檔案編號: EDB CR 6/951/2001

立法會參考資料摘要

《 航空運輸條例 》 (第 500 章)

2005年航空運輸(修訂)條例草案

引言

在二零零五年五月三十一日的會議上,行政會議**建議**,署理 附件A 行政長官**指令**載於附件A的《2005年航空運輸 (修訂)條例草案》 應提交立法會,以在香港施行一九九九年五月二十八日於蒙特利 爾簽訂的《統一國際航空運輸某些規則的公約》。

理據

華沙體系

- 2. 多年來,航空公司經營國際航空運輸時,對乘客、行李和貨物所承擔的法律責任,受一系列國際條約所規管。有關的條約最初由兩項英國法令引申至香港,繼而通過經本地化的《航空運 附件B 輸條例》(條例)(載於附件B)適用於香港。這些國際條約如下:
 - (a) 一九二九年在華沙簽署的《統一國際航空運輸某些規則的 公約》;
 - (b) 一九五五年於海牙簽署的修訂華沙公約的議定書;及
 - (c) 一九六一年在瓜達拉哈拉簽署的補充華沙公約的公約。

以上三項一般統稱為「華沙體系」的條約訂下國際性的統一準則,規管航空運輸憑證(即機票及航空貨運單)、航空公司對乘客傷

亡、行李及貨物的損壞和遺失、航班延誤需負的法律責任,以及 索賠訴訟的司法管轄權和時效。

- 3. 加入這三項條約的締約方必須為主權國,在回歸時,中央政府向有關條約的保存人確認將條約繼續適用於香港特別行政區。
- <u>一九九九年五月二十八日於蒙特利爾簽訂的《統一國際航空運輸</u> 某些規則的公約》(《蒙特利爾公約》)
- 4. 華沙體系在上世紀 20 年代訂立,當時民航業正處於萌芽階段。多年來,因應航空業的發展,該體系內的個別條款曾多次作出修改。一九九五年,國際民用航空組織(國際民航組織)正式全面修訂華沙體系,並草擬《蒙特利爾公約》,以綜合和更新華沙體系的各項公約。《蒙特利爾公約》於一九九九年五月二十八日簽署;按照公約的規定,在第 30 個簽署國完成確認程序後,公約已在二零零三年十一月四日生效。截至二零零五年四月,一共有 64 個國家確認了該公約,其中包括不少香港的主要民航夥伴如歐盟成員國、美國及日本。在內地方面,全國人民代表大會常務委員會已批准該公約。將《蒙特利爾公約》適用於香港,可使我們的規管框架符合國際水平,對保持香港作為國際航空中心的地位尤其重要。《蒙特利爾公約》的主要條文詳述如下。

(A) 加大賠償金額

- 5. 《蒙特利爾公約》大幅度提高了華沙體系中過時的賠償金額。在乘客傷亡方面,華沙體系中的單一賠償上限(約 188,500元等值的賠償額),將由一雙重賠償制度取代 第一重賠償的上限是 1,140,000元,航空公司不得免除或限制此責任;第二重賠償則視乎航空公司的過失,不設上限。此外,行李損壞或遺失的賠償上限亦增加約 50%,至每位乘客 11,400元。
- 6. 《蒙特利爾公約》更引入定期覆審賠償限額的機制。根據該機制,國際民航組織將每隔五年覆審賠償限額,當加權通脹因素超過10%時,限額便會相應調整。該機制能及時更新賠償限額,反映物價指數。

(B) 增加可提出訴訟的地方

- 7. 華沙體系規定,乘客及付貨人可選擇在以下四個地方的法院提出索償訴訟:
 - (a) 航空公司的所在地;
 - (b) 航空公司的主要營業地;
 - (c) 航空公司與乘客或付貨人訂立運輸合同的營業地;及
 - (d) 旅程的目的地。

《蒙特利爾公約》引入第五個訴訟地,容許涉及乘客傷亡的法律程序在乘客的居住地進行。這將令香港市民較容易在本地法院對外國航空公司採取法律行動。

(C) 認可電子機票

8. 順應航空業的新發展,《蒙特利爾公約》加入新的條文,除機票和航空貨運單外,還承認以電子機票及電子航空貨運單作為空運憑證。

立法修訂建議

9. 在現行的條例中,適用於香港的華沙體系條約分別載於數個附表。條例亦包括了執行條文,以賦予華沙體系效力,訂明在致命意外發生時可由誰人索償,賦予法院權力決定賠償額,訂下訴訟時效,以及就貨幣的換算作出規定。這些附表及執行條文須予保留,以規管香港與其他未確認《蒙特利爾公約》國家之間的國際運輸。為了適用《蒙特利爾公約》,我們建議將公約載於《航空運輸條例》中另一新附表,並制訂類似現行條例中的執行條文。

其他建議修訂

(A) 將《蒙特利爾公約》適用於非國際運輸和郵包運輸

10. 現行條例也規管華沙體系所不涵蓋的非國際運輸(主要為香港區內,以及香港與內地、台灣及澳門間的運輸)和郵包運輸, 其規管模式是沿用華沙體系的條文,並將其載於一獨立附表(附表3)。原則上,無論運輸是國際還是非國際性質,無論付運的物資是普通貨物還是郵包,乘客和付貨人都應享有相同程度的保障。故此,我們建議、《蒙特利爾公約》的規定應同樣適用於非國際運輸和郵包運輸。具體而言,我們建議以《蒙特利爾公約》的條文取代現有附表3的華沙體系條文。

(B) 廢除關於指定締約方的條文

11. 條例賦權政府制訂附屬法例,核證誰是各項華沙條約的締約方。迄今我們並沒有制訂附屬法例。由於有關締約方的資料可以很方便地從有關公約的保存人和國際民航組織獲取(如該組織的網頁),因此,我們認為沒有需要引用有關條文制訂附屬法例,並建議刪去該條文。

(C) 廢除兩項關於貨幣單位換算的法令

12. 華沙體系中所訂的賠償限額以特別提款權或法郎為表達單位。為了將這些單位換算為港元,條例第 6(4)至(6)條及 16(4)至(6)條規定,金融管理專員可發出證明書,指明在某一天這些單位的港元等值。同時,條例第 20 條還訂下條文,保留在一九八四年頒佈載有當時換算率的兩項法令。有關的換算率已過時,為避免混淆,我們建議廢除這兩項法令以及與法令有關的條文。金融管理專員將根據規定,在有需要時以證明書指明港元等值。

(D) 法定先行付款計劃

13. 《蒙特利爾公約》讓各政府自行決定是否立法,規定當地的航空公司向航空意外受害者先行付款,以應付其迫切經濟需要。歐盟已立法規定歐盟的航空公司需先行付款。香港的航空公司願意在自願基礎上實施先行付款。作為一個國際航空中心,我

們認為香港應依循最高的國際標準,向乘客提供更佳的法律保障。因此,我們建議制定先行付款計劃,要求香港的航空公司,當其航機發生意外並造成乘客傷亡時,須不延遲地作出先行付款,以應付受害人或其家屬的迫切經濟需要。我們建議賦權民航處處長,就實施該計劃的細節另行制訂附屬法例。

條例草案

14. 主要條款如下 一

(a) 第 4 及 22 條 —

第 4 條於主體法例中加入新的 IA 部,訂立執行條文,以賦予《蒙特利爾公約》效力。第 22 條訂立新附表 IA,載入《蒙特利爾公約》條文。

(b) 第 23 條 一

現行附表 3 載有經適當修改的華沙體系條文,以規管非國際運輸及郵包運輸。草案第 23 條廢除現有的附表 3 華沙條文,代以經適當修改的《蒙特利爾公約》條文。

(c) 第7及13條 —

該兩項條文廢除由政府核證誰是各項華沙條約締約方的有關規定。

(d) 第 19 條 一

此條文廢除兩項關於貨幣換算率的法令及其他已過時的條文。

(e) 第 20 條 —

此條文賦權民航處處長藉憲報公告,公布國際民航組織 經覆審後修改的賠償限額。條文並賦權民航處處長制訂 附屬法例,以實施先行付款計劃。

(f) 其他條文—

餘下的條文主要是處理相應和技術性的修訂。

立法程序時間表

- 15. 條例草案將於二零零五年六月十日刊登憲報,並於二零零五年六月二十二日提交立法會首讀和開始二讀辯論。
- 16. 中央人民政府曾根據基本法第 153 條,就《蒙特利爾公約》是否適用於香港徵詢我們的意見。我們已表示有意適用該公約。在修訂條例草案通過後,我們會請中央政府通知作為公約保存人的國際民航組織,公約適用於香港。

建議的影響

17. 建議符合《基本法》,包括有關人權的條文。建議不會影響法例現行的約束力。建議對財政、公務員、環境或可持續發展均没有影響。

對經濟的影響

18. 建議令香港規管航空公司法律責任的法規符合廣被接受的國際水平,能進一步鞏固香港的國際和區域航空中心地位。建議亦加強對乘客及付貨人的法律保障。此外,實施《蒙特利爾公約》將更淸晰地界定航空公司的法律責任,並有助提昇航空公司的運作效率。預期建議將不會對航空公司的營運成本有顯著影響。在競爭方面,有關建議值得支持。

公眾諮詢

19. 我們已諮詢了立法會經濟事務委員會、航空諮詢委員會、 航空業界、消費者委員會,以及代表旅遊業、付貨人及法律界的 組織的意見,他們原則上支持建議。

宣傳安排

20. 我們會在二零零五年六月八日發出新聞稿,並安排發言人解答查詢。

查詢

21. 如對本參考資料摘要有任何查詢,請聯絡經濟發展及勞工局首席助理秘書長(經濟發展)陳維民先生(電話:2810 2687)。

經濟發展及勞工局 二零零五年六月八日

檔案編號: EDB CR 6/951/2001

立法會參考資料摘要

《 航空運輸條例 》 (第 500 章)

2005年航空運輸(修訂)條例草案

引言

在二零零五年五月三十一日的會議上,行政會議**建議**,署 附件A 理行政長官**指令**載於附件A的《2005年航空運輸 (修訂)條例草 案》應提交立法會,以在香港施行一九九九年五月二十八日於蒙特 利爾簽訂的《統一國際航空運輸某些規則的公約》。

理據

華沙體系

- 2. 多年來,航空公司經營國際航空運輸時,對乘客、行李和貨物所承擔的法律責任,受一系列國際條約所規管。有關的條約最初由兩項英國法令引申至香港,繼而通過經本地化的《航空運 附件B 輸條例》(條例)(載於附件B)適用於香港。這些國際條約如下:
 - (a) 一九二九年在華沙簽署的《統一國際航空運輸某些規則的 公約》;
 - (b) 一九五五年於海牙簽署的修訂華沙公約的議定書;及
 - (c) 一九六一年在瓜達拉哈拉簽署的補充華沙公約的公約。

以上三項一般統稱為「華沙體系」的條約訂下國際性的統一準則,規管航空運輸憑證(即機票及航空貨運單)、航空公司對乘客傷

- 亡、行李及貨物的損壞和遺失、航班延誤需負的法律責任,以及 索賠訴訟的司法管轄權和時效。
- 3. 加入這三項條約的締約方必須為主權國,在回歸時,中央政府向有關條約的保存人確認將條約繼續適用於香港特別行政區。
- <u>一九九九年五月二十八日於蒙特利爾簽訂的《統一國際航空運輸</u> 某些規則的公約》(《蒙特利爾公約》)
- 4. 華沙體系在上世紀 20 年代訂立,當時民航業正處於萌芽階段。多年來,因應航空業的發展,該體系內的個別條款曾多次作出修改。一九九五年,國際民用航空組織(國際民航組織)正式全面修訂華沙體系,並草擬《蒙特利爾公約》,以綜合和更新華沙體系的各項公約。《蒙特利爾公約》於一九九九年五月二十八日簽署;按照公約的規定,在第 30 個簽署國完成確認程序後,公約已在二零零三年十一月四日生效。截至二零零五年四月,一共有 64 個國家確認了該公約,其中包括不少香港的主要民航夥伴如歐盟成員國、美國及日本。在內地方面,全國人民代表大會常務委員會已批准該公約。將《蒙特利爾公約》適用於香港,可使我們的規管框架符合國際水平,對保持香港作為國際航空中心的地位尤其重要。《蒙特利爾公約》的主要條文詳述如下。

(A) 加大賠償金額

- 5. 《蒙特利爾公約》大幅度提高了華沙體系中過時的賠償金額。在乘客傷亡方面,華沙體系中的單一賠償上限(約 188,500元等值的賠償額),將由一雙重賠償制度取代 第一重賠償的上限是1,140,000元,航空公司不得免除或限制此責任;第二重賠償則視乎航空公司的過失,不設上限。此外,行李損壞或遺失的賠償上限亦增加約50%,至每位乘客11,400元。
- 6. 《蒙特利爾公約》更引入定期覆審賠償限額的機制。根據該機制,國際民航組織將每隔五年覆審賠償限額,當加權通脹因素超過10%時,限額便會相應調整。該機制能及時更新賠償限額,反映物價指數。

(B) 增加可提出訴訟的地方

- 7. 華沙體系規定,乘客及付貨人可選擇在以下四個地方的法院提出索償訴訟:
 - (a) 航空公司的所在地;
 - (b) 航空公司的主要營業地;
 - (c) 航空公司與乘客或付貨人訂立運輸合同的營業地;及
 - (d) 旅程的目的地。

《蒙特利爾公約》引入第五個訴訟地,容許涉及乘客傷亡的法律程序在乘客的居住地進行。這將令香港市民較容易在本地法院對外國航空公司採取法律行動。

(C) 認可電子機票

8. 順應航空業的新發展,《蒙特利爾公約》加入新的條文,除機票和航空貨運單外,還承認以電子機票及電子航空貨運單作為空運憑證。

立法修訂建議

9. 在現行的條例中,適用於香港的華沙體系條約分別載於數個附表。條例亦包括了執行條文,以賦予華沙體系效力,訂明在致命意外發生時可由誰人索償,賦予法院權力決定賠償額,訂下訴訟時效,以及就貨幣的換算作出規定。這些附表及執行條文須予保留,以規管香港與其他未確認《蒙特利爾公約》國家之間的國際運輸。為了適用《蒙特利爾公約》,我們建議將公約載於《航空運輸條例》中另一新附表,並制訂類似現行條例中的執行條文。

其他建議修訂

(A) 將《蒙特利爾公約》適用於非國際運輸和郵包運輸

10. 現行條例也規管華沙體系所不涵蓋的非國際運輸(主要為香港區內,以及香港與內地、台灣及澳門間的運輸)和郵包運輸, 其規管模式是沿用華沙體系的條文,並將其載於一獨立附表(附表3)。原則上,無論運輸是國際還是非國際性質,無論付運的物資是普通貨物還是郵包,乘客和付貨人都應享有相同程度的保障。故此,我們建議,《蒙特利爾公約》的規定應同樣適用於非國際運輸和郵包運輸。具體而言,我們建議以《蒙特利爾公約》的條文取代現有附表3的華沙體系條文。

(B) 廢除關於指定締約方的條文

11. 條例賦權政府制訂附屬法例,核證誰是各項華沙條約的締約方。迄今我們並沒有制訂附屬法例。由於有關締約方的資料可以很方便地從有關公約的保存人和國際民航組織獲取(如該組織的網頁),因此,我們認為沒有需要引用有關條文制訂附屬法例,並建議刪去該條文。

(C) 廢除兩項關於貨幣單位換算的法令

12. 華沙體系中所訂的賠償限額以特別提款權或法郎為表達單位。為了將這些單位換算為港元,條例第 6(4)至(6)條及 16(4)至(6)條規定,金融管理專員可發出證明書,指明在某一天這些單位的港元等值。同時,條例第 20 條還訂下條文,保留在一九八四年頒佈載有當時換算率的兩項法令。有關的換算率已過時,為避免混淆,我們建議廢除這兩項法令以及與法令有關的條文。金融管理專員將根據規定,在有需要時以證明書指明港元等值。

