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A BILL

To

Amend the Carriage by Air Ordinance to give effect to the Montreal Convention; to make provisions relating to non-international carriage by air and carriage of postal packages to which the Montreal Convention and other conventions concerning international carriage by air do not apply; to repeal the provisions relating to certification of certain matters for the purposes of the Ordinance; to repeal section 20 of the Ordinance; to repeal certain obsolete references; to make provisions for other miscellaneous amendments; and to make provisions for related purposes.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Carriage by Air (Amendment) Ordinance 2005.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

3. Interpretation

(1) Section 2(1) of the Carriage by Air Ordinance (Cap. 500) is amended—

(a) by repealing the definition of “High Contracting Party” and substituting—

““High Contracting Party” (締約方) means a party to any of the following, as may be appropriate—

- (a) the amended Convention;
 - (b) the Guadalajara Convention;
 - (c) the Warsaw Convention;”;
- (b) by repealing the definition of “special drawing rights” and substituting—
- ““Special Drawing Rights” (特別提款權) means units of account used by the International Monetary Fund and known as Special Drawing Rights;”;
- (c) by adding—
- ““the Montreal Convention” (《蒙特利爾公約》) means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999, the provisions of which are set out in Schedule 1A;
- “State Party” (當事國) means a party to the Montreal Convention;”.
- (2) Section 2(2) is repealed and the following substituted—
- “(2) In this Ordinance, “court” (法院) includes, in an arbitration allowed by the Montreal Convention, the amended Convention, the Warsaw Convention or the Guadalajara Convention, an arbitrator.”.

4. Part IA added

The following is added—

“PART IA

INTERNATIONAL CARRIAGE TO WHICH THE MONTREAL CONVENTION APPLIES

2A. Montreal Convention to have the force of law

The provisions of the Montreal Convention as set out in Schedule 1A, so far as they relate to the rights and liabilities of carriers, carriers’ servants and agents, passengers, consignors, consignees and other persons, and subject to this Ordinance, have the force of law in relation to any carriage by air to which the Montreal Convention applies, irrespective of the nationality of the aircraft performing that carriage.

2B. Fatal accidents

(1) Any liability imposed by paragraph (1) of Article 17 of the Montreal Convention on a carrier in respect of the death of a passenger (in this section referred to as “the liability”) is in substitution for any liability of the carrier in respect of the death of that passenger either under any enactment or at common law and the following provisions of this section have effect with respect to the persons by whom or for whose benefit the liability so imposed is enforceable and with respect to the manner in which it may be enforced.

(2) The liability is enforceable for the benefit of any member of the passenger’s family who sustained damage by reason of the passenger’s death.

(3) For the purposes of this section the following are taken to be the members of the passenger’s family, that is to say, the passenger’s spouse, parents, grandparents, children and grandchildren and any person who is, or is the issue of, a brother, sister, uncle or aunt of the passenger.

(4) In deducing any relationship for the purposes of this section—

- (a) notwithstanding paragraphs (b) and (c), an adopted person is treated as the child of the person or persons by whom he was adopted and not as the child of any other person;
- (b) any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child of any person as the child of that person; and
- (c) an illegitimate child is treated as a legitimate child of his mother and reputed father.

(5) Subject to this Part, an action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is, by virtue of subsections (2), (3) and (4), enforceable, but only one action may be brought in respect of the death of any one passenger and every such action by whomsoever brought must be for the benefit of all such persons so entitled as either are domiciled in Hong Kong or, not being domiciled there, express a desire to take the benefit of this action.

(6) Subject to this Part, the amount recovered in an action to enforce the liability, after deducting any costs not recoverable from the defendant, shall be divided between the persons entitled in such proportions as the court (or, where the action is tried with a jury, the jury) directs.

2C. Limitations on liability

(1) The limitations on liability in Article 21 or 22, as may be appropriate, of the Montreal Convention apply whatever the nature of the proceedings by which liability may be enforced and in particular—

- (a) those limitations apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and
- (b) the limitations for each passenger in Article 21 or paragraph (1) of Article 22, as may be appropriate, of the Montreal Convention apply to the aggregate liability of the carrier in all proceedings which may be brought against the carrier under the law of Hong Kong together with any proceedings brought against the carrier outside Hong Kong.

