6 of the Comité Maritime International Uniform; and

“shipper” means a party named in, and identifiable as such from, a contract of carriage.

Comité Maritime International Uniform Rules for Seaway Bills

137. The Comité Maritime International Uniform Rules for Seaway Bills shall have the force of law in Barbados.

Agency

138.(1) A shipper on entering into a contract of carriage does so not only on his own behalf but also as agent of the consignee, and warrants to the carrier that he has authority to do so.

(2) Subsection (1) applies only if it is necessary by the law applicable to the contract of carriage to enable the consignee to sue and be sued on it.

(3) A consignee shall be under no greater liability under a contract of carriage than he would have been had the contract been covered by a bill of lading or similar document of title.

Rights and responsibilities

139.(1) A contract of carriage shall be subject to the International Carriage of Goods by Sea Rules, any other international convention, or a law of Barbados that is applicable to it, or that would have been applicable to it if the contract of carriage had been covered by a bill of lading or similar document of title, notwithstanding any inconsistent provision in the contract of carriage.

- (2) Subject to subsection (1), a contract of carriage is governed by
- (a) unless otherwise agreed by the parties, the carrier's standard terms and conditions for the trade, if any, including any terms and conditions relating to the non-sea part of the carriage; and
 - (b) any other terms and conditions agreed by the parties.
- (3) In the event of an inconsistency between the terms and conditions referred to in paragraphs (2)(b) and (c) and the Comité Maritime International Uniform Rules for Seaway Bills, the Rules shall prevail.

Description of the goods

140.(1) A shipper warrants the accuracy of the particulars furnished by him relating to the goods, and shall indemnify the carrier against any loss, damage or expense resulting from any inaccuracy.

- (2) In the absence of a reservation by the carrier, a statement in a sea waybill or similar document as to the quantity or condition of the goods shall
- (a) as between the carrier and the shipper, be *prima facie* evidence of receipt of the goods as so stated; and
 - (b) as between the carrier and the consignee, be conclusive evidence of receipt of the goods as so stated, so long as the consignee has acted in good faith.

Right of control

141.(1) Unless a shipper has exercised an option under subsection (3), he shall be the only party entitled to give the carrier instructions in relation to the contract of carriage.

(2) Unless prohibited by the applicable law, the shipper is entitled to change the name of the consignee at any time before the consignee claims delivery of the goods after their arrival at destination, if the shipper gives the carrier reasonable notice in writing, or by some other means acceptable to the carrier, and undertakes to indemnify the carrier against any additional expense caused by the change.

(3) The shipper shall have the option, to be exercised not later than the time of receipt of the goods by the carrier, to transfer the right of control to the consignee.

(4) The exercise of such an option shall be noted on the sea waybill or similar document, if any.

(5) Where such an option has been exercised, the consignee shall have the rights referred to in subsection (1) and the shipper shall cease to have those rights.

Delivery

142.(1) A carrier shall deliver goods to the consignee upon production of proper identification.

(2) A carrier is under no liability for wrong delivery if it can prove that it has exercised reasonable care to ascertain that the party claiming to be the consignee is in fact that party.

Validity

143. If anything contained in the Comité Maritime International Uniform Rules for Seaway Bills, or in any provisions incorporated into the contract of

carriage by virtue of Rule 4 of those Rules, is inconsistent with any other international convention or the laws of Barbados applicable to the contract of carriage, the Comité Maritime International Uniform Rules or those provisions, as the case may be, shall not apply to the extent of the inconsistency.

PART XX

MISCELLANEOUS

Facilitating Multimodal Transport *via* the Maritime Single Window

144. Multimodal transport documents may be submitted to the Chief Executive Officer through the Barbados Maritime Single Window or as otherwise directed pursuant to a Maritime Trade Facilitation Directive issued under section 145 in order to

- (a) enhance administrative processes related to multimodal transport and support the multimodal transport process; and
- (b) enable electronic data interchange in respect of multimodal transport documents.

Maritime Trade Facilitation Directive

145. The Minister may by notice published in the *Official Gazette* issue a maritime trade facilitation directive in respect of advancing multimodal transport and continuously improving the enabling environment to support multimodal transport activities.

Multimodal transport involving air transport

146. The Minister responsible for Civil Aviation may make regulations governing carriage by air and supporting regulations, that

- (a) are complementary to this Act;

- (b) serve to complete the national multimodal transport and trade framework; and
- (c) generally clarify the regime for multimodal transport operators performing under contracts of carriage in which transport by sea, road and air are involved.

Contractual requirements for shipments involving several modes of transport

147. Multimodal contractual arrangements shall be consistent with the Baltic and International Maritime Council's MULTIDOC and MULTIWAYBILL Agreements.

Power to make regulations

148. The Minister responsible for Shipping may make regulations pertaining to the matters addressed under, or incidental to, this Act.

Power to amend schedules

149. The Minister responsible for Shipping may by order amend any schedules to regulations made under this Act.

Read three times and passed the House of Assembly this
day of _____, 2024.

Speaker

Read three times and passed the Senate this _____ day of
, 2024.

President