(D) 法定先行付款計劃

13. 《蒙特利爾公約》讓各政府自行決定是否立法,規定當地的航空公司向航空意外受害者先行付款,以應付其迫切經濟需要。歐盟已立法規定歐盟的航空公司需先行付款。香港的航空公司願意在自願基礎上實施先行付款。作為一個國際航空中心,我

們認為香港應依循最高的國際標準,向乘客提供更佳的法律保障。因此,我們建議制定先行付款計劃,要求香港的航空公司,當其航機發生意外並造成乘客傷亡時,須不延遲地作出先行付款,以應付受害人或其家屬的迫切經濟需要。我們建議賦權民航處處長,就實施該計劃的細節另行制訂附屬法例。

條例草案

14. 主要條款如下 一

(a) 第 4 及 22 條 一

第 4 條於主體法例中加入新的 IA 部,訂立執行條文,以賦予《蒙特利爾公約》效力。第 22 條訂立新附表 IA,載入《蒙特利爾公約》條文。

(b) 第23條 —

現行附表 3 載有經適當修改的華沙體系條文,以規管非國際運輸及郵包運輸。草案第 23 條廢除現有的附表 3 華沙條文,代以經適當修改的《蒙特利爾公約》條文。

(c) 第7及13條 —

該兩項條文廢除由政府核證誰是各項華沙條約締約方的有關規定。

(d) 第19條 —

此條文廢除兩項關於貨幣換算率的法令及其他已過時的條文。

(e) 第 20 條 —

此條文賦權民航處處長藉憲報公告,公布國際民航組織 經覆審後修改的賠償限額。條文並賦權民航處處長制訂 附屬法例,以實施先行付款計劃。

(f) 其他條文—

餘下的條文主要是處理相應和技術性的修訂。

立法程序時間表

- 15. 條例草案將於二零零五年六月十日刊登憲報,並於二零零五年六月二十二日提交立法會首讀和開始二讀辯論。
- 16. 中央人民政府曾根據基本法第 153 條,就《蒙特利爾公約》是否適用於香港徵詢我們的意見。我們已表示有意適用該公約。在修訂條例草案通過後,我們會請中央政府通知作為公約保存人的國際民航組織,公約適用於香港。

建議的影響

17. 建議符合《基本法》,包括有關人權的條文。建議不會影響法例現行的約束力。建議對財政、公務員、環境或可持續發展均没有影響。

對經濟的影響

18. 建議令香港規管航空公司法律責任的法規符合廣被接受的國際水平,能進一步鞏固香港的國際和區域航空中心地位。建議亦加強對乘客及付貨人的法律保障。此外,實施《蒙特利爾公約》將更淸晰地界定航空公司的法律責任,並有助提昇航空公司的運作效率。預期建議將不會對航空公司的營運成本有顯著影響。在競爭方面,有關建議值得支持。

公眾諮詢

19. 我們已諮詢了立法會經濟事務委員會、航空諮詢委員會、 航空業界、消費者委員會,以及代表旅遊業、付貨人及法律界的 組織的意見,他們原則上支持建議。

宣傳安排

20. 我們會在二零零五年六月八日發出新聞稿,並安排發言人解答查詢。

查詢

21. 如對本參考資料摘要有任何查詢,請聯絡經濟發展及勞工局首席助理秘書長(經濟發展)陳維民先生(電話: 2810 2687)。

經濟發展及勞工局 二零零五年六月八日

本條例草案

旨在

修訂《航空運輸條例》以施行《蒙特利爾公約》;訂立關乎《蒙特利爾公約》 及其他關於國際航空運輸的公約所不適用的非國際航空運輸及郵 包運輸的條文;廢除關乎為該條例的目的而核證某些事項的條文; 廢除該條例第 20 條;廢除某些過時的提述;就其他雜項修訂訂定 條文;並就有關目的訂定條文。

由立法會制定。

1. 簡稱

本條例可引稱為《2005年航空運輸(修訂)條例》。

2. 生效日期

本條例自經濟發展及勞工局局長以憲報公告指定的日期起實施。

3. 釋義

- (1) 《航空運輸條例》(第500章)第2(1)條現予修訂
 - (a) 廢除"締約方"的定義而代以一
 - " "締約方" (High Contracting Party)指以下 任何公約的締約方(視何者屬適當而 定) 一
 - (a) 《 經修訂公約 》;
 - (b) 《瓜達拉哈拉公約》;

- (c) 《華沙公約》;";
- (b) 廢除"特別提款權單位"的定義而代以一
 - "特別提款權"(Special Drawing Rights)指國際貨幣基金所採用的稱為特別提款權的會計單位;";
- (c) 加入
 - "當事國"(State Party)指《蒙特利爾公約》 的締約方;
 - "《蒙特利爾公約》"(the Montreal Convention)指在1999年5月28日在蒙特利爾訂立的《統一國際航空運輸某些規則的公約》,該公約的條文列於附表1A;"。
- (2) 第 2(2) 條現予廢除,代以一
- "(2) 在本條例中,"法院"(court)在《蒙特利爾公約》、《經修訂公約》、《華沙公約》或《瓜達拉哈拉公約》所准許的仲裁中,包括仲裁人。"。
- 4. 加入第 IA 部

現加入 一

《蒙特利爾公約》適用的國際運輸

2A. 《蒙特利爾公約》具有法律效力

在符合本條例的規定下,附表 1A 所列的《蒙特利爾公約》條文在它們是關於承運人、承運人的僱員、承運人的代理人、乘客、付貨人、收貨人及其他人的權利和法律責任的範圍內,就《蒙特利爾公約》所適用的任何航空運輸具有法律的效力,不論進行該項運輸的航空器屬何國籍。

2B. 致命意外

- (1) 《蒙特利爾公約》第 17 條第(1)款就乘客死亡施加於 承運人的任何法律責任(在本條中稱為"有關法律責任"),取代該 承運人在任何成文法則或普通法下就該乘客的死亡而承擔的任何 法律責任;而凡如此施加的有關法律責任可由某人強制執行,或可 為某人的利益而強制執行或可以某方式強制執行,本條的以下條文 就該人及該方式有效。
- (2) 如有關乘客的家庭的任何成員因為該乘客的死亡而 蒙受損失,則有關法律責任可為該成員的利益而強制執行。
- (3) 為本條的施行,以下各人均視為有關乘客的家庭的成員:該乘客的配偶、父母、祖父母、外祖父母、子女、孫、孫女、外孫、外孫女,以及該乘客的兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈或姨母或該兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈或姨母的後嗣。
 - (4) 在為本條的施行而推究關係時 一
 - (a) 儘管有(b)及(c)段的規定,受領養人須視為領養他的人的子女,而非其他人的子女;

- (b) 姻親關係須視為血親關係,半血親關係須視為 全血親關係,而任何人的繼子女須視為該人的 子女;及
- (c) 非婚生子女須視為其母親及據稱的父親的婚 生子女。
- (5) 除本部另有規定外,強制執行有關法律責任的訴訟可由該乘客的遺產代理人提起,如有關法律責任憑藉第(2)、(3)及(4)款可為某人的利益而強制執行,則該項訴訟亦可由該人提起,但只可就任何一名乘客的死亡提起一項訴訟,而無論由何人提起,每項該等訴訟必須為所有有權享有該等利益的人的利益提起,而他們須是以香港為其居籍,如非以香港為其居籍,則他們須表明希望得到該項訴訟的利益。
- (6) 除本部另有規定外,在強制執行有關法律責任的訴訟中追討所得的款額,在減除未能向被告人追討的任何訟費之後,須按法院(或如該訴訟審訊時有陪審團的話,則按該陪審團)所指示的比例分給有權享有該等權益的人。

2C. 法律責任的限制

- (1) 《蒙特利爾公約》第 21 或 22 條(視何者屬適當而定) 內對法律責任的限制,適用於任何性質的可藉以強制執行法律責任 的法律程序,而 —
 - (a) 該等限制尤其適用於侵權人為向另一名侵權 人取得法律責任分擔而提起的法律程序;及
 - (b) 《蒙特利爾公約》第 21 條或第 22 條第(1)款 (視何者屬適當而定)內就每名乘客所設的限 制,尤其適用於承運人在可根據香港法律針對 承運人提起的所有法律程序中連同在香港以 外地方針對承運人提起的任何法律程序中的 總法律責任。

- (2) 凡任何人為強制執行受《蒙特利爾公約》第 21 或 22 條(視何者屬適當而定)限制的法律責任而在任何法院提起法律程序,該法院可在該法律程序的任何階段,作出任何該法院覺得在考慮到該條條文及為完全或局部強制執行該法律責任而已經或相當可能會在香港或其他地方開始的任何其他法律程序後,屬公正和公平的命令。
- (3) 在不影響第(2)款的情況下,凡任何人為強制執行受《蒙特利爾公約》第 21 或 22 條(視何者屬適當而定)限制的法律責任而在任何法院提起法律程序,而該法律責任於在香港或其他地方進行的其他法律程序中是可以或可能可以局部強制執行的,則如假使該限制只適用於在該法院提起的法律程序法院便會判給某數額,該法院具有司法管轄權判給一筆數額少於該某數額的款項;或將其判給的任何部分定為須視乎任何其他法律程序的結果。
- (4) 金融管理專員可指明若干以港幣作為單位的款額,而 為施行《蒙特利爾公約》第 21、22 或 23 條(視何者屬適當而定), 該等款額須被視為就某一日而言相等於該條內以特別提款權或貨 幣單位表達的款項。
- (5) 為施行《蒙特利爾公約》第 21、22 或 23 條(視何者屬適當而定),由金融管理專員或其代表依據第(4)款發出的證明書,即為其內所述資料的不可推翻的證據,而看來是該證明書的文件,須在任何法律程序中被接受為證據,並且除非相反證明成立,否則該文件須當作是該證明書。
- (6) 金融管理專員可就任何根據本條發出的證明書收取 合理費用,而該等費用須撥入政府一般收入。
- (7) 在本條中對《蒙特利爾公約》第 21 及 22 條內的法律責任限制(不論實際如何稱述)的提述,在經任何必要的變通後,包括對由該公約第 30 及 44 條施行的責任限額的提述。

2D. 提起法律程序的時限

- (1) 如承運人的僱員或代理人是在其受僱範圍內行事,在 從下列日期起計的2年後,任何人不得向該僱員或代理人提起因 《蒙特利爾公約》所關乎的損失而導致的訴訟 —
 - (a) 抵達目的地的日期;
 - (b) 航空器應該抵達的日期;或
 - (c) 運輸停止的日期。
- (2) 《蒙特利爾公約》第 35 條不適用於為法律責任分擔 而在侵權人之間提起的法律程序,但在自取得判尋求獲得法律責任 分擔的人敗訴的判決之日起計的 2 年屆滿後,侵權人不得就該條適 用的侵權行為提起向承運人取得法律責任分擔的訴訟。
- (3) 第(1)與(2)款及《蒙特利爾公約》第 35 條在猶如該 等條文中對一項訴訟的提述包括對一宗仲裁的提述的情況下具有 效力。
- (4) 在本條中對承運人的提述,包括對《蒙特利爾公約》 第 39 條所提述的實際承運人和締約承運人的提述。

2E. 針對當事國的訴訟

- (1) 並無作出《蒙特利爾公約》第 57條(a)段所指的聲明的每一個當事國,就按照該公約第 33條為強制執行關於該當事國所進行的運輸的申索而在香港法院提起的訴訟而言,須當作已接受該法院的司法管轄權管轄。
- (2) 法院規則可就第(1)款所提述的訴訟的開始和進行方式作出規定,而《高等法院條例》(第4章)第54條須當作據此修訂。
 - (3) 本條並不授權針對當事國的財產發出執行令。

(4) 就在《蒙特利爾公約》第 45 條之中考慮到的損害賠償訴訟而言,在第(1)款中對該公約第 33 條的提述包括對該公約第 46 條的提述。"。

5. 修訂第 11 部標題

第 II 部的標題現予修訂,在"適用"之後加入"但《蒙特利爾公約》並不適用"。

6. 《經修訂公約》具有法律效力

- (1) 第3條現予修訂,將該條重編為第3(1)條。
- (2) 第3條現予修訂,加入一
- "(2) 儘管有第(1)款的規定,如《蒙特利爾公約》適用於《經修訂公約》適用的某項航空運輸,則不論《瓜達拉哈拉公約》是否亦適用於該項航空運輸,本部的條文並不適用於該項航空運輸。"。

7. 對締約方的領土的提述

- (1) 第 4(1)條現予廢除。
- (2) 第 4(3)條現予廢除。

8. 致命意外

- (1) 第 5(1)條現予修訂,廢除 "by and" 而代以 "by whom or"。
- (2) 第 5(3)條現予修訂
 - (a) 在"祖父母、"之後加入"外祖父母、";

- (b) 在"孫女"之後加入"、外孫、外孫女"。
- (3) 第 5(4)(a)條現予廢除,代以 -
- "(a) 儘管有(b)及(c)段的規定,受領養人須視為領養他的人的子 女,而非其他人的子女;"。
- (4) 第 5(5)條現予修訂,廢除 "第(4)款" 而代以 "第(2)、(3) 及(4)款"。

9. 《瓜達拉哈拉公約》具有法律效力

第 10(2)條現予廢除。

10. 第6、7及9條的條文的 適用範圍

第 11(1)條現予修訂,廢除 "6(1)(a)"而代以 "6(1)"。

11. 修訂第 | | | 部標題

第 III 部的標題現予修訂,在"《經修訂公約》"之前加入"《蒙特利爾公約》及"。

12. 適用範圍

第 12(1)條現予修訂,在"《經修訂公約》"之前加入"《蒙特利爾公約》或"。

13. 《華沙公約》下的國際運輸

(1) 第 14(2)條現予廢除。

(2) 第 14(3)條現予廢除。

14. 致命意外

- (1) 第 15(1)條現予修訂 -
 - (a) 廢除 "第 I 部第 17 條及附表 4 第 I 部第 17 條" 而代以 "第 17 條第(1)款或附表 4 第 I 部第 17 條(視何者屬適當而定)";
 - (b) 廢除"by and"而代以"by whom or"。
- (2) 第 15(3)條現予修訂 -
 - (a) 在"祖父母、"之後加入"外祖父母、";
 - (b) 在"孫女"之後加入"、外孫、外孫女"。
- (3) 第 15(4)(a)條現予廢除,代以 -
- "(a) 儘管有(b)及(c)段的規定,受領養人須視為領養他的人的子 女,而非其他人的子女;"。
- (4) 第 15(5)條現予修訂,廢除"第(4)款"而代以"第(2)、(3) 及(4)款"。

15. 法律責任的限制

- (1) 第 16(1)條現予修訂 -
 - (a) 廢除 "第 I 部第 22 條及附表 4 第 I 部第 22 條(在本條內稱為 "第 22 條")"而代以 "第 21 或 22 條或附表 4 第 I 部第 22 條(視何者屬適當而定)";