(2) A court before which proceedings are brought to enforce a liability which is limited by Article 21 or 22, as may be appropriate, of the Montreal Convention may, at any stage of the proceedings, make any such order as appears to the court to be just and equitable in view of that Article and of any other proceedings which have been, or are likely to be, commenced in Hong Kong or elsewhere to enforce the liability in whole or in part.

(3) Without prejudice to subsection (2), a court before which proceedings are brought to enforce a liability which is limited by Article 21 or 22, as may be appropriate, of the Montreal Convention and which is, or may be, partly enforceable in other proceedings in Hong Kong or elsewhere, has jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Monetary Authority may specify in Hong Kong dollars the amounts which for the purposes of Article 21, 22 or 23, as may be appropriate, of the Montreal Convention are to be taken as equivalent for a particular day to the sums expressed in Special Drawing Rights or monetary units in that Article.

(5) A certificate given by or on behalf of the Monetary Authority in pursuance of subsection (4) is conclusive evidence of the materials stated in it for the purposes of Article 21, 22 or 23, as may be appropriate, of the Montreal Convention, and a document purporting to be such a certificate is, in any proceedings, to be received in evidence and, unless the contrary is proved, deemed to be such a certificate.

(6) The Monetary Authority may charge a reasonable fee for any certificate given under this section, and every such fee shall be paid into the general revenue.

(7) References in this section to the limitations on liability, however expressed, in Articles 21 and 22 of the Montreal Convention include, subject to any necessary modifications, references to the limits of liability, however expressed, as applied by Articles 30 and 44 of that Convention.

2D. Time for bringing proceedings

(1) No action against a carrier's servant or agent which arises out of damage to which the Montreal Convention relates shall, if the servant or agent was acting within the scope of his employment, be brought after more than 2 years reckoned from—

- (a) the date of arrival at the destination;
- (b) the date on which the aircraft ought to have arrived; or
- (c) the date on which the carriage stopped.

(2) Article 35 of the Montreal Convention does not apply to any proceedings for contribution between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which that Article applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

(3) Subsections (1) and (2) and Article 35 of the Montreal Convention have effect as if references in those provisions to an action included references to an arbitration.

(4) References in this section to a carrier include references to an actual carrier and a contracting carrier as referred to in Article 39 of the Montreal Convention.

2E. Action against State Parties

(1) Every State Party which has not made a declaration under Article 57(a) of the Montreal Convention is deemed, for the purposes of any action brought in a court in Hong Kong in accordance with Article 33 of that Convention to enforce a claim in respect of carriage undertaken by that Party, to have submitted to the jurisdiction of that court.

(2) Rules of court may provide for the manner in which an action referred to in subsection (1) is to be commenced and carried on and section 54 of the High Court Ordinance (Cap. 4) is deemed to be amended accordingly.

(3) Nothing in this section authorizes the issue of execution against the property of a State Party.

(4) In the case of an action for damages that is contemplated in Article 45 of the Montreal Convention, the reference to Article 33 of that Convention in subsection (1) includes a reference to Article 46 of that Convention.”.

5. Part II heading amended

The heading of Part II is amended by adding “BUT NOT THE MONTREAL CONVENTION” after “CONVENTION”.

6. Amended Convention to have the force of law

(1) Section 3 is amended by renumbering it as section 3(1).

(2) Section 3 is amended by adding—

“(2) Notwithstanding subsection (1), where the Montreal Convention applies to a carriage by air to which the amended Convention applies (whether or not the Guadalajara Convention also applies), the provisions in this Part do not apply to that carriage by air.”.

7. References to territory of High Contracting Party

(1) Section 4(1) is repealed.

(2) Section 4(3) is repealed.

8. Fatal accidents

(1) Section 5(1) is amended by repealing “by and” and substituting “by whom or”.

(2) Section 5(3) is amended—

(a) by adding “外祖父母、” after “祖父母、” ;

(b) by adding “、外孫、外孫女” after “孫女”.

(3) Section 5(4)(a) is repealed and the following substituted—

“(a) notwithstanding paragraphs (b) and (c), an adopted person is treated as the child of the person or persons by whom he was adopted and not as the child of any other person;”.

(4) Section 5(5) is amended by repealing “subsection (4)” and substituting “subsections (2), (3) and (4)”.