- (b) 在(b)段中,廢除"第 22 條第(1)款"而代以"附表 3 第 21 條或第 22 條第(1)款或附表 4 第 I 部第 22 條第 (1)款(視何者屬適當而定)"。
- (2) 第 16(2)條現予修訂
 - (a) 廢除 "受第 22 條" 而代以 "受附表 3 第 21 或 22 條 或附表 4 第 I 部第 22 條(視何者屬適當而定)";
 - (b) 廢除"第22條條文"而代以"該條條文"。
- (3) 第 16(3)條現予修訂,廢除 "第 22條" 而代以 "附表 3 第 21 或 22條或附表 4 第 I 部第 22條(視何者屬適當而定)"。
 - (4) 第 16(4)條現予廢除,代以 —
 - "(4) 金融管理專員可指明若干以港幣作為單位的款額,而為施行附表 3 第 21 或 22 條或附表 4 第 I 部第 22 條(視何者屬適當而定),該等款額須被視為就某一日而言相等於該條內以特別提款權或法郎為單位表達的款項。"。
 - (5) 第 16(5)條現予廢除,代以 —
 - "(5) 為施行附表 3 第 21 或 22 條或附表 4 第 I 部第 22 條(視何者屬適當而定),由金融管理專員或其代表依據第(4)款發出的證明書,即為其內所述資料的不可推翻的證據,而看來是該證明書的文件,須在任何法律程序中被接受為證據,並且除非相反證明成立,否則該文件須當作是該證明書。"。

- (6) 第 16(7)條現予廢除,代以 —
- "(7) 在本條中對附表 3 第 21 及 22 條及附表 4 第 I 部第 22 條內的法律責任限制(不論實際如何稱述)的提述,在經任何必要的變通後,包括對由附表 3 第 30 及 44 條施行的責任限額的提述。"。

16. 提起法律程序的時限

- (1) 第17(1)條現予修訂,廢除"由本條例施行的《經修訂公約》"而代以"《華沙公約》"。
 - (2) 第 17(2)條現予廢除,代以 —
 - "(2) 附表 3 第 35 條或附表 4 第 I 部第 29 條(視何者屬適當而定)不適用於為法律責任分擔而在侵權人之間提起的法律程序,但在自取得判尋求獲得法律責任分擔的人敗訴的判決之日起計的 2 年屆滿後,侵權人不得就該條適用的侵權行為提起向承運人取得法律責任分擔的訴訟。"。
- (3) 第 17(3)條現予修訂,廢除 "第 29條"而代以 "附表 3 第 35條及附表 4 第 I 部第 29條"。

17. 第 16 及 17 條的條文的適用範圍

- (1) 第 18(1)條現予廢除,代以 -
- "(1) 在第 16(1)、(2)及(3)條(該等條文解釋附表 3 第 21 或 22 條或附表 4 第 I 部第 22 條(視何者屬適當而定)中的法律責任的限制,以及令法院能作出適當的命令及判給以施行該等限制)中,對附表 3 第 21 或 22 條或附表 4 第 I 部第 22 條(視何者屬適當而定)的提述,在經任何必要的變通後,包括對附表 3 第 44 條或附表 4 第 II 部第 VI 條(視何者屬適當而定)的提述。"。

(2) 第 18(2)條現予修訂,廢除"附表 3 第 II 部第 I 條(c)段及 附表 4 第 II 部第 I 條(c)段"而代以"附表 3 第 39 條及附表 4 第 II 部第 I 條(c)段"。

18. 本條例的適用範圍

第 19(2)條現予修訂,在"II"之前加入"IA、"。

19. 廢除及保留條文

第20條現予廢除。

20. 加入條文

現加入 一

"21. 修訂附表 1A 及 3 指明的責任限額

- (1) 如《蒙特利爾公約》第 21、22 或 23 條指明的責任限額按照該公約第 24 條修訂,民航處處長須藉於憲報刊登的公告公布 一
 - (a) 該項修訂;及
 - (b) 該項修訂根據該公約第 24 條生效的日期。
- (2) 凡民航處處長根據第(1)款就《蒙特利爾公約》第21、22或23條作出公布,則自如此公布的日期起,附表1A第21、22或23條(視屬何情況而定)及附表3第21或22條(視屬何情況而定)指明的責任限額,須在如此公布的修訂的規限下具有效力。
- (3) 《釋義及通則條例》(第1章)第34條不適用於根據第(1)款刊登的公告。

22. 訂立規例的權力

- (1) 民航處處長可訂立他覺得就 一
 - (a) 對關於《蒙特利爾公約》第 28 條所指的先行 付款的事宜作出規定;及
 - (b) 將根據(a)段作出的任何規定施用於並非《蒙特利爾公約》所適用的航空運輸,

而言屬需要或適官的規例。

- (2) 在不局限可根據第(1)款訂立的規例的一般性的原則下,該等規例
 - (a) 可一般地適用或適用於特別情況,並可只於指明的情況下適用;
 - (b) 可就不同情況訂定不同條文,並可對不同個案 或不同類別的個案作出規定;
 - (c) 可授權將任何事宜或事情交由指明的人決定 、施行、應用或規管;
 - (d) 可對在指明個案中行使酌情決定權作出規定;
 - (e) 可對在有或沒有條件或限制下豁免不同個案 或不同類別的個案使其不在該等規例任何條 文適用範圍內,作出規定;
 - (f) 可對
 - (i) 釐定須為可按照該等規例任何條文 作出的事情而繳付的費用;及

(ii) 該等費用的繳付方法,

作出規定;

- (g) 可為更佳和更有效地施行本條例或有關規例 的任何條文,納入保留條文、過渡性條文、附 帶條文、補充性條文及證據條文;及
- (h) 可為確保有關規例的任何條文獲得遵從而
 - (i) 訂立罪行,並訂定於定罪後施加形式 為不超過第6級罰款的刑罰;及
 - (ii) 對施加其他制裁作出規定,包括(但不限於)就可根據該等規例被規定支付的任何款項徵收利息。
- (3) 在不局限可根據第(1)款訂立的規例的一般性的原則下,該等規例尤其可
 - (a) 規定任何指明的承運人支付指明的款項,以應付任何指明的人因指明的航空運輸所發生的 意外而引致的迫切經濟需要;
 - (b) 對與可根據該等規例被規定支付的任何款項 的申請或其他程序有關的事宜,作出規定;
 - (c) 對與可根據該等規例被規定支付的任何款項 有關的任何條件,作出規定;
 - (d) 賦權法院或任何人應任何人的申請就任何事 情作出裁定,並對該等裁定的效力,作出規定;
 - (e) 對可根據該等規例被規定支付的任何款項的 抵銷及追討,作出規定;

- (f) 對支付或收取可根據該等規例被規定支付的 任何款項的效力,作出規定;
- (g) 規定任何沒有按照該等規例支付的款項或任 何指明可追討的款項屬一筆拖欠有權獲得該 款項的人的民事債項;及
- (h) 對訂定任何指引及該等指引的效力,作出規定。

23. 保留現有權利及法律責任

- (1) 凡在《2005年航空運輸(修訂)條例》(2005年第號)("《修訂條例》")生效前發生任何造成某損失的事故,而根據當時有效的本條例承運人是須為該損失負上法律責任的,則《修訂條例》並不影響因該事故而產生或導致的任何人的權利及法律責任。
- (2) 第(1)款補充而不減損《釋義及通則條例》(第1章) 第23條。"。

21. 《經修訂公約》

附表 1 現予修訂,在方括號內,廢除 "2(1)"而代以 "2"。

22. 加入附表 1A

現加入 一

《蒙特利爾公約》

《統一國際航空運輸某些規則的公約》

第 | 章

總則

第1條 一 適用範圍

- (1) 本公約適用於所有以航空器運送人員、行李或者貨物 而收取報酬的國際運輸。本公約同樣適用於航空運輸企業以航空器 履行的免費運輸。
- 就本公約而言,"國際運輸"係指根據當事人的約 (2) 定,不論在運輸中有無間斷或者轉運,其出發地點和目的地點是在 兩個當事國的領土內,或者在一個當事國的領土內,而在另一國的 領土內有一個約定的經停地點的任何運輸,即使該國為非當事國。 就本公約而言,在一個當事國的領土內兩個地點之間的運輸,而在 另一國的領土內沒有約定的經停地點的,不是國際運輸。
- 運輸合同各方認為幾個連續的承運人履行的運輸是 (3)一項單一的業務活動的,無論其形式是以一個合同訂立或者一系列 合同訂立,就本公約而言,應當視為一項不可分割的運輸,並不僅 因其中一個合同或者一系列合同完全在同一國領土內履行而喪失 其國際性質。
- (4) 本公約同樣適用於第 V 章規定的運輸,除非該章另有 規定。

第2條 一 國家履行的運輸和郵件運輸

- (1) 本公約適用於國家或者依法成立的公共機構在符合 第 1 條規定的條件下履行的運輸。
- (2) 在郵件運輸中,承運人僅根據適用於承運人和郵政當局之間關係的規則,對有關的郵政當局承擔責任。
- (3) 除本條第(2)款規定外,本公約的規定不適用於郵件 運輸。

第 | 1 章

旅客、行李和貨物運輸的有關憑證和當事人的義務

第3條 一 旅客和行李

- (1) 就旅客運輸而言,應當出具個人的或者集體的運輸憑證,該項憑證應當載明:
 - (a) 對出發地點和目的地點的標示;
 - (b) 出發地點和目的地點是在一個當事國的領土 內,而在另一國的領土內有一個或者幾個約定 的經停地點的,至少對其中一個此種經停地點 的標示。
- (2) 任何保存第(1)款內容的其他方法都可以用來代替出 具該款中所指的運輸憑證。採用此種其他方法的,承運人應當提出 向旅客出具一份以此種方法保存的內容的書面陳述。
- (3) 承運人應當就每一件托運行李向旅客出具行李識別 標簽。

- (4) 旅客應當得到書面提示,說明在適用本公約的情況下,本公約調整並可能限制承運人對死亡或者傷害,行李毀滅、遺失或者損壞,以及延誤所承擔的責任。
- (5) 未遵守前幾款的規定,不影響運輸合同的存在或者有效,該運輸合同仍應當受本公約規則的約束,包括有關責任限制規則的約束。

第4條一貨物

- (1) 就貨物運輸而言,應當出具航空貨運單。
- (2) 任何保存將要履行的運輸的記錄的其他方法都可以 用來代替出具航空貨運單。採用此種其他方法的,承運人應當應托 運人的要求,向托運人出具貨物收據,以便識別貨物並能獲得此種 其他方法所保存記錄中的內容。

第 5 條 一 航空貨運單或者貨物收據的內容

航空貨運單或者貨物收據應當包括:

- (a) 對出發地點和目的地點的標示;
- (b) 出發地點和目的地點是在一個當事國的領土 內,而在另一國的領土內有一個或者幾個約定 的經停地點的,至少對其中一個此種經停地點 的標示;以及
- (c) 對貨物重量的標示。

第6條 一 關於貨物性質的憑證

在需要履行海關、警察和類似公共當局的手續時,托運人可以被要求出具標明貨物性質的憑證。此項規定對承運人不造成任何 職責、義務或由此產生的責任。

第7條 一 航空貨運單的說明

- (1) 托運人應當填寫航空貨運單正本一式三份。
- (2) 第一份應當註明"交承運人",由托運人簽字。第二份應當註明"交收貨人",由托運人和承運人簽字。第三份由承運人簽字,承運人在接受貨物後應當將其交給托運人。
 - (3) 承運人和托運人的簽字可以印就或者用戳記。
- (4) 承運人根據托運人的請求填寫航空貨運單的,在沒有相反證明的情況下,應當視為代托運人填寫。

第8條 - 多包件貨物的憑證

在貨物不止一個包件時:

- (a) 貨物承運人有權要求托運人分別填寫航空貨 運單;
- (b) 採用第 4 條第(2)款所指其他方法的,托運人 有權要求承運人分別出具貨物收據。

第9條 一 未遵守憑證的規定

未遵守第 4 條至第 8 條的規定,不影響運輸合同的存在或者 有效,該運輸合同仍應當受本公約規則的約束,包括有關責任限制 規則的約束。

第 10 條 一 對憑證說明的責任

- (1) 對托運人或者以其名義在航空貨運單上載入的關於 貨物的各項說明和陳述的正確性,或者對托運人或者以其名義提供 給承運人載入貨物收據或者載入第4條第(2)款所指其他方法所保 存記錄的關於貨物的各項說明和陳述的正確性,托運人應當負責。 以托運人名義行事的人同時也是承運人的代理人的,同樣適用上述 規定。
- (2) 對因托運人或者以其名義所提供的各項說明和陳述不符合規定、不正確或者不完全,給承運人或者承運人對之負責的任何其他人造成的一切損失,托運人應當對承運人承擔賠償責任。
- (3) 除本條第(1)款和第(2)款規定的外,對因承運人或者 以其名義在貨物收據或者在第 4 條第(2)款所指其他方法所保存的 記錄上載入的各項說明和陳述不符合規定、不正確或者不完全,給 托運人或者托運人對之負責的任何其他人造成的一切損失,承運人 應當對托運人承擔賠償責任。

第 11 條 一 憑證的證據價值

(1) 航空貨運單或者貨物收據是訂立合同、接受貨物和所列運輸條件的初步證據。

(2) 航空貨運單上或者貨物收據上關於貨物的重量、尺寸和包裝以及包件件數的任何陳述是所述事實的初步證據;除經過承運人在托運人在場時查對並在航空貨運單上或者貨物收據上註明經過如此查對或者其為關於貨物外表狀況的陳述外,航空貨運單上或者貨物收據上關於貨物的數量、體積和狀況的陳述不能構成不利於承運人的證據。

第12條 一 處置貨物的權利

- (1) 托運人在負責履行運輸合同規定的全部義務的條件下,有權對貨物進行處置,即可以在出發地機場或者目的地機場將貨物提回,或者在途中經停時中止運輸,或者要求在目的地點或者途中將貨物交給非原指定的收貨人,或者要求將貨物運回出發地機場。托運人不得因行使此種處置權而使承運人或者其他托運人遭受損失,並必須償付因行使此種權利而產生的費用。
- (2) 托運人的指示不可能執行的,承運人必須立即通知托 運人。
- (3) 承運人按照托運人的指示處置貨物,沒有要求出示托運人所收執的那份航空貨運單或者貨物收據,給該份航空貨運單或者貨物收據的合法持有人造成損失的,承運人應當承擔責任,但是不妨礙承運人對托運人的追償權。
- (4) 收貨人的權利依照第 13 條規定開始時,托運人的權利即告終止。但是,收貨人拒絕接受貨物,或者無法同收貨人聯繫的,托運人恢復其處置權。

第13條 一 貨物的交付

(1) 除托運人已經根據第 12 條行使其權利外,收貨人於 貨物到達目的地點,並在繳付應付款項和履行運輸條件後,有權要 求承運人向其交付貨物。

- (2) 除另有約定外,承運人應當負責在貨物到達後立即通知收貨人。
- (3) 承運人承認貨物已經遺失,或者貨物在應當到達之日 起七日後仍未到達的,收貨人有權向承運人行使運輸合同所賦予的 權利。

第14條 一 托運人和收貨人權利的行使

托運人和收貨人在履行運輸合同規定的義務的條件下,無論 為本人或者他人的利益,可以分別以本人的名義行使第 12 條和第 13 條賦予的所有權利。

第 15 條 一 托運人和收貨人的關係或者 第三人之間的相互關係

- (1) 第 12 條、第 13 條和第 14 條不影響托運人同收貨人 之間的相互關係,也不影響從托運人或者收貨人獲得權利的第三人 之間的相互關係。
- (2) 第 12 條、第 13 條和第 14 條的規定,只能通過航空 貨運單或者貨物收據上的明文規定予以變更。

第 16 條 一 海關、警察或者 其他公共當局的手續

(1) 托運人必須提供必需的資料和文件,以便在貨物可交付收貨人前完成海關、警察或者任何其他公共當局的手續。因沒有此種資料、文件,或者此種資料、文件不充足或者不符合規定而引起的損失,除由於承運人、其受僱人或者代理人的過錯造成的外, 托運人應當對承運人承擔責任。 (2) 承運人沒有對此種資料或者文件的正確性或者充足 性進行查驗的義務。

第川章

承運人的責任和損害賠償範圍

第17條 一 旅客死亡和傷害 一 行李損失

- (1) 對於因旅客死亡或者身體傷害而產生的損失,只要造成死亡或者傷害的事故是在航空器上或者在上、下航空器的任何操作過程中發生的,承運人就應當承擔責任。
- (2) 對於因托運行李毀滅、遺失或者損壞而產生的損失, 只要造成毀滅、遺失或者損壞的事件是在航空器上或者在托運行李 處於承運人掌管之下的任何期間內發生的,承運人就應當承擔責 任。但是,行李損失是由於行李的固有缺陷、質量或者瑕疵造成的, 在此範圍內承運人不承擔責任。關於非托運行李,包括個人物件, 承運人對因其過錯或者其受僱人或者代理人的過錯造成的損失承 擔責任。
- (3) 承運人承認托運行李已經遺失,或者托運行李在應當 到達之日起二十一日後仍未到達的,旅客有權向承運人行使運輸合 同所賦予的權利。
- (4) 除另有規定外,本公約中"行李"一詞係指托運行李和非托運行李。

第 18 條 一 貨物損失

(1) 對於因貨物毀滅、遺失或者損壞而產生的損失,只要造成損失的事件是在航空運輸期間發生的,承運人就應當承擔責任。

- (2) 但是,承運人證明貨物的毀滅、遺失或者損壞是由於下列一個或者幾個原因造成的,在此範圍內承運人不承擔責任:
 - (a) 貨物的固有缺陷、質量或者瑕疵;
 - (b) 承運人或者其受僱人、代理人以外的人包裝貨物的,貨物包裝不良;
 - (c) 戰爭行為或者武裝衝突;
 - (d) 公共當局實施的與貨物入境、出境或者過境有關的行為。
- (3) 本條第(1)款所稱的航空運輸期間,係指貨物處於承運人掌管之下的期間。
- (4) 航空運輸期間,不包括機場外履行的任何陸路、海上或者內水運輸過程。但是,此種運輸是在履行航空運輸合同時為了裝載、交付或者轉運而辦理的,在沒有相反證明的情況下,所發生的任何損失推定為在航空運輸期間發生的事件造成的損失。承運人未經托運人同意,以其他運輸方式代替當事人各方在合同中約定採用航空運輸方式的全部或者部分運輸的,此項以其他方式履行的運輸視為在航空運輸期間。

第 19 條 一 延誤

旅客、行李或者貨物在航空運輸中因延誤引起的損失,承運 人應當承擔責任。但是,承運人證明本人及其受僱人和代理人為了 避免損失的發生,已經採取一切可合理要求的措施或者不可能採取 此種措施的,承運人不對因延誤引起的損失承擔責任。

第20條 一 免責

經承運人證明,損失是由索賠人或者索賠人從其取得權利的人的過失或者其他不當作為、不作為造成或者促成的,應當根據造成或者促成此種損失的過失或者其他不當作為、不作為的程度,相應全部或者部分免除承運人對索賠人的責任。旅客以外的其他人就旅客死亡或者傷害提出賠償請求的,經承運人證明,損失是旅客本人的過失或者其他不當作為、不作為造成或者促成的,同樣應當根據造成或者促成此種損失的過失或者其他不當作為、不作為的程度,相應全部或者部分免除承運人的責任。本條適用於本公約中的所有責任條款,包括第 21 條第(1)款。

第21條 一 旅客死亡或者傷害的賠償

- (1) 對於根據第 17 條第(1)款所產生的每名旅客不超過 100,000 特別提款權的損害賠償,承運人不得免除或者限制其責任。
- (2) 對於根據第 17 條第(1)款所產生的損害賠償每名旅客超過 100,000 特別提款權的部分,承運人證明有下列情形的,不應當承擔責任:
 - (a) 損失不是由於承運人或者其受僱人、代理人的 過失或者其他不當作為、不作為造成的;或者
 - (b) 損失完全是由第三人的過失或者其他不當作 為、不作為造成的。

第22條 一 延誤、行李和貨物的責任限額

(1) 在人員運輸中因第 19 條所指延誤造成損失的,承運人對每名旅客的責任以 4,150 特別提款權為限。

- (2) 在行李運輸中造成毀滅、遺失、損壞或者延誤的,承運人的責任以每名旅客 1,000 特別提款權為限,除非旅客在向承運人交運托運行李時,特別聲明在目的地點交付時的利益,並在必要時支付附加費。在此種情況下,除承運人證明旅客聲明的金額高於在目的地點交付時旅客的實際利益外,承運人在聲明金額範圍內承擔責任。
- (3) 在貨物運輸中造成毀滅、遺失、損壞或者延誤的,承運人的責任以每公斤 17 特別提款權為限,除非托運人在向承運人交運包件時,特別聲明在目的地點交付時的利益,並在必要時支付附加費。在此種情況下,除承運人證明托運人聲明的金額高於在目的地點交付時托運人的實際利益外,承運人在聲明金額範圍內承擔責任。
- (4) 貨物的一部分或者貨物中任何物件毀滅、遺失、損壞或者延誤的,用以確定承運人賠償責任限額的重量,僅為該包件或者該數包件的總重量。但是,因貨物一部分或者貨物中某一物件的毀滅、遺失、損壞或者延誤,影響同一份航空貨運單、貨物收據或者在未出具此兩種憑證時按第4條第(2)款所指其他方法保存的記錄所列的其他包件的價值的,確定承運人的賠償責任限額時,該包件或者數包件的總重量也應當考慮在內。
- (5) 經證明,損失是由於承運人、其受僱人或者代理人的故意或者明知可能造成損失而輕率地作為或者不作為造成的,不適用本條第(1)款和第(2)款的規定;對於受僱人、代理人的此種作為或者不作為,還應當證明該受僱人、代理人是在受僱、代理範圍內行事。
- (6) 第 21 條和本條規定的限額不妨礙法院按照其法律另外加判全部或者一部分法院費用及原告所產生的其他訴訟費用,包括利息。判給的賠償金額,不含法院費用及其他訴訟費用,不超過承運人在造成損失的事情發生後六個月內或者已過六個月而在起訴以前已書面向原告提出的金額的,不適用上述規定。

第 23 條 一 貨幣單位的換算

- (1) 本公約中以特別提款權表示的各項金額,係指國際貨幣基金組織確定的特別提款權。在進行司法程序時,各項金額與各國家貨幣的換算,應當按照判決當日用特別提款權表示的該項貨幣的價值計算。當事國是國際貨幣基金組織成員的,用特別提款權表示的其國家貨幣的價值,應當按照判決當日有效的國際貨幣基金組織在其業務和交易中採用的計價方法進行計算。當事國不是國際貨幣基金組織成員的,用特別提款權表示的其國家貨幣的價值,應當按照該國所確定的辦法計算。
- (2) 但是,非國際貨幣基金組織成員並且其法律不允許適用本條第(1)款規定的國家,可以在批准、加入或者其後的任何時候聲明,在其領土內進行司法程序時,就第 21 條而言,承運人對每名旅客的責任以 1,500,000 貨幣單位為限;就第 22 條第(1)款而言,承運人對每名旅客的責任以 62,500 貨幣單位為限;就第 22 條第(2)款而言,承運人對每名旅客的責任以 15,000 貨幣單位為限;就第 22 條第(3)款而言,承運人的責任以每公斤 250 貨幣單位為限;就第 22 條第(3)款而言,承運人的責任以每公斤 250 貨幣單位為限。此種貨幣單位相當於含有千分之九百純度的六十五點五毫克的黃金。各項金額可換算為有關國家貨幣,取其整數。各項金額與國家貨幣的換算,應當按照該有關國家的法律進行。
- (3) 本條第(1)款最後一句所稱的計算,以及本條第(2)款 所稱的換算方法,應當使以當事國貨幣計算的第 21 條和第 22 條的 數額的價值與根據本條第(1)款前三句計算的真實價值盡可能相 同。當事國在交存對本公約的批准書、接受書、核准書或者加入書 時,應當將根據本條第(1)款進行的計算方法或者根據本條第(2)款 所得的換算結果通知保存人,該計算方法或者換算結果發生變化時 亦同。

第24條 一 限額的覆審

- (1) 在不妨礙本公約第 25 條規定的條件下,並依據本條 第(2)款的規定,保存人應當對第 21 條、第 22 條和第 23 條規定的 責任限額每隔五年進行一次覆審,第一次覆審應當在本公約生效之 日起第五年的年終進行,本公約在其開放簽署之日起五年內未生效 的,第一次覆審應當在本公約生效的第一年內進行,覆審時應當參 考與上一次修訂以來或者就第一次而言本公約生效之日以來累積 的通貨膨脹率相應的通貨膨脹因素。用以確定通貨膨脹因素的通貨 膨脹率,應當是構成第 23 條第(1)款所指特別提款權的貨幣的發行 國消費品價格指數年漲跌比率的加權平均數。
- (2) 前款所指的覆審結果表明通貨膨脹因素已經超過百分之十的,保存人應當將責任限額的修訂通知當事國。該項修訂應當在通知當事國六個月後生效。在將該項修訂通知當事國後的三個月內,多數當事國登記其反對意見的,修訂不得生效,保存人應當將此事提交當事國會議。保存人應當將修訂的生效立即通知所有當事國。
- (3) 儘管有本條第(1)款的規定,三分之一的當事國表示希望進行本條第(2)款所指的程序,並且第(1)款所指通貨膨脹因素自上一次修訂之日起,或者在未曾修訂過的情形下自本公約生效之日起,已經超過百分之三十的,應當在任何時候進行該程序。其後的依照本條第(1)款規定程序的覆審每隔五年進行一次,自依照本款進行的覆審之日起第五年的年終開始。

第 25 條 一 關於限額的訂定

承運人可以訂定,運輸合同適用高於本公約規定的責任限額,或者無責任限額。

第 26 條 一 合同條款的無效

任何旨在免除本公約規定的承運人責任或者降低本公約規 定的責任限額的條款,均屬無效,但是,此種條款的無效,不影響 整個合同的效力,該合同仍受本公約規定的約束。

第27條 一 合同自由

本公約不妨礙承運人拒絕訂立任何運輸合同、放棄根據本公約能夠獲得的任何抗辯理由或者制定同本公約規定不相抵觸的條件。

第28條 一 先行付款

因航空器事故造成旅客死亡或者傷害的,承運人應當在其國內法有如此要求的情況下,向有權索賠的自然人不遲延地先行付款,以應其迫切經濟需要。此種先行付款不構成對責任的承認,並可從承運人隨後作為損害賠償金支付的任何數額中抵銷。

第29條 一 索賠的根據

在旅客、行李和貨物運輸中,有關損害賠償的訴訟,不論其根據如何,是根據本公約、根據合同、根據侵權,還是根據其他任何理由,只能依照本公約規定的條件和責任限額提起,但是不妨礙確定誰有權提起訴訟以及他們各自的權利。在任何此類訴訟中,均不得判給懲罰性、懲戒性或者任何其他非補償性的損害賠償。

第30條 一 受僱人、代理人 一 索賠的總額

- (1) 就本公約中所指損失向承運人的受僱人、代理人提起訴訟時,該受僱人、代理人證明其是在受僱、代理範圍內行事的,有權援用本公約中承運人有權援用的條件和責任限額。
- (2) 在此種情況下,承運人及其受僱人和代理人的賠償總額不得超過上述責任限額。
- (3) 經證明,損失是由於受僱人、代理人的故意或者明知可能造成損失而輕率地作為或者不作為造成的,不適用本條第(1)款和第(2)款的規定,但貨物運輸除外。

第 31 條 一 異議的及時提出

- (1) 有權提取托運行李或者貨物的人收受托運行李或者 貨物而未提出異議,為托運行李或者貨物已經在良好狀況下並在與 運輸憑證或者第 3 條第 (2) 款和第 4 條第 (2) 款所指其他方法保存的 記錄相符的情況下交付的初步證據。
- (2) 發生損失的,有權提取托運行李或者貨物的人必須在 發現損失後立即向承運人提出異議,並且,托運行李發生損失的, 至遲自收到托運行李之日起七日內提出,貨物發生損失的,至遲自 收到貨物之日起十四日內提出。發生延誤的,必須至遲自行李或者 貨物交付收件人處置之日起二十一日內提出異議。
- (3) 任何異議均必須在前款規定的期間內以書面形式提 出或者發出。
- (4) 除承運人一方有欺詐外,在前款規定的期間內未提出 異議的,不得向承運人提起訴訟。

第32條 一 責任人的死亡

責任人死亡的,損害賠償訴訟可以根據本公約的規定,對其 遺產的合法管理人提起。

第33條 一 管轄權

- (1) 損害賠償訴訟必須在一個當事國的領土內,由原告選擇,向承運人住所地、主要營業地或者訂立合同的營業地的法院,或者向目的地點的法院提起。
- (2) 對於因旅客死亡或者傷害而產生的損失,訴訟可以向本條第(1)款所述的法院之一提起,或者在這樣一個當事國領土內提起,即在發生事故時旅客的主要且永久居所在該國領土內,並且承運人使用自己的航空器或者根據商務協議使用另一承運人的航空器經營到達該國領土或者從該國領土始發的旅客航空運輸業務,並且在該國領土內該承運人通過其本人或者與其有商務協議的另一承運人租賃或者所有的處所從事其旅客航空運輸經營。
 - (3) 就第(2)款而言,
 - (a) "商務協議"係指承運人之間就其提供聯營 旅客航空運輸業務而訂立的協議,但代理協議 除外;
 - (b) "主要且永久居所"係指事故發生時旅客的 那一個固定和永久的居住地。在此方面,旅客 的國籍不得作為決定性的因素。
 - (4) 訴訟程序適用案件受理法院的法律。

第34條 一 仲裁

- (1) 在符合本條規定的條件下,貨物運輸合同的當事人可以約定,有關本公約中的承運人責任所發生的任何爭議應當通過仲裁解決。此協議應當以書面形式訂立。
- (2) 仲裁程序應當按照索賠人的選擇,在第 33 條所指的 其中一個管轄區內進行。
 - (3) 仲裁員或者仲裁庭應當適用本公約的規定。
- (4) 本條第(2)款和第(3)款的規定應當視為每一仲裁條 款或者仲裁協議的一部分,此種條款或者協議中與上述規定不一致 的任何條款均屬無效。

第35條 一 訴訟時效

- (1) 自航空器到達目的地點之日、應當到達目的地點之日 或者運輸終止之日起兩年期間內未提起訴訟的,喪失對損害賠償的 權利。
- (2) 上述期間的計算方法,依照案件受理法院的法律確 定。

第36條 一連續運輸

(1) 由幾個連續承運人履行的並屬於第 1 條第 (3) 款規定 的運輸,接受旅客、行李或者貨物的每一個承運人應當受本公約規 則的約束,並就在運輸合同中其監管履行的運輸區段的範圍內,作 為運輸合同的訂約一方。

- (2) 對於此種性質的運輸,除明文約定第一承運人對全程 運輸承擔責任外,旅客或者任何行使其索賠權利的人,只能對發生 事故或者延誤時履行該運輸的承運人提起訴訟。
- (3) 關於行李或者貨物,旅客或者托運人有權對第一承運 人提起訴訟,有權接受交付的旅客或者收貨人有權對最後承運人提 起訴訟,旅客、托運人和收貨人均可以對發生毀滅、遺失、損壞或 者延誤的運輸區段的承運人提起訴訟。上述承運人應當對旅客、托 運人或者收貨人承擔連帶責任。

第37條 一 對第三人的追償權

本公約不影響依照本公約規定對損失承擔責任的人是否有權向他人追償的問題。

第IV章

聯合運輸

第38條 一 聯合運輸

- (1) 部分採用航空運輸,部分採用其他運輸方式履行的聯合運輸,本公約的規定應當只適用於符合第1條規定的航空運輸部分,但是第18條第(4)款另有規定的除外。
- (2) 在航空運輸部分遵守本公約規定的條件下,本公約不妨礙聯合運輸的各方當事人在航空運輸憑證上列入有關其他運輸方式的條件。