9. Guadalajara Convention to have the force of law

Section 10(2) is repealed.

10. Application of provisions of sections 6, 7 and 9

Section 11(1) is amended by repealing “section 6(1)(a)” and substituting “section 6(1)”.

11. Part III heading amended

The heading of Part III is amended by repealing “AMENDED CONVENTION DOES” and substituting “MONTREAL CONVENTION AND THE AMENDED CONVENTION DO”.

12. Application

Section 12(1) is amended by repealing “amended Convention” and substituting “Montreal Convention or the amended Convention”.

13. International carriage under the Warsaw Convention

- (1) Section 14(2) is repealed.
- (2) Section 14(3) is repealed.

14. Fatal accidents

- (1) Section 15(1) is amended—
 - (a) by repealing “Article 17 in Part I of Schedule 3 and in Part I of Schedule 4” and substituting “paragraph (1) of Article 17 of Schedule 3 or Article 17 in Part I of Schedule 4, as may be appropriate,”;
 - (b) by repealing “by and” and substituting “by whom or”.
- (2) Section 15(3) is amended—
 - (a) by adding “外祖父母、” after “祖父母、” ;
 - (b) by adding “、外孫、外孫女” after “孫女”.
- (3) Section 15(4)(a) is repealed and the following substituted—

“(a) notwithstanding paragraphs (b) and (c), an adopted person is treated as the child of the person or persons by whom he was adopted and not as the child of any other person;”.
- (4) Section 15(5) is amended by repealing “subsection (4)” and substituting “subsections (2), (3) and (4)”.

15. Limitations on liability

- (1) Section 16(1) is amended—
 - (a) by repealing “Article 22 in Part I of Schedule 3 and in Part I of Schedule 4 (in this section called “Article 22”)” and substituting “Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”;
 - (b) in paragraph (b), by repealing “paragraph (1) of Article 22” and substituting “Article 21 or paragraph (1) of Article 22 of Schedule 3, or paragraph (1) of Article 22 in Part I of Schedule 4, as may be appropriate,”.
- (2) Section 16(2) is amended—
 - (a) by repealing “by Article 22” and substituting “by Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”;
 - (b) by repealing “in view of Article 22” and substituting “in view of that Article”.
- (3) Section 16(3) is amended by repealing “Article 22” and substituting “Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”.
- (4) Section 16(4) is repealed and the following substituted—

“(4) The Monetary Authority may specify in Hong Kong dollars the amounts which for the purposes of Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate, are to be taken as equivalent for a particular day to the sums expressed in Special Drawing Rights or francs in that Article.”.
- (5) Section 16(5) is repealed and the following substituted—

“(5) A certificate given by or on behalf of the Monetary Authority in pursuance of subsection (4) is conclusive evidence of the materials stated in it for the purposes of Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate, and a document purporting to be such a certificate is, in any proceedings, to be received in evidence and, unless the contrary is proved, deemed to be such a certificate.”.
- (6) Section 16(7) is repealed and the following substituted—

“(7) References in this section to the limitations on liability, however expressed, in Articles 21 and 22 of Schedule 3 and Article 22 in Part I of Schedule 4 include, subject to any necessary modifications, references to the limits of liability, however expressed, as applied by Articles 30 and 44 of Schedule 3.”.

16. Time for bringing proceedings

(1) Section 17(1) is amended by repealing “amended Convention as applied by this Ordinance” and substituting “Warsaw Convention”.

(2) Section 17(2) is repealed and the following substituted—

“(2) Article 35 of Schedule 3, or Article 29 in Part I of Schedule 4, as may be appropriate, does not apply to any proceedings for contribution between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which that Article applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.”.

(3) Section 17(3) is amended by repealing “Article 29” and substituting “Article 35 of Schedule 3 and Article 29 in Part I of Schedule 4”.

17. Application of provisions of sections 16 and 17

(1) Section 18(1) is repealed and the following substituted—

“(1) In section 16(1), (2) and (3) (which explains the limitations on liability in Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate, and enables a court to make appropriate orders and awards to give effect to those limitations) references to Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate, include, subject to any necessary modifications, references to Article 44 of Schedule 3, or Article VI in Part II of Schedule 4, as may be appropriate.”.