第Ⅴ章

非締約承運人履行的航空運輸

第39條 一 締約承運人 一 實際承運人

一方當事人(以下簡稱 "締約承運人")本人與旅客、托運人或者與以旅客或者托運人名義行事的人訂立本公約調整的運輸合同,而另一當事人(以下簡稱 "實際承運人")根據締約承運人的授權,履行全部或者部分運輸,但就該部分運輸而言該另一當事人又不是本公約所指的連續承運人的,適用本章的規定。在沒有相反證明時,此種授權應當被推定為是存在的。

第 40 條 一 締約承運人和實際承運人各自的責任

除本章另有規定外,實際承運人履行全部或者部分運輸,而 根據第 39 條所指的合同,該運輸是受本公約調整的,締約承運人 和實際承運人都應當受本公約規則的約束,締約承運人對合同考慮 到的全部運輸負責,實際承運人只對其履行的運輸負責。

第 41 條 一 相互責任

(1) 實際承運人的作為和不作為,實際承運人的受僱人、 代理人在受僱、代理範圍內的作為和不作為,關係到實際承運人履 行的運輸的,也應當視為締約承運人的作為和不作為。 (2) 締約承運人的作為和不作為,締約承運人的受僱人、 代理人在受僱、代理範圍內的作為和不作為,關係到實際承運人履 行的運輸的,也應當視為實際承運人的作為和不作為。但是,實際 承運人承擔的責任不因此種作為或者不作為而超過第 21 條、第 22 條、第 23 條和第 24 條所指的數額。任何有關締約承運人承擔本公 約未規定的義務或者放棄本公約賦予的權利或者抗辯理由的特別 協議,或者任何有關第 22 條考慮到的在目的地點交付時利益的特 別聲明,除經過實際承運人同意外,均不得影響實際承運人。

第 42 條 一 異議和指示的對象

依照本公約規定向承運人提出的異議或者發出的指示,無論 是向締約承運人還是向實際承運人提出或者發出,具有同等效力。 但是,第12條所指的指示,只在向締約承運人發出時,方為有效。

第 43 條 一 受僱人和代理人

實際承運人的受僱人、代理人或者締約承運人的受僱人、代理人,證明其是在受僱、代理範圍內行事的,就實際承運人履行的運輸而言,有權援用本公約規定的適用於僱用該人的或者被代理的承運人的條件和責任限額,但是經證明依照本公約其行為不能援用該責任限額的除外。

第 44 條 一 賠償總額

對於實際承運人履行的運輸,實際承運人和締約承運人以及 他們的在受僱、代理範圍內行事的受僱人和代理人的賠償總額不得 超過依照本公約得以從締約承運人或者實際承運人獲得賠償的最 高數額,但是上述任何人都不承擔超過對其適用的責任限額。

第 45 條 一 索賠對象

對實際承運人履行的運輸提起的損害賠償訴訟,可以由原告 選擇,對實際承運人提起或者對締約承運人提起,也可以同時或者 分別對實際承運人和締約承運人提起。損害賠償訴訟只對其中一個 承運人提起的,該承運人有權要求另一承運人參加訴訟,訴訟程序 及其效力適用案件受理法院的法律。

第 46 條 一 附加管轄權

第 45 條考慮到的損害賠償訴訟,必須在一個當事國的領土內,由原告選擇,按照第 33 條規定向可以對締約承運人提起訴訟的法院提起,或者向實際承運人住所地或者其主要營業地有管轄權的法院提起。

第 47 條 一 合同條款的無效

任何旨在免除本章規定的締約承運人或者實際承運人責任 或者降低適用於本章的責任限額的合同條款,均屬無效,但是,此 種條款的無效,不影響整個合同的效力,該合同仍受本章規定的約 束。

第 48 條 一 締約承運人和實際承運人的相互關係

除第 45 條規定外,本章的規定不影響承運人之間的權利和 義務,包括任何追償權或者求償權。 第VI章

其他規定

第 49 條 一 強制適用

運輸合同的任何條款和在損失發生以前達成的所有特別協 議,其當事人借以違反本公約規則的,無論是選擇所適用的法律還 是變更有關管轄權的規則,均屬無效。

第51條 一 特殊情況下履行的運輸

第 3 條至第 5 條、第 7 條和第 8 條關於運輸憑證的規定,不適用於承運人正常業務範圍以外的在特殊情況下履行的運輸。

第52條 一 日的定義

本公約所稱"日",係指日曆日,而非工作日。

第第 VII 章

最後條款

第 56 條 一 有多種法律制度的國家

(1) 一國有兩個或者多個領土單位,在各領土單位內對於本公約處理的事項適用不同的法律制度的,該國可以在簽署、批准、接受、核准或者加入時,聲明本公約適用於該國所有領土單位或者只適用於其中一個或者多個領土單位,該國也可隨時提交另一份聲明以修改此項聲明。

- (2) 作出此項聲明,均應當通知保存人,聲明中應當明確 指明適用本公約的領土單位。
 - (3) 就已作出此項聲明的當事國而言,
 - (a) 第 23 條所述的"國家貨幣"應當解釋為該國 有關領土單位的貨幣;並且
 - (b) 第 28 條所述的"國內法"應當解釋為該國有關領土單位的法律。

第57條 一保留

對本公約不得保留,但是當事國可以在任何時候向保存人提 交通知,聲明本公約不適用於:

- (a) 由當事國就其作為主權國家的職能和責任為 非商業目的而直接辦理和運營的國際航空運 輸;以及/或者
- (b) 使用在該當事國登記的或者為該當事國所租 賃的、其全部運力已為其軍事當局或者以該當 局的名義所保留的航空器,為該當局辦理的人 員、貨物和行李運輸。

[本公約的弁言、第50、53、54及55條及最後字句不予載列。該等條文和文字分別關於保險、簽署、批准和生效、退出的事宜,以及《蒙特利爾公約》和關於國際航空運輸的其他公約的關係。]"。

23. 《瓜達拉哈拉公約》

附表 2 現予修訂,在方括號內,廢除 "2(1)"而代以 "2"。

24. 取代附表 3

附表 3 現予廢除,代以 一

"附表 3

[第 13、15、16、 17、18 及 21 條]

非國際運輸與郵件和郵包的運輸

《蒙特利爾公約》的適用範圍

就本條例第 13 條所描述的運輸而言,《蒙特利爾公約》經以下所列的形式改編和變通後適用 —

第Ⅰ章

總則

第1條 一 適用範圍

- (1) 本附表適用於所有以航空器運送人員、行李或者貨物 而收取報酬的運輸。本附表同樣適用於航空運輸企業以航空器履行 的免費運輸。
- (3) 運輸合同各方認為幾個連續的承運人履行的運輸是 一項單一的業務活動的,無論其形式是以一個合同訂立或者一系列 合同訂立,就本附表而言,應當視為一項不可分割的運輸。
- (4) 本附表同樣適用於第 V 章規定的運輸,除非該章另有規定。

第2條 一 國家履行的運輸

(1) 本附表適用於國家或者依法成立的公共機構在符合 第 1 條規定的條件下履行的運輸。

第三章

旅客、行李和貨物運輸的有關憑證和當事人的義務

第3條 一 旅客和行李

- (1) 就旅客運輸而言,應當出具個人的或者集體的運輸憑證,該項憑證應當載明:
 - (a) 對出發地點和目的地點的標示。
- (2) 任何保存第(1)款內容的其他方法都可以用來代替出 具該款中所指的運輸憑證。採用此種其他方法的,承運人應當提出 向旅客出具一份以此種方法保存的內容的書面陳述。
- (3) 承運人應當就每一件托運行李向旅客出具行李識別標簽。
- (5) 未遵守前幾款的規定,不影響運輸合同的存在或者有效,該運輸合同仍應當受本附表規則的約束,包括有關責任限制規則的約束。

第4條 一 貨物

(1) 就貨物運輸而言,應當出具航空貨運單。

(2) 任何保存將要履行的運輸的記錄的其他方法都可以 用來代替出具航空貨運單。採用此種其他方法的,承運人應當應托 運人的要求,向托運人出具貨物收據,以便識別貨物並能獲得此種 其他方法所保存記錄中的內容。

第 5 條 一 航空貨運單或者貨物收據的內容

航空貨運單或者貨物收據應當包括:

- (a) 對出發地點和目的地點的標示;
- (c) 對貨物重量的標示。

第6條 - 關於貨物性質的憑證

在需要履行海關、警察和類似公共當局的手續時,托運人可以被要求出具標明貨物性質的憑證。此項規定對承運人不造成任何 職責、義務或由此產生的責任。

第7條 一 航空貨運單的說明

- (1) 托運人應當填寫航空貨運單正本一式三份。
- (2) 第一份應當註明"交承運人",由托運人簽字。第二份應當註明"交收貨人",由托運人和承運人簽字。第三份由承運人簽字,承運人在接受貨物後應當將其交給托運人。
 - (3) 承運人和托運人的簽字可以印就或者用戳記。
- (4) 承運人根據托運人的請求填寫航空貨運單的,在沒有相反證明的情況下,應當視為代托運人填寫。

第8條 一 多包件貨物的憑證

在貨物不止一個包件時:

- (a) 貨物承運人有權要求托運人分別填寫航空貨 運單;
- (b) 採用第 4 條第(2)款所指其他方法的,托運人 有權要求承運人分別出具貨物收據。

第9條 一 未遵守憑證的規定

未遵守第4條至第8條的規定,不影響運輸合同的存在或者 有效,該運輸合同仍應當受本附表規則的約束,包括有關責任限制 規則的約束。

第 10 條 一 對憑證說明的責任

- (1) 對托運人或者以其名義在航空貨運單上載入的關於 貨物的各項說明和陳述的正確性,或者對托運人或者以其名義提供 給承運人載入貨物收據或者載入第4條第(2)款所指其他方法所保 存記錄的關於貨物的各項說明和陳述的正確性,托運人應當負責。 以托運人名義行事的人同時也是承運人的代理人的,同樣適用上述 規定。
- (2) 對因托運人或者以其名義所提供的各項說明和陳述不符合規定、不正確或者不完全,給承運人或者承運人對之負責的任何其他人造成的一切損失,托運人應當對承運人承擔賠償責任。

(3) 除本條第(1)款和第(2)款規定的外,對因承運人或者 以其名義在貨物收據或者在第 4 條第(2)款所指其他方法所保存的 記錄上載入的各項說明和陳述不符合規定、不正確或者不完全,給 托運人或者托運人對之負責的任何其他人造成的一切損失,承運人 應當對托運人承擔賠償責任。

第 11 條 一 憑證的證據價值

- (1) 航空貨運單或者貨物收據是訂立合同、接受貨物和所列運輸條件的初步證據。
- (2) 航空貨運單上或者貨物收據上關於貨物的重量、尺寸和包裝以及包件件數的任何陳述是所述事實的初步證據;除經過承運人在托運人在場時查對並在航空貨運單上或者貨物收據上註明經過如此查對或者其為關於貨物外表狀況的陳述外,航空貨運單上或者貨物收據上關於貨物的數量、體積和狀況的陳述不能構成不利於承運人的證據。

第12條 一處置貨物的權利

- (1) 托運人在負責履行運輸合同規定的全部義務的條件下,有權對貨物進行處置,即可以在出發地機場或者目的地機場將貨物提回,或者在途中經停時中止運輸,或者要求在目的地點或者途中將貨物交給非原指定的收貨人,或者要求將貨物運回出發地機場。托運人不得因行使此種處置權而使承運人或者其他托運人遭受損失,並必須償付因行使此種權利而產生的費用。
- (2) 托運人的指示不可能執行的,承運人必須立即通知托運人。
- (3) 承運人按照托運人的指示處置貨物,沒有要求出示托 運人所收執的那份航空貨運單或者貨物收據,給該份航空貨運單或 者貨物收據的合法持有人造成損失的,承運人應當承擔責任,但是 不妨礙承運人對托運人的追償權。

(4) 收貨人的權利依照第 13 條規定開始時,托運人的權利即告終止。但是,收貨人拒絕接受貨物,或者無法同收貨人聯繫的,托運人恢復其處置權。

第13條 一 貨物的交付

- (1) 除托運人已經根據第 12 條行使其權利外,收貨人於 貨物到達目的地點,並在繳付應付款項和履行運輸條件後,有權要 求承運人向其交付貨物。
- (2) 除另有約定外,承運人應當負責在貨物到達後立即通知收貨人。
- (3) 承運人承認貨物已經遺失,或者貨物在應當到達之日 起七日後仍未到達的,收貨人有權向承運人行使運輸合同所賦予的 權利。

第14條 一 托運人和收貨人權利的行使

托運人和收貨人在履行運輸合同規定的義務的條件下,無論 為本人或者他人的利益,可以分別以本人的名義行使第 12 條和第 13 條賦予的所有權利。

第 15 條 一 托運人和收貨人的關係 或者第三人之間的相互關係

(1) 第 12 條、第 13 條和第 14 條不影響托運人同收貨人 之間的相互關係,也不影響從托運人或者收貨人獲得權利的第三人 之間的相互關係。 (2) 第 12 條、第 13 條和第 14 條的規定,只能通過航空 貨運單或者貨物收據上的明文規定予以變更。

第 16 條 一 海關、警察或者 其他公共當局的手續

- (1) 托運人必須提供必需的資料和文件,以便在貨物可交付收貨人前完成海關、警察或者任何其他公共當局的手續。因沒有此種資料、文件,或者此種資料、文件不充足或者不符合規定而引起的損失,除由於承運人、其受僱人或者代理人的過錯造成的外,托運人應當對承運人承擔責任。
- (2) 承運人沒有對此種資料或者文件的正確性或者充足性進行查驗的義務。

第川章

承運人的責任和損害賠償範圍

第17條 一 旅客死亡和傷害 一 行李損失

- (1) 對於因旅客死亡或者身體傷害而產生的損失,只要造成死亡或者傷害的事故是在航空器上或者在上、下航空器的任何操作過程中發生的,承運人就應當承擔責任。
- (2) 對於因托運行李毀滅、遺失或者損壞而產生的損失, 只要造成毀滅、遺失或者損壞的事件是在航空器上或者在托運行李 處於承運人掌管之下的任何期間內發生的,承運人就應當承擔責 任。但是,行李損失是由於行李的固有缺陷、質量或者瑕疵造成的, 在此範圍內承運人不承擔責任。關於非托運行李,包括個人物件, 承運人對因其過錯或者其受僱人或者代理人的過錯造成的損失承 擔責任。

- (3) 承運人承認托運行李已經遺失,或者托運行李在應當 到達之日起二十一日後仍未到達的,旅客有權向承運人行使運輸合 同所賦予的權利。
- (4) 除另有規定外,本附表中"行李"一詞係指托運行李 和非托運行李。

第 18 條 一 貨物損失

- (1) 對於因貨物毀滅、遺失或者損壞而產生的損失,只要造成損失的事件是在航空運輸期間發生的,承運人就應當承擔責任。
- (2) 但是,承運人證明貨物的毀滅、遺失或者損壞是由於下列一個或者幾個原因造成的,在此範圍內承運人不承擔責任:
 - (a) 貨物的固有缺陷、質量或者瑕疵;
 - (b) 承運人或者其受僱人、代理人以外的人包裝貨物的,貨物包裝不良;
 - (c) 戰爭行為或者武裝衝突;
 - (d) 公共當局實施的與貨物入境、出境或者過境有關的行為。
- (3) 本條第(1)款所稱的航空運輸期間,係指貨物處於承運人掌管之下的期間。
- (4) 航空運輸期間,不包括機場外履行的任何陸路、海上或者內水運輸過程。但是,此種運輸是在履行航空運輸合同時為了裝載、交付或者轉運而辦理的,在沒有相反證明的情況下,所發生的任何損失推定為在航空運輸期間發生的事件造成的損失。承運人未經托運人同意,以其他運輸方式代替當事人各方在合同中約定採用航空運輸方式的全部或者部分運輸的,此項以其他方式履行的運輸視為在航空運輸期間。