(2) Section 18(2) is amended by repealing “paragraph (c) of Article I in Part II of Schedule 3 and in Part II of Schedule 4” and substituting “Article 39 of Schedule 3 and paragraph (c) of Article I in Part II of Schedule 4”.

18. Application of this Ordinance

Section 19(2) is amended by adding “IA,” after “Parts”.

19. Repeals and savings

Section 20 is repealed.

20. Sections added

The following are added—

“21. Revision of limits of liability specified in Schedules 1A and 3

(1) Where the limits of liability specified in Article 21, 22 or 23 of the Montreal Convention have been revised in accordance with Article 24 of that Convention, the Director-General of Civil Aviation shall, by notice published in the Gazette, announce—

- (a) such revision; and
- (b) the date on which such revision becomes effective under Article 24 of that Convention.

(2) Where the Director-General of Civil Aviation makes an announcement under subsection (1) in respect of Article 21, 22 or 23 of the Montreal Convention, the limits of liability specified in Article 21, 22 or 23, as the case may be, of Schedule 1A and Article 21 or 22, as the case may be, of Schedule 3 shall, as from the date so announced, have effect subject to the revision so announced.

(3) Section 34 of the Interpretation and General Clauses Ordinance (Cap. 1) shall not apply to a notice published under subsection (1).

22. Power to make regulations

(1) The Director-General of Civil Aviation may make such regulations as appear to him to be necessary or expedient—

- (a) to provide for matters concerning advance payment within the meaning of Article 28 of the Montreal Convention; and
- (b) to apply any of the provisions made under paragraph (a) to any carriage by air, not being carriage to which the Montreal Convention applies.

(2) Without limiting the generality of regulations which may be made under subsection (1), such regulations—

- (a) may be of general or special application and may be made so as to apply only in specified circumstances;
- (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
- (c) may authorize any matter or thing to be determined, applied or regulated by any specified person;
- (d) may provide for the exercise of discretion in specified cases;
- (e) may provide for any exemption of different cases or classes of cases, with or without conditions or restrictions, from the application of any provision of such regulations;
- (f) may provide for—
 - (i) the fixing of any fee to be paid for anything that may be done in accordance with any provision of such regulations; and

- (ii) the method of payment of such fee;
 - (g) may, for the better and more effectual carrying into effect of any provision of this Ordinance or of such regulations, include any savings, transitional, incidental, supplemental and evidential provisions; and
 - (h) may, for the purpose of securing compliance with any provision of such regulations—
 - (i) create offences and provide for the imposition of penalties on conviction in the form of a fine not exceeding level 6; and
 - (ii) provide for the imposition of any other sanctions, including but not limited to the charging of any interest on any payment required under such regulations.
- (3) Without limiting the generality of regulations which may be made under subsection (1), such regulations may, in particular—
- (a) require any specified carrier to make a payment of any specified amount to meet the immediate economic needs of any specified person arising out of any accident in any specified carriage by air;
 - (b) provide for the application or other procedures in relation to any payment required under such regulations;
 - (c) provide for any condition in relation to any payment required under such regulations;
 - (d) empower the court or any person to determine any matter on application by any person and provide for the effect of such determination;
 - (e) provide for the set-off or recovery of any payment required under such regulations;
 - (f) provide for the effect of the making of or receiving of any payment required under such regulations;
 - (g) provide that any payment which is not made in accordance with such regulations or any payment which is specified to be recoverable is a civil debt due to the person entitled to such payment; and
 - (h) provide for the making of any guidelines and the effect of such guidelines.

23. Saving of existing rights and liabilities

(1) Nothing in the Carriage by Air (Amendment) Ordinance 2005 (of 2005) (“amending Ordinance”) shall affect the rights and liabilities of any person arising out of any occurrence which took place before the commencement of the amending Ordinance and caused any damage for which a carrier was liable under this Ordinance as then in force.

(2) Subsection (1) is in addition to and not in derogation of section 23 of the Interpretation and General Clauses Ordinance (Cap. 1).”.

21. The amended Convention

Schedule 1 is amended, within the square brackets, by repealing “2(1)” and substituting “2”.

22. Schedule 1A added

The following is added—

“SCHEDULE 1A [ss. 2, 2A & 21]

THE MONTREAL CONVENTION

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR INTERNATIONAL CARRIAGE BY AIR

Chapter I

General Provisions

Article 1—Scope of Application

(1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.