第 19 條 一 延誤

旅客、行李或者貨物在航空運輸中因延誤引起的損失,承運 人應當承擔責任。但是,承運人證明本人及其受僱人和代理人為了 避免損失的發生,已經採取一切可合理要求的措施或者不可能採取 此種措施的,承運人不對因延誤引起的損失承擔責任。

第 20 條 一 免責

經承運人證明,損失是由索賠人或者索賠人從其取得權利的人的過失或者其他不當作為、不作為造成或者促成的,應當根據造成或者促成此種損失的過失或者其他不當作為、不作為的程度,相應全部或者部分免除承運人對索賠人的責任。旅客以外的其他人就旅客死亡或者傷害提出賠償請求的,經承運人證明,損失是旅客本人的過失或者其他不當作為、不作為造成或者促成的,同樣應當根據造成或者促成此種損失的過失或者其他不當作為、不作為的程度,相應全部或者部分免除承運人的責任。本條適用於本附表中的所有責任條款,包括第 21 條第(1)款。

第 21 條 一 旅客死亡或者傷害的賠償

- (1) 對於根據第 17 條第(1)款所產生的每名旅客不超過 100,000 特別提款權的損害賠償,承運人不得免除或者限制其責任。
- (2) 對於根據第 17 條第(1)款所產生的損害賠償每名旅客超過 100,000 特別提款權的部分,承運人證明有下列情形的,不應當承擔責任:
 - (a) 損失不是由於承運人或者其受僱人、代理人的 過失或者其他不當作為、不作為造成的;或者

(b) 損失完全是由第三人的過失或者其他不當作 為、不作為造成的。

第 22 條 一 延誤、行李和貨物的責任限額

- (1) 在人員運輸中因第 19 條所指延誤造成損失的,承運人對每名旅客的責任以 4,150 特別提款權為限。
- (2) 在行李運輸中造成毀滅、遺失、損壞或者延誤的,承運人的責任以每名旅客 1,000 特別提款權為限,除非旅客在向承運人交運托運行李時,特別聲明在目的地點交付時的利益,並在必要時支付附加費。在此種情況下,除承運人證明旅客聲明的金額高於在目的地點交付時旅客的實際利益外,承運人在聲明金額範圍內承擔責任。
- (3) 在貨物運輸中造成毀滅、遺失、損壞或者延誤的,承運人的責任以每公斤 17 特別提款權為限,除非托運人在向承運人交運包件時,特別聲明在目的地點交付時的利益,並在必要時支付附加費。在此種情況下,除承運人證明托運人聲明的金額高於在目的地點交付時托運人的實際利益外,承運人在聲明金額範圍內承擔責任。
- (4) 貨物的一部分或者貨物中任何物件毀滅、遺失、損壞或者延誤的,用以確定承運人賠償責任限額的重量,僅為該包件或者該數包件的總重量。但是,因貨物一部分或者貨物中某一物件的毀滅、遺失、損壞或者延誤,影響同一份航空貨運單、貨物收據或者在未出具此兩種憑證時按第4條第(2)款所指其他方法保存的記錄所列的其他包件的價值的,確定承運人的賠償責任限額時,該包件或者數包件的總重量也應當考慮在內。
- (5) 經證明,損失是由於承運人、其受僱人或者代理人的故意或者明知可能造成損失而輕率地作為或者不作為造成的,不適用本條第(1)款和第(2)款的規定;對於受僱人、代理人的此種作為或者不作為,還應當證明該受僱人、代理人是在受僱、代理範圍內行事。

(6) 第 21 條和本條規定的限額不妨礙法院按照其法律另外加判全部或者一部分法院費用及原告所產生的其他訴訟費用,包括利息。判給的賠償金額,不含法院費用及其他訴訟費用,不超過承運人在造成損失的事情發生後六個月內或者已過六個月而在起訴以前已書面向原告提出的金額的,不適用上述規定。

第23條 一 貨幣單位的換算

(1) 本附表中以特別提款權表示的各項金額,係指國際貨幣基金組織確定的特別提款權。在進行司法程序時,各項金額與港幣的換算,應當按照判決當日用特別提款權表示的港幣的價值計算。

第25條 - 關於限額的訂定

承運人可以訂定,運輸合同適用高於本附表規定的責任限額,或者無責任限額。

第 26 條 一 合同條款的無效

任何旨在免除本附表規定的承運人責任或者降低本附表規 定的責任限額的條款,均屬無效,但是,此種條款的無效,不影響 整個合同的效力,該合同仍受本附表規定的約束。

第27條 一 合同自由

本附表不妨礙承運人拒絕訂立任何運輸合同、放棄根據本附表能夠獲得的任何抗辯理由或者制定同本附表規定不相抵觸的條件。

第29條 一 索賠的根據

在旅客、行李和貨物運輸中,有關損害賠償的訴訟,不論其根據如何,是根據本附表、根據合同、根據侵權,還是根據其他任何理由,只能依照本附表規定的條件和責任限額提起,但是不妨礙確定誰有權提起訴訟以及他們各自的權利。在任何此類訴訟中,均不得判給懲罰性、懲戒性或者任何其他非補償性的損害賠償。

第30條 一 受僱人、代理人 一 索賠的總額

- (1) 就本附表中所指損失向承運人的受僱人、代理人提起訴訟時,該受僱人、代理人證明其是在受僱、代理範圍內行事的,有權援用本附表中承運人有權援用的條件和責任限額。
- (2) 在此種情況下,承運人及其受僱人和代理人的賠償總額不得超過上述責任限額。
- (3) 經證明,損失是由於受僱人、代理人的故意或者明知可能造成損失而輕率地作為或者不作為造成的,不適用本條第(1)款和第(2)款的規定,但貨物運輸除外。

第 31 條 一 異議的及時提出

- (1) 有權提取托運行李或者貨物的人收受托運行李或者 貨物而未提出異議,為托運行李或者貨物已經在良好狀況下並在與 運輸憑證或者第3條第(2)款和第4條第(2)款所指其他方法保存的 記錄相符的情況下交付的初步證據。
- (2) 發生損失的,有權提取托運行李或者貨物的人必須在 發現損失後立即向承運人提出異議,並且,托運行李發生損失的, 至遲自收到托運行李之日起七日內提出,貨物發生損失的,至遲自 收到貨物之日起十四日內提出。發生延誤的,必須至遲自行李或者 貨物交付收件人處置之日起二十一日內提出異議。

- (3) 任何異議均必須在前款規定的期間內以書面形式提 出或者發出。
- (4) 除承運人一方有欺詐外,在前款規定的期間內未提出 異議的,不得向承運人提起訴訟。

第32條 一 責任人的死亡

責任人死亡的,損害賠償訴訟可以根據本附表的規定,對其 遺產的合法管理人提起。

第 34 條 一 仲裁

- (1) 在符合本條規定的條件下,貨物運輸合同的當事人可以約定,有關本附表中的承運人責任所發生的任何爭議應當通過仲裁解決。此協議應當以書面形式訂立。
 - (3) 仲裁員或者仲裁庭應當適用本附表的規定。
- (4) 本條第(3)款的規定應當視為每一仲裁條款或者仲裁協議的一部分,此種條款或者協議中與上述規定不一致的任何條款均屬無效。

第35條 一 訴訟時效

- (1) 自航空器到達目的地點之日、應當到達目的地點之日 或者運輸終止之日起兩年期間內未提起訴訟的,喪失對損害賠償的 權利。
- (2) 上述期間的計算方法,依照案件受理法院的法律確定。

第36條 一連續運輸

- (1) 由幾個連續承運人履行的並屬於第 1 條第 (3) 款規定 的運輸,接受旅客、行李或者貨物的每一個承運人應當受本附表規 則的約束,並就在運輸合同中其監管履行的運輸區段的範圍內,作 為運輸合同的訂約一方。
- (2) 對於此種性質的運輸,除明文約定第一承運人對全程 運輸承擔責任外,旅客或者任何行使其索賠權利的人,只能對發生 事故或者延誤時履行該運輸的承運人提起訴訟。
- (3) 關於行李或者貨物,旅客或者托運人有權對第一承運人提起訴訟,有權接受交付的旅客或者收貨人有權對最後承運人提起訴訟,旅客、托運人和收貨人均可以對發生毀滅、遺失、損壞或者延誤的運輸區段的承運人提起訴訟。上述承運人應當對旅客、托運人或者收貨人承擔連帶責任。

第37條 一 對第三人的追償權

本附表不影響依照本附表規定對損失承擔責任的人是否有權向他人追償的問題。

第Ⅳ章

聯合運輸

第38條 一 聯合運輸

(1) 部分採用航空運輸,部分採用其他運輸方式履行的聯合運輸,本附表的規定應當只適用於符合第1條規定的航空運輸部分,但是第18條第(4)款另有規定的除外。

(2) 在航空運輸部分遵守本附表規定的條件下,本附表不妨礙聯合運輸的各方當事人在航空運輸憑證上列入有關其他運輸方式的條件。

第Ⅴ章

非締約承運人履行的航空運輸

第39條 一 締約承運人 一 實際承運人

一方當事人(以下簡稱 "締約承運人")本人與旅客、托運人或者與以旅客或者托運人名義行事的人訂立本附表調整的運輸合同,而另一當事人(以下簡稱 "實際承運人")根據締約承運人的授權,履行全部或者部分運輸,但就該部分運輸而言該另一當事人又不是本附表所指的連續承運人的,適用本章的規定。在沒有相反證明時,此種授權應當被推定為是存在的。

第 40 條 一 締約承運人和實際承運人各自的責任

除本章另有規定外,實際承運人履行全部或者部分運輸,而 根據第 39 條所指的合同,該運輸是受本附表調整的,締約承運人 和實際承運人都應當受本附表規則的約束,締約承運人對合同考慮 到的全部運輸負責,實際承運人只對其履行的運輸負責。

第 41 條 一 相互責任

(1) 實際承運人的作為和不作為,實際承運人的受僱人、 代理人在受僱、代理範圍內的作為和不作為,關係到實際承運人履 行的運輸的,也應當視為締約承運人的作為和不作為。 (2) 締約承運人的作為和不作為,締約承運人的受僱人、 代理人在受僱、代理範圍內的作為和不作為,關係到實際承運人履 行的運輸的,也應當視為實際承運人的作為和不作為。但是,實際 承運人承擔的責任不因此種作為或者不作為而超過第 21 條和第 22 條所指的數額。任何有關締約承運人承擔本附表未規定的義務或者 放棄本附表賦予的權利或者抗辯理由的特別協議,或者任何有關第 22 條考慮到的在目的地點交付時利益的特別聲明,除經過實際承運 人同意外,均不得影響實際承運人。

第 42 條 一 異議和指示的對象

依照本附表規定向承運人提出的異議或者發出的指示,無論 是向締約承運人還是向實際承運人提出或者發出,具有同等效力。 但是,第12條所指的指示,只在向締約承運人發出時,方為有效。

第 43 條 一 受僱人和代理人

實際承運人的受僱人、代理人或者締約承運人的受僱人、代理人,證明其是在受僱、代理範圍內行事的,就實際承運人履行的運輸而言,有權援用本附表規定的適用於僱用該人的或者被代理的承運人的條件和責任限額,但是經證明依照本附表其行為不能援用該責任限額的除外。

第 44 條 一 賠償總額

對於實際承運人履行的運輸,實際承運人和締約承運人以及 他們的在受僱、代理範圍內行事的受僱人和代理人的賠償總額不得 超過依照本附表得以從締約承運人或者實際承運人獲得賠償的最 高數額,但是上述任何人都不承擔超過對其適用的責任限額。

第 45 條 一 索賠對象

對實際承運人履行的運輸提起的損害賠償訴訟,可以由原告 選擇,對實際承運人提起或者對締約承運人提起,也可以同時或者 分別對實際承運人和締約承運人提起。損害賠償訴訟只對其中一個 承運人提起的,該承運人有權要求另一承運人參加訴訟,訴訟程序 及其效力適用案件受理法院的法律。

第 47 條 一 合同條款的無效

任何旨在免除本章規定的締約承運人或者實際承運人責任 或者降低適用於本章的責任限額的合同條款,均屬無效,但是,此 種條款的無效,不影響整個合同的效力,該合同仍受本章規定的約 束。

第 48 條 一 締約承運人和 實際承運人的相互關係

除第 45 條規定外,本章的規定不影響承運人之間的權利和 義務,包括任何追償權或者求償權。

第Ⅵ章

其他規定

第49條 一強制適用

運輸合同的任何條款和在損失發生以前達成的所有特別協 議,其當事人借以違反本附表規則的,無論是選擇所適用的法律還 是變更有關管轄權的規則,均屬無效。

第 51 條 一 特殊情況下履行的運輸

第 3 條至第 5 條、第 7 條和第 8 條關於運輸憑證的規定,不適用於承運人正常業務範圍以外的在特殊情況下履行的運輸。

第52條 一 日的定義

本附表所稱"日",係指日曆日,而非工作日。

第 52A 條 一 香港郵政署署長

載於本附表的條文不得對香港郵政署署長訂明任何法律責任。"。

25. 《華沙公約》下的國際運輸

- (1) 附表 4 現予修訂,在方括號內,廢除 "2(1)、"。
- (2) 在附表 4 的標題下的第(1)款現予修訂,廢除"《經修訂公約》"而代以"《華沙公約》"。
 - (3) 附表 4 第 I 部的標題現予廢除,代以 一
 - "《華沙公約》的適用範圍"。
 - (4) 附表 4 第 I 部第 15 條第(3)款及第 25A 條現予廢除。
 - (5) 附表 4 第 I I 部第 I 條(a)段現予廢除。

相應修訂

《高等法院規則》

26. 根據《航空運輸條例》提出的某些 訴訟中令狀的送達

- (1) 《高等法院規則》(第 4 章,附屬法例 A)第 11 號命令第 7A(1) 條規則現予修訂 -
 - (a) (i) 廢除 "向根據《航空運輸條例》(第 500 章) 第 4 條核證" 而代以 "向《航空運輸條例》 (第 500 章)第 2(1)條所指";
 - (ii) 在所有"締約方"之後加入"或當事國(視何者屬適當而定)";
 - (b) 在(c)段中,廢除 "締約國" 而代以 "締約方或當事國(視何者屬適當而定)"。
- (2) 第 11 號命令第 7A(3)條規則現予修訂,在"締約方"之後加入"或當事國(視何者屬適當而定)"。

《區域法院規則》

27. 根據《航空運輸條例》提出的某些 訴訟中令狀的送達

- (1) 《區域法院規則》(第 336 章,附屬法例 H)第 11 號命令第 7A(1)條規則現予修訂
 - (a) 廢除"第4條所列明的公約"而代以"第2(1)條所 指";

- (b) 在所有"締約方"之後加入"或當事國(視何者屬適 當而定)"。
- (2) 第 11 號命令第 7A(3)條規則現予修訂,在"締約方"之後加入"或當事國(視何者屬適當而定)"。

摘要說明

本條例草案旨在修訂《航空運輸條例》(第 500 章)("主體條例"), 以一

- (a) 在香港施行在 1999 年 5 月 28 日在蒙特利爾訂立的 《統一國際航空運輸某些規則的公約》("《蒙特利 爾公約》");
- (b) 將《蒙特利爾公約》適用於非國際航空運輸及郵包運輸;及
- (c) 賦權民航處處長訂立規例施行《蒙特利爾公約》第 28 條及將該條的規定施用於並非《蒙特利爾公約》所適用的航空運輸。
- 2. 為在香港施行《蒙特利爾公約》的目的,草案第 4 條在主體條例加入新的第 IA 部。
- 3. 草案第 6 條處理《蒙特利爾公約》和關於國際航空運輸的其他公約的關係。
- 4. 草案第7條廢除訂立關乎核證經1955年9月28日的《海牙議定書》修訂的1929年10月12日在華沙簽署的《統一關於若干國際航空運輸規則的公約》("《經修訂公約》")的締約方的命令的賦權條文。

- 5. 草案第 12 條訂明主體條例的第 III 部適用於所有並非《蒙特利爾公約》及《經修訂公約》所適用的航空運輸。
- 6. 草案第 13 條廢除訂立關乎核證在 1929 年 10 月 12 日在華沙簽署的《統一關於若干國際航空運輸規則的公約》(即《華沙公約》)的締約方的命令的賦權條文。
- 7. 草案第 14 至 17 條修訂主體條例的第 15 至 18 條,以對主體條例的 建議的附表 3 的條文的提述,取代對主體條例的現有的附表 3 的條文的提 述。
- 8. 草案第 19 條廢除過時的條文。
- 9. 草案第 20 條 一
 - (a) 加入新的條文,賦權民航處處長藉於憲報刊登的公告 公布對建議的附表 1A 第 21、22 或 23 條(視屬何情況 而定)及附表 3 第 21 或 22 條(視屬何情況而定)指明 的責任限額的修訂;
 - (b) 賦權民航處處長訂立規例施行《蒙特利爾公約》第 28 條及將該條的規定施用於並非《蒙特利爾公約》所適 用的航空運輸。
- 10. 草案第 22 條將載有《蒙特利爾公約》條文的新的附表 1A 加入主體條例。
- 11. 草案第 24 條以載有以《蒙特利爾公約》條文為依據的新的附表 3 取代以《經修訂公約》條文為依據的主體條例的現有的附表 3。

《2005年航空運輸(修訂)條例草案》

目錄

條次			頁次
1.	簡稱		1
2.	生效日期		1
3.	釋義		1
4.	加入第 IA 部		
		第 IA 部	
	《蒙特	利爾公約》適用的國際運輸	
	2A.	《蒙特利爾公約》具有法律效力	3
	2B. 3	改命意外	3
	2C.	去律責任的限制	4
	2D. ±	是起法律程序的時限	6
	2E.	计對當事國的訴訟	6
5.	修訂第 II 部標	題	7
6.	《經修訂公約》) 具有法律效力	7
7.	對締約方的領土	上的提述	7
8.	致命意外		7
Q	《爪漆拉岭拉》	N	8

條次		頁次
10.	第6、7及9條的條文的適用範圍	8
11.	修訂第二三部標題	8
12.	適用範圍	8
13.	《華沙公約》下的國際運輸	8
14.	致命意外	9
15.	法律責任的限制	9
16.	提起法律程序的時限	11
17.	第 16 及 17 條的條文的適用範圍	11
18.	本條例的適用範圍	12
19.	廢除及保留條文	12
20.	加入條文	
	21. 修訂附表 1A 及 3 指明的責任限額	12
	22. 訂立規例的權力	13
	23. 保留現有權利及法律責任	15
21.	《經修訂公約》	15
22.	加入附表 1A	
	附表 1A 《蒙特利爾公約》	16
23.	《瓜達拉哈拉公約》	38

條次		頁次
24.	取代附表 3	
	附表 3 非國際運輸與郵件和郵包的運輸	36
25.	《華沙公約》下的國際運輸	56
	相應修訂	
	《高等法院規則》	
26.	根據《航空運輸條例》提出的某些訴訟中令狀的送 達	57
	《區域法院規則》	
27.	根據《航空運輸條例》提出的某些訴訟中令狀的送 達	57

附件B

核對表及指引 Check List and Instructions

航空運輸條例 (第500章)

CARRIAGE BY AIR ORDINANCE

(CAP. 500)

如欲確定此乃本成文法則的最新核對表及指引,請參閱第1冊內的總核對表及指引第11部所載本成文法則的核對表及指引的刊印期數、該刊印期數應與此頁右下角所示的刊印期數相同。

To verify that this is the latest Check List and Instructions for this enactment, please refer to the issue number of Check List and Instructions for this enactment shown in Part II of the Master Check List and Instructions in Volume 1. Such issue number should be the same as the issue number shown at the lower right hand corner of this page.

如欲知悉本成文法則文本切合何時的法律情況,請參閱第1冊內的總核對表及指引第1部。

To determine how up to date the text of this enactment is, please see Part I of the Master Check List and Instructions in Volume 1.

移去頁數 Withdraw pages	加插頁數 Insert pages	目前應有頁數 You should now have pages	刊印期數 Issue number
3 - 4	3 - 4	1 - 2	15 20 15 20
制定史 本爲 1997年第 13 號 — 1998年第 25 號,2000年第 32 號		Enactment History Originally 13 of 1997 -25 of 1998, 32 of 2000	
尚未實施 一 無		The following are not yet in operation	ı

第 500 章

航空運輸條例

日蜂

條次

第1部

導言

- 1. 簡稍
- 2. 釋義

第Ⅱ部

(經修訂公約)適用的國際運輸

- 3. 《經修訂公約》具有法律效力
- 4. 締約方的指定
- 5. 致命意外
- 6. 法律責任的限制
- 7. 提起法律程序的時限
- 8. 豁免作軍事用途的飛機的權力
- 9. 針對締約方的訴訟
- 10. 《瓜達拉哈拉公約》具有法律效力
- 11. 第6、7及9條的條文的適用範圍

第Ⅲ部

《經修訂公約》不適用的國際運輸與非國際運輸

- 12. 適用範圍
- 13. 非國際運輸與郵件和郵包的運輸
- 14. 〈華沙公約〉下的國際運輸
- 15. 致命意外
- 16. 法律責任的限制
- 17. 提起法律程序的時限
- 18. 《經修訂公約》的適用範圍

第 IV 部

雜項條文

19. 適用於官方的範圍以及官方所進行的免費運輸

第 15 期

爬可活頁版,由香港特別行政攝政府印務局局長印刷及發行

CHAPTER 500

CARRIAGE BY AIR ORDINANCE

CONTENTS

Section

PART I

PRELIMINARY

- 1. Short title
- 2. Interpretation

PART II

INTERNATIONAL CARRIAGE TO WHICH THE AMENDED CONVENTION APPLIES

- 3. Amended Convention to have the force of law
- 4. Designation of High Contracting Parties
- Fatal accidents
- 6. Limitations on liability
- 7. Time for bringing proceedings
- 8. Power to exclude aircraft in use for military purposes
- 9. Actions against High Contracting Parties
- 10. Guadalajara Convention to have the force of law
- 11. Application of provisions of sections 6, 7 and 9

PART III

International and Non-international Carriage to which the Amended Convention does not Apply

- 12. Application
- 13. Non-international carriage, and carriage of mail and postal packages
- 14. International carriage under the Warsaw Convention
- 15. Fatal accidents
- 16. Limitations on liability
- 17. Time for bringing proceedings
- 18. Application of amended Convention

PART IV

MISCELLANEOUS

19. Application to Crown and gratuitous carriage by Crown

Authorized Loose-leaf Edition, Printed and Published by the Government Printer, Hong Kong Special Administrative Region 條次

2

厥除與保留條文 20.

附表1 (經修訂公約)

附表 2 《瓜達拉哈拉公約》

附表 3 非國際運輸與郵件和郵包的運輸

附表 4 (華沙公約)下的國際運輸

附表 5 (已失時效而略去)

Regulation

Repeals and savings

CAP. 500

Schedule 1 The amended Convention

Schedule 2 The Guadalajara Convention

Schedule 3 Non-international carriage, and carriage of mail and postal packages

Schedule 4 International carriage under the Warsaw Convention

Schedule 5 (Omitted as spent)

第 500 章

航空運輸條例

本條例旨在施行若干關於國際航空運輸方面的公約; 訂立關於公約所不適用的非國際 航空運輸及國際航空運輸的條文並就有關目的訂定條文。

[1997年2月5日]

第1部

導言

1. 簡稱

本條例可引稱為《航空運輸條例》。

2. 釋義

- (1) 在本條例中,除文意另有所指外——
- "《瓜達拉哈拉公約》" (the Guadalajara Convention) 指 1961 年 9 月 18 日在瓜達拉哈拉簽署的為統一關於非訂約承運人辦理國際航空運輸的若干規則而補充《華沙公約》的公約,該公約的條文的中譯本列於附表 2;
- "《附加議定書》"(the Additional Protocol) 指《華沙公約》的《附加議定書》,其條文的中譯本列於附表 1 的末處;

CHAPTER 500

CARRIAGE BY AIR

An Ordinance to give effect to certain Conventions concerning international carriage by air; to make provisions relating to non-international carriage by air and international carriage by air to which the Conventions do not apply; and for related purposes.

[5 February 1997]

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Carriage by Air Ordinance.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- "the Additional Protocol" (《附加議定書》) means the Additional Protocol to the Warsaw Convention the provisions of which are set out at the end of Schedule 1;
- "the amended Convention" (《經修訂公約》) means the Warsaw Convention as amended by the Hague Protocol of 28 September 1955 the provisions of which are set out in Schedule 1;

- "金融管理專員" (Monetary Authority) 指根據《外匯基金條例》 (第 66 章) 第 5A 條委 任的金融管理專員;
- "《海牙議定書》" (the Hague Protocol) 指在 1955 年 9 月 28 日於海牙簽署以修訂《華 沙公約》的議定書;
- "特別提款權單位" (special drawing rights) 指國際貨幣基金所採用的稱為特別提款權 單位的會計單位:
- "《華沙公約》" (the Warsaw Convention) 指 1929 年 10 月 12 日在華沙簽署單以法文寫 成的《統一關於若干國際航空運輸規則的公約》(Convention for the Unification of Certain Rules Relating to International Carriage by Air),包括《附加議定書》,但 在《瓜達拉哈拉公約》中,"《華沙公約》" (the Warsaw Convention) 則指未經修訂 的《華沙公約》或《經修訂公約》(視平哪一項公約監管有關的運輸);
- "《經修訂公約》" (the amended Convention) 指經 1955 年 9 月 28 日的《海牙議定書》 修訂的《華沙公約》,其條文的中譯本列於附表1;
- "締約方" (High Contracting Party)---
 - (a) 就第 II 部及附表 1 及 2 而言, 指根據第 4 條核證的國家或地區;
 - (b) 就第 III 部及附表 3 及 4 而言,指根據第 14 條核證的國家或地區。 [附錄 III CG1 頁第 2(1) 條 & 1962 c. 43 s. 2(1)(b) U.K.]
- (2) 在本條例中,除第 10(2)條另有規定外,"法院"(court)包括《經修訂公約》 所准許的仲裁中的仲裁人。

[1961 c. 27 s. 14(2) U.K. & 1962 c. 43 s. 2(2) U.K.]

第Ⅱ部

《經修訂公約》適用的國際運輸

3. 《經修訂公約》具有法律效力

在符合本條例的規定下,以及在附表1所列的《經修訂公約》條文是關於承運人、 承運人的僱員、承運人的代理人、乘客、付貨人、收貨人及其他人的權利和法律責任 的範圍內,該公約就其所適用的任何航空運輸具有法律效力,不論進行該項運輸的飛 機關何國籍。

[1961 c. 27 s. 1(1) U.K.]

- "the Guadalaiara Convention" (《瓜達拉哈拉公約》) means the Convention supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier signed at Guadalajara on 18 September 1961. the provisions of which are set out in Schedule 2:
- "the Hague Protocol" ((海牙議定書)) means the Protocol to amend the Warsaw Convention signed at The Hague on 28 September 1955; "High Contracting Party" (締約方)---
 - (a) for the purposes of Part II and Schedules 1 and 2, means a country or territory certified under section 4:
 - (b) for the purposes of Part III and Schedules 3 and 4, means a country or territory certified under section 14:
- "Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66); "special drawing rights" (特別提款權單位) means units of account used by the International Monetary Fund and known as special drawing rights:
- "the Warsaw Convention" (《華沙公約》) means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, including the Additional Protocol, which was established in a single original in the French language, except that in the Guadalajara Convention, "the Warsaw Convention" (華沙公約) means the unamended Warsaw Convention or the amended Convention depending upon which Convention governs the carriage in question.

[App. III, p. CG1 art. 2(1) & 1962 c. 43 s. 2(1)(b) U.K.] (2) In this Ordinance except as provided in section 10(2), "court" (法院) includes, in an arbitration allowed by the amended Convention, an arbitrator. [1961 c. 27 s. 14(2) U.K. & 1962 c. 43 s. 2(2) U.K.]

PART II

INTERNATIONAL CARRIAGE TO WHICH THE AMENDED CONVENTION APPLIES

3. Amended Convention to have the force of law

The provisions of the amended Convention as set out in Schedule 1, 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 amended Convention applies, irrespective of the nationality of the aircraft performing that carriage.

[1961 c. 27 s. 1(1) U.K.]

4. 締約方的指定

- (1) 總督可藉於憲報中的命令核證——
 - (a) 誰是《經修訂公約》的締約方;
 - (b) 該等締約方分別就甚麼領土而屬締約方;及
 - (c) 該等締約方在甚麼程度上引用《附加議定書》的條文。
- (2) 凡締約方並不就某領土 ("有關領土") 而屬締約方,《經修訂公約》第 40A 條第 (2) 款並不將該公約中對締約方的領土的提述 (除非該提述是對不論是否締約方的任何國家的領土的提述) 擴大至包括有關領土。
- (3) 根據本條訂立的命令是附屬法例,而除在該命令被其後作出的另一命令所取代的範圍內,該命令是其內所核證的事宜的不可推翻的辭據。

[1961 c. 27 s. 2 U.K.]

5. 致命意外

- (1)《經修訂公約》第17條就乘客死亡施加於承運人的任何法律責任(在本條中稱為"有關法律責任"),取代該承運人在任何成文法則或普通法下就該乘客的死亡所承婚的任何法律責任;而凡如此施加有關法律責任可由某人強制執行,或可為某人的利益而強制執行或可以某方式強制執行,本條的以下條文就該人及該方式有效。
- (2) 如該乘客的家庭的任何家庭成員因為該乘客的死亡而蒙受損失,則有關法律責任可就該成員的利益而強制執行。
- (3) 為本條的施行,以下各人士視為乘客的家庭的成員:該乘客的配偶、父母、祖父母、子女、孫、孫女,以及該乘客的兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈或姨母或該兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈或姨母的後嗣。
 - (4) 為本條的施行而推究關係時——
 - (a) 受領養人須視為領養人的子女而非其他人的子女;並且在符合本段的規定下;
 - (h) 姻親關係須視為血親關係,半血親關係須視為全血親關係,而任何人的繼子女須視為該人的子女;及
 - (c) 非婚生子女須視為其母親及據稱的父親的婚生子女。

4. Designation of High Contracting Parties

(1) The Governor may by order in the Gazette certify—

(a) who are the High Contracting Parties to the amended Convention;

- (b) in respect of what territories they are respectively parties; and
- (c) to what extent they have availed themselves of the provisions of the Additional Protocol.
- (2) Paragraph (2) of Article 40A of the amended Convention does not extend the references in that Convention to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.
- (3) An order under this section is subsidiary legislation and is, except so far as it has been superseded by a subsequent order, conclusive evidence of the matters certified in the order.

[1961 c. 27 s. 2 U.K.]