(3) Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

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

Article 2—Carriage Performed by State and Carriage of Postal Items

(1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

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

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

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3—Passengers and Baggage

(1) In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.

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

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

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

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

Article 4—Cargo

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

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

Article 5—Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

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

Article 6—Document Relating to the Nature of the Cargo

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

Article 7—Description of Air Waybill

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

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

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

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

Article 8—Documentation for Multiple Packages

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph (2) of Article 4 are used.

Article 9—Non-compliance with Documentary Requirements

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

Article 10—Responsibility for Particulars of Documentation

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

(2) The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

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

Article 11—Evidentiary Value of Documentation

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

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

Article 12—Right of Disposition of Cargo

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

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

(3) If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

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

Article 13—Delivery of the Cargo

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

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

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

Article 14—Enforcement of the Rights of Consignor and Consignee

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

Article 15—Relations of Consignor and Consignee or Mutual Relations of Third Parties

(1) Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16—Formalities of Customs, Police or Other Public Authorities

(1) The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage

occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

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

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

Article 17—Death and Injury of Passengers— Damage to Baggage

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

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

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

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

Article 18—Damage to Cargo

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

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

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

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

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

Article 19—Delay

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

Article 20—Exoneration

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

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

Article 21—Compensation in Case of Death or Injury of Passengers

(1) For damages arising under paragraph (1) of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

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

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

Article 22—Limits of Liability in Relation to Delay, Baggage and Cargo

(1) In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a

supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

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

(5) The foregoing provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

(6) The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23—Conversion of Monetary Units

(1) The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance

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

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

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

Article 24—Review of Limits

(1) Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph (2) below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of

inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph (1) of Article 23.

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

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

Article 25—Stipulation on Limits

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

Article 26—Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Article 27—Freedom to Contract

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

Article 28—Advance Payments

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

Article 29—Basis of Claims

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

Article 30—Servants, Agents—Aggregation of Claims

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

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

(3) Save in respect of the carriage of cargo, the provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31—Timely Notice of Complaints

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

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

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

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

Article 32—Death of Person Liable

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

Article 33—Jurisdiction

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

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

- (3) For the purposes of paragraph (2),
- (a) “commercial agreement” means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;
 - (b) “principal and permanent residence” means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.
- (4) Questions of procedure shall be governed by the law of the court seised of the case.

Article 34—Arbitration

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

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

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

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

Article 35—Limitation of Actions

(1) The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36—Successive Carriage

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

(2) In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37—Right of Recourse against Third Parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Chapter IV

Combined Carriage

Article 38—Combined Carriage

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

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39—Contracting Carrier—Actual Carrier

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

Article 40—Respective Liability of Contracting and Actual Carriers

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

Article 41—Mutual Liability

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

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

Article 42—Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43—Servants and Agents

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

Article 44—Aggregation of Damages

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

Article 45—Addressee of Claims

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

Article 46—Additional Jurisdiction

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

Article 47—Invalidity of Contractual Provisions

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

Article 48—Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49—Mandatory Application

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

Article 51—Carriage Performed in Extraordinary Circumstances

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

Article 52—Definition of Days

The expression "days" when used in this Convention means calendar days, not working days.

Chapter VII

Final Clauses

Article 56—States with more than one System of Law

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

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

- (3) In relation to a State Party which has made such a declaration:
- (a) references in Article 23 to "national currency" shall be construed as referring to the currency of the relevant territorial unit of that State; and
 - (b) the reference in Article 28 to "national law" shall be construed as referring to the law of the relevant territorial unit of that State.

Article 57—Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

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

[The Preamble, Articles 50, 53, 54 and 55 and the concluding words of the Convention are not reproduced. They deal with matters concerning insurance, signature, ratification and entry into force, denunciation and the relationship between the Montreal Convention and other conventions relating to international carriage by air respectively.]

23. The Guadalajara Convention

Schedule 2 is amended, within the square brackets, by repealing “2(1)” and substituting “2”.

24. Schedule 3 substituted

Schedule 3 is repealed and the following substituted—

“SCHEDULE 3

[ss. 13, 15, 16,
17, 18 & 21]

NON-INTERNATIONAL CARRIAGE, AND CARRIAGE OF MAIL AND POSTAL PACKAGES

Application of the Montreal Convention

The Montreal Convention as adapted and modified in the form hereinafter set out shall apply in respect of the carriage described in section 13 of this Ordinance—

Chapter I

General Provisions

Article 1—Scope of Application

(1) This Schedule applies to all carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(3) Carriage to be performed by several successive carriers is deemed, for the purposes of this Schedule, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts.

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

Article 2—Carriage Performed by State

(1) This Schedule applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

Chapter II

Documentation and Duties of the Parties Relating to the Carriage of Passengers, Baggage and Cargo

Article 3—Passengers and Baggage

(1) In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:

(a) an indication of the places of departure and destination.

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

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

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

Article 4—Cargo

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

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

Article 5—Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

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

Article 6—Document Relating to the Nature of the Cargo

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

Article 7—Description of Air Waybill

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

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

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

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

Article 8—Documentation for Multiple Packages

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph (2) of Article 4 are used.

Article 9—Non-compliance with Documentary Requirements

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

Article 10—Responsibility for Particulars of Documentation

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

(2) The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.

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

Article 11—Evidentiary Value of Documentation

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

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

Article 12—Right of Disposition of Cargo

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

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

(3) If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

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

Article 13—Delivery of the Cargo

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

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

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

Article 14—Enforcement of the Rights of Consignor and Consignee

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

Article 15—Relations of Consignor and Consignee or Mutual Relations of Third Parties

(1) Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16—Formalities of Customs, Police or Other Public Authorities

(1) The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.

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

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

Article 17—Death and Injury of Passengers— Damage to Baggage

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

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

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

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

Article 18—Damage to Cargo

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

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

- (a) inherent defect, quality or vice of that cargo;
- (b) defective packing of that cargo performed by a person other than the carrier or its servants or agents;
- (c) an act of war or an armed conflict;

(d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.

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

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

Article 19—Delay

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

Article 20—Exoneration

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

Article 21—Compensation in Case of Death or Injury of Passengers

(1) For damages arising under paragraph (1) of Article 17 not exceeding 100 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.

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

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

Article 22—Limits of Liability in Relation to Delay, Baggage and Cargo

(1) In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 150 Special Drawing Rights.

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

(4) In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages

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

(5) The foregoing provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.

(6) The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23—Conversion of Monetary Units

(1) The sums mentioned in terms of Special Drawing Right in this Schedule shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into Hong Kong dollars shall, in case of judicial proceedings, be made according to the value of Hong Kong dollars in terms of the Special Drawing Right at the date of the judgement.

Article 25—Stipulation on Limits

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

Article 26—Invalidity of Contractual Provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

Article 27—Freedom to Contract

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

Article 29—Basis of Claims

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

Article 30—Servants, Agents—Aggregation of Claims

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

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

(3) Save in respect of the carriage of cargo, the provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31—Timely Notice of Complaints

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

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

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

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

Article 32—Death of Person Liable

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

Article 34—Arbitration

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

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

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

Article 35—Limitation of Actions

(1) The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36—Successive Carriage

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

(2) In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37—Right of Recourse against Third Parties

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

Chapter IV

Combined Carriage

Article 38—Combined Carriage

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

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

Chapter V

Carriage by Air Performed by a Person other than the Contracting Carrier

Article 39—Contracting Carrier—Actual Carrier

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

Article 40—Respective Liability of Contracting and Actual Carriers

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

Article 41—Mutual Liability

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

(2) The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall

subject the actual carrier to liability exceeding the amounts referred to in Articles 21 and 22. Any special agreement under which the contracting carrier assumes obligations not imposed by this Schedule or any waiver of rights or defences conferred by this Schedule or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42—Addressee of Complaints and Instructions

Any complaint to be made or instruction to be given under this Schedule to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43—Servants and Agents

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

Article 44—Aggregation of Damages

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

Article 45—Addressee of Claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall

have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article 47—Invalidity of Contractual Provisions

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

Article 48—Mutual Relations of Contracting and Actual Carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI

Other Provisions

Article 49—Mandatory Application

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

Article 51—Carriage Performed in Extraordinary Circumstances

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

Article 52—Definition of Days

The expression “days” when used in this Schedule means calendar days, not working days.

Article 52A—Postmaster General of Hong Kong

Nothing herein contained shall impose any liability on the Postmaster General of Hong Kong.”.

25. International carriage under the Warsaw Convention

(1) Schedule 4 is amended, within the square brackets, by repealing “2(1),”.

(2) Paragraph (1) below the heading of Schedule 4 is amended by repealing “amended Convention” and substituting “Warsaw Convention”.

(3) The heading of Part I of Schedule 4 is repealed and the following substituted—

“Application of the Warsaw Convention”.

(4) Paragraph (3) of Article 15, and Article 25A in Part I of Schedule 4 are repealed.

(5) Paragraph (a) of Article I in Part II of Schedule 4 is repealed.

Consequential Amendments

Rules of the High Court

26. Service of writ in certain actions under Carriage by Air Ordinance

(1) Order 11, rule 7A(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended—

(a) by repealing “certified under section 4” and substituting “or State Party, as may be appropriate, within the meaning of section 2(1)”;

(b) by repealing subparagraph (c) and substituting—

“(c) except where the official language of the High Contracting Party or State Party, as may be appropriate, is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of that Party.”.

(2) Order 11, rule 7A(3) is amended by adding “or State Party, as may be appropriate” after “High Contracting Party”.

Rules of the District Court

27. Service of writ in certain actions under Carriage by Air Ordinance

(1) Order 11, rule 7A(1) of the Rules of the District Court (Cap. 336 sub. leg. H) is amended—

- (a) by repealing “to the convention set out in section 4” and substituting “or State Party, as may be appropriate, within the meaning of section 2(1)”;
- (b) by repealing subparagraph (c) and substituting—
 - “(c) except where the official language of the High Contracting Party or State Party, as may be appropriate, is, or the official languages of that Party include, English, a translation of the writ in the official language or one of the official languages of that Party.”.

(2) Order 11, rule 7A(3) is amended by adding “or State Party, as may be appropriate” after “High Contracting Party”.

Explanatory Memorandum

The object of this Bill is to amend the Carriage by Air Ordinance (Cap. 500) (“principal Ordinance”) so as to—

- (a) give effect to the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999 (the “Montreal Convention”) in Hong Kong;
- (b) apply the Montreal Convention provisions to non-international carriage by air and carriage of postal packages; and
- (c) empower the Director-General of Civil Aviation to make regulations to carry out Article 28 of the Montreal Convention and to apply the requirements of that Article to any carriage by air, not being carriage to which the Montreal Convention applies.

2. Clause 4 adds a new Part IA to the principal Ordinance for the purpose of giving effect to the Montreal Convention in Hong Kong.

3. Clause 6 deals with the relationship between the Montreal Convention and other conventions concerning international carriage by air.
4. Clause 7 repeals the provision that empowers the making of an order relating to the certification of High Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 (the “Warsaw Convention”) as amended by the Hague Protocol of 28 September 1955 (the “amended Convention”).
5. Clause 12 provides that Part III of the principal Ordinance applies to all carriage by air, not being carriage to which the Montreal Convention and the amended Convention apply.
6. Clause 13 repeals the provision that empowers the making of an order relating to the certification of High Contracting Parties to the Warsaw Convention.
7. Clauses 14 to 17 amend sections 15 to 18 of the principal Ordinance to substitute references to the Articles in the proposed Schedule 3 for references to the Articles in the existing Schedule 3.
8. Clause 19 repeals an obsolete provision.
9. Clause 20—
 - (a) adds a new provision to the principal Ordinance empowering the Director-General of Civil Aviation to publish a notice in the Gazette announcing the revision of the limits of liability specified in Article 21, 22 or 23, as the case may be, of the proposed Schedule 1A and Article 21 or 22, as the case may be, of the proposed Schedule 3;
 - (b) empowers the Director-General of Civil Aviation to make regulations to carry out Article 28 of the Montreal Convention and to apply the requirements of that Article to any carriage by air, not being carriage to which the Montreal Convention applies.
10. Clause 22 adds a new Schedule 1A to the principal Ordinance that contains the provisions of the Montreal Convention.
11. Clause 24 substitutes a new Schedule 3 that contains the provisions based on the Montreal Convention for the existing Schedule 3 that is based on the amended Convention.