5. Fatal accidents

- (1) Any liability imposed by Article 17 of the amended 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 and 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) 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; and, subject thereto;
 - (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) 除本部另有規定外,凡有關法律責任憑藉第(4)款可為某人的利益而強制執 行,強制執行有關法律責任的訴訟可由該乘客的遺產代理人或該人提起,但只可就任 何一名乘客的死亡提起一項訴訟,而無論由何人提起,每項該等訴訟必須為所有有權 享有該等利益的人的利益提起,而他們須是以香港為其居籍,如非以香港為其居籍, 則須表明希望得到該項訴訟的利益。
- (6) 除本部另有規定外,在強制執行有關法律責任的訴訟中追討得的款額,在減 除未能向被告人追討的任何訟費之後,須按法院(或如該訴訟案審訊時有陪審團的 話,則按該陪審團)所指示的比例分給有權享有該等權益的人。

[1961 c. 27 s. 3 U.K. & 附錄 III CG1 頁附件 2 的附表]]

6. 法律責任的限制

- (1) 《經修訂公約》第22條內對法律責任的限制,適用於任何性質的可藉以強制 執行法律責任的法律程序,而----
 - (a) 該等限制尤其適用於侵權人為向另一名侵權人取得法律責任分擔而提起 的法律程序;及
 - (b) 該條第(1)款內就每名乘客所設的限制,尤其適用於承運人在可根據香 港法律針對承運人提起的所有法律程序中連同在香港以外地方針對提起 的任何法律程序中的總法律責任。
- (2) 凡為強制執行受《經修訂公約》第22條限制的法律責任而在任何法院提起法 律程序,該法院在該法律程序的任何階段,可作出任何該法院覺得在考慮到該條條文 及已經或相當可能會在香港或其他地方開始的為完全或局部強制執行法律責任而進行 的任何其他法律程序後,屬公正和公平的命令。
- (3) 在不影響第(2) 款的情况下,凡任何人為強制執行受《經修訂公約》第22條 限制的法律責任而在任何法院提起法律程序,而該法律責任於在香港或其他地方進行 的其他法律程序中是可以或可能可以局部強制執行的,則如假使該限制只適用於在該 法院提起的法律程序法院便會判給某數額,該法院具有司法管轄權判給一筆數額少於 該某數額的款項;或將其判給的任何部分定為須視乎任何其他法律程序的結果。
- (4) 金融管理專員可指明以港幣為單位的各個別款額,而為施行(經修訂公約) 第22條以及尤其是為施行該條第(5)款,該等款額須視為就某一日而言相等於該條內 以法郎為單位的各款項。

- (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 subsection (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.

[1961 c. 27 s. 3 U.K. & App. III, p. CGI Second Annex to Sch. I]

Limitations on liability

CAP. 500

- (1) The limitations on liability in Article 22 of the amended 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 limitation for each passenger in paragraph (1) of that Article applies 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 22 of the amended 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 22 of the amended 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 respective amounts which for the purposes of Article 22 of the amended Convention, and in particular of paragraph (5) of that Article, are to be taken as equivalent for a particular day to the sums expressed in francs in that Article.

- (5) 為施行《經修訂公約》第22條以及尤其是為施行該條第(5)款,由金融管理 專員或其代表依據第(4)款發出的證明書,即為其內所述資料的不可推翻的證據,而 看來是該證明書的文件,須在任何法律程序中被接受為證據,而除非相反證明成立, 否則該文件須當作是該證明書。
- (6) 金融管理專員可就任何根據本條發出的證明書收取合理費用,而該等費用須 撥入政府一般收入。
- (7) 本條內對《經修訂公約》第 22 條的提述,在經任何必要的變通後,包括對由《經修訂公約》第 25A 條施行的《經修訂公約》第 22 條的提述。

[1961 c. 27 s. 4 U.K.]

7. 提起法律程序的時限

- (1) 如承運人的僱員或代理人是在其受僱範圍內行事,在從下列日期起計的2年後,任何人不得向該僱員或代理人提起因《經修訂公約》所關乎的損失而導致的訴訟——
 - (a) 抵達目的地的日期;
 - ~(b) 飛機應該抵達的日期;或
 - (c) 運輸停止的日期。
- (2) 《經修訂公約》第 29 條不適用於為法律責任分擔而在侵權人之間提起的法律程序,但在取得到尋求獲得法律責任分擔的人敗訴的判決之日起計的 2 年屆滿後,侵權人不得就該條適用的侵權行為提起向承運人取得法律責任分擔的訴訟。
- (3) 第 (1) 與 (2) 款及《經修訂公約》第 29 條在猶如該等條文中對一項訴訟的提述包括對一宗仲裁的提述的情況下具有效力。

[1961 c. 27 s. 5 U.K.]

8. 豁免作軍事用途的飛機的權力

(1) 凡國務大臣向總督發出指示,指示本條須適用於或須停止適用於該指示指明 的任何國家或地區,則總督須藉憲報公告遵從該指示。

- (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 22 of the amended Convention, and in particular of paragraph (5) of that Article, 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 Article 22 of the amended Convention include, subject to any necessary modifications, references to that Article as applied by Article 25A of the amended Convention.

[1961 c. 27 s. 4 U.K.]

7. Time for bringing proceedings

- (1) No action against a carrier's servant or agent which arises out of damage to which the amended 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 29 of the amended 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 Article 29 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 29 of the amended Convention have effect as if references in those provisions to an action included references to an arbitration.

[1961 c. 27 s. 5 U.K.]

8. Power to exclude aircraft in use for military purposes

(1) Where the Secretary of State issues an instruction to the Governor to direct that this section shall apply, or shall cease to apply, to any State or territory specified in the instruction, the Governor shall, by notice in the Gazette, comply with that instruction.

(2) 《經修訂公約》不適用於在該國家或地區註冊的飛機為本條憑藉第(1) 款所指 的公告所適用的國家或地區的軍事當局運輸人、貨物和行李,但該當局或該當局的代 表須已預留該飛機的全部容量。

[1961 c. 27 s. 7 U.K.]

9. 針對締約方的訴訟

- (1) 本身沒有引用《附加議定書》的《經修訂公約》的每一個締約方,須為就該締 約方所進行的運輸而按照《經修訂公約》第28條在香港法院提起強制執行申索的訴訟 的目的,當作已接受該法院的司法管轄權管轄。
- (2) 法院規則可就第(1)款所提述的訴訟的開始和進行方式作出規定,而《高等法 院條例》(第4章)第54條須當作據此修訂。 (由1998年第25號第2條修訂)
 - (3) 本條並不授權針對締約方的財產發出執行令。

[1961 c. 27 s. 8 U.K.]

10. 《瓜達拉哈拉公約》具有法律效力

- (1) 在符合第 11 條的規定下,以及在附表 2 所列的 (瓜達拉哈拉公約)條文是關 於承運人、承運人的僱員、承運人的代理人、乘客、付貨人、收貨人及其他人的權利 和法律責任的範圍內,《瓜達拉哈拉公約》就其所適用的任何航空運輸具有法律的效 力,不論進行該項運輸的飛機屬何國籍。 [1962 c. 43 s. 1(1) U.K.]
- (2) 在《瓜達拉哈拉公約》第 VII 及 VIII 條中,"法院"(court) 包括 (在《經修訂公 約)或(瓜達拉哈拉公約)第 IX 3 條所允許的仲裁中的) 仲裁人。

11. 第6、7及9條的條文的適用範圍

- (1) 在第 6(1)(a)、(2) 及 (3) 條中,對《經修訂公約》第 22 條的提述經必需的變通 後,包括對《瓜達拉哈拉公約》第 VI 條的提述。
- (2) 在第7條中(該條限制為針對承運人的僱員或代理人及為向承運人取得法律 贯任分擔而提起法律程序的時限)對承運人的提述,包括對(瓜達拉哈拉公約)第 I條(c)段所界定的實際承運人的提述,亦包括對該第I條(b)段所界定的承包承運人 的提摊。

(2) The amended Convention does not apply to the carriage of persons. cargo and baggage for the military authorities of a State or territory to which this section applies by virtue of a notice under subsection (1) in aircraft registered in that State or territory if the whole capacity of the aircraft has been reserved by or on behalf of those authorities.

[1961 c. 27 s. 7 U.K.]

9. Actions against High Contracting Parties

CAP. 500

- (1) Every High Contracting Party to the amended Convention which has not availed itself of the Additional Protocol is deemed, for the purposes of any action brought in a court in Hong Kong in accordance with Article 28 of the amended 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. (Amended 25 of 1998 s. 2)
- (3) Nothing in this section authorizes the issue of execution against the property of a High Contracting Party.

[1961 c. 27 s. 8 U.K.]

10. Guadalajara Convention to have the force of law

- (1) The provisions of the Guadalajara Convention as set out in Schedule 2, 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 section 11, have the force of law in relation to any carriage by air to which the Guadalajara Convention applies, irrespective of the nationality of the aircraft performing that carriage. [1962 c. 43 s. 1(1) U.K.]
- (2) In Articles VII and VIII of the Guadalajara Convention, "court" (法 院) includes (in an arbitration allowed by the amended Convention or by Article IX 3 of the Guadalajara Convention) an arbitrator.

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

- (1) In section 6(1)(a), (2) and (3), references to Article 22 of the amended Convention include, subject to any necessary modifications, references to Article VI of the Guadalajara Convention.
- (2) In section 7 (which limits the time for bringing proceedings against a carrier's servant or agent and to obtain contribution from a carrier) references to a carrier include references to an actual carrier as defined in paragraph (c) of Article I of the Guadalajara Convention as well as to a contracting carrier as defined in paragraph (b) of that Article.

CAP. 500 Carriage by Air

(3) 在第 9 條中 (該條是關乎按照《經修訂公約》第 28 條在香港向締約方提起訴訟的) 對第 28 條的提述,包括對《瓜達拉哈拉公約》第 VIII 條的提述。

[1962 c. 43 s. 3 U.K.]

第III部

《經修訂公約》不適用的國際運輸與非國際運輸

12. 適用範圍

- (1) 本部適用於所有並非《經修訂公約》所適用的航空運輸。 [附錄 III CH] 頁第3條]
- (2) 總督可藉憲報公告指示就香港而言,任何運輸或任何類別運輸或任何人或任何類別的人,獲豁免而不須遵守本部的任何規定,而任何該等指示可明訂為受總督覺得在有關個案的情況下須規定的任何條件或限制所規限;如已如此訂明,則該等指示須在該等條件或限制的規限下生效。

[附錄 III CH1 頁第6條]

13. 非國際運輸與郵件和郵包的運輸

附表 3 就本部適用的以下運輸具有效力——

- (a) 並非附表 4 所界定的國際運輸的運輸;或
- (b) 郵件或郵包的運輸。

[附錄 III CHI 頁第 4 條]

14. 《華沙公約》下的國際運輸

- (1) 本條及附表 4 就本部適用的屬該附表所界定的國際運輸的運輸具有效力。 [附錄 III CH1 頁第 5(1) 條]
- (2) 總督可藉於惠報中的命令核證誰是《華沙公約》的締約方,它們分別就甚麼領土面屬締約方和它們在甚麼程度上引用《華沙公約》的《附加議定書》的程度。

(3) In section 9 (which relates to actions against High Contracting Parties brought in Hong Kong in accordance with Article 28 of the amended Convention) the reference to Article 28 includes a reference to Article VIII of the Guadalajara Convention.

[1962 c. 43 s. 3 U.K.]

PART III

INTERNATIONAL AND NON-INTERNATIONAL CARRIAGE TO WHICH THE AMENDED CONVENTION DOES NOT APPLY

12. Application

- (1) This Part applies to all carriage by air, not being carriage to which the amended Convention applies. [App. III, p. CH1 art. 3]
- (2) The Governor may by notice in the Gazette direct that, in relation to Hong Kong, any carriage or class of carriage, or any person or class of person is exempted from any of the requirements of this Part, and any such direction may be expressed to be, and if so expressed takes effect, subject to any conditions or limitations which in the circumstances of the case appear to the Governor to be required.

[App. III, p. CH1 art. 6]

13. Non-international carriage, and carriage of mail and postal packages

Schedule 3 has effect in respect of carriage to which this Part applies, being either—-

- (a) carriage which is not international carriage as defined in Schedule 4; or
- (b) carriage of mail or postal packages.

[App. III, p. CH1 art. 4]

14. International carriage under the Warsaw Convention

- (1) This section and Schedule 4 have effect in respect of carriage to which this Part applies, being carriage which is international carriage as defined in that Schedule. [App. III, p. CH1 art. 5(1)]
- (2) The Governor may by order in the Gazette certify who are the High Contracting Parties to the Warsaw Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the Additional Protocol to the Warsaw Convention.

- (3) 根據本條訂立的命令是附屬法例,而除在該命令被其後作出的另一命令所取 代的範圍內,該命令是其內所核證的事宜的不可推翻的證據。 [由附錄 III CH1 百的 附表 3 施行的 1961 c. 27 s. 2 U.K.]
- (4) 本身沒有引用《附加議定書》的《藉沙公約》的每一締約方,須為就該締約方 所進行的運輸而按照附表 4 第 I 部內的第 28 條在香港法院提起強制執行申索的訴訟 的目的, 當作已接受該法院的司法管轄權管轄。
- (5) 法院規則可就第(4)款所提述的訴訟開始和進行方式作出規定,而《高等法院 條例》(第4章)第54條須當作據此修訂。 (由1998年第25號第2條修訂)
 - (6) 本條並不授權針對締約方的財產發出執行令。

[由附錄 III CH1 頁的附表 3 旅行的 1961 c. 27 s. 8 U.K.]

15. 致命意外

- (1) 附表 3 第 1 部第 17 條及附表 4 第 I 部第 17 條就乘客死亡施加於承運人的任 何法律責任(在本條中稱為"有關法律責任"),取代該承運人在任何成文法則或普通法 下就該乘客的死亡所承擔的任何法律責任;而凡如此施加的有關法律責任可由某人強 制執行,或可為某人的利益而強制執行或可以某方式強制執行,本條的以下條文就該 人及該方式有效。 [由附錄 III CH1 頁的附表 1 施行的 1961 c. 27 s. 3 U.K.]
- (2) 如該乘客的任何家庭成員因為該乘客的死亡而蒙受損失,則有關法律實任可 為該成員的利益而強制執行。
- (3) 就本條而言,以下各人士視為乘客家庭的成員:該乘客的配偶、父母、祖父 母、子女、孫、孫女、以及該乘客的兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、 姑母、姨丈或姨母或該兄弟、姊妹、伯父母、叔父母、舅父母、姑丈、姑母、姨丈或 姨母的後嗣。
 - (4) 為本條的施行而推究關係時——
 - (a) 受領養人須視為領養人的子女而非其他人的子女;並且在符合本段的規 定下;
 - (b) 姻親關係須視為血親關係,半血親關係須視為全血親關係,而任何人的 繼子女須視為該人的子女; 及
 - (c) 非婚生子女須視為其母親及據稱的父親的婚生子女。

- (3) An order under this section is subsidiary legislation and is, except in so far as it has been superseded by a subsequent order, conclusive evidence of the matters certified in the order. [1961 c. 27 s. 2 U.K. as applied by App. III. p. CH1 Sch. 31
- (4) Every High Contracting Party to the Warsaw Convention which has not availed itself of the Additional Protocol is deemed, for the purposes of any action brought in a court in Hong Kong in accordance with Article 28 in Part I of Schedule 4 to enforce a claim in respect of carriage undertaken by that Party, to have submitted to the jurisdiction of that court.
- (5) Rules of court may provide for the manner in which an action referred to in subsection (4) is to be commenced and carried on and section 54 of the High Court Ordinance (Cap. 4) is deemed to be amended accordingly. (Amended 25 of 1998 s. 2)
- (6) Nothing in this section authorizes the issue of execution against the property of a High Contracting Party.

[1961 c. 27 s. 8 U.K. as applied by App. III, p. CH1 Sch. 3]

15. Fatal accidents

- (1) Any liability imposed by Article 17 in Part I of Schedule 3 and in Part I of Schedule 4 on a carrier in respect of the death of a passenger (in this section called "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 and for whose benefit the liability so imposed is enforceable and with respect to the manner in which it may be enforced. [1961 c. 27 s. 3 U.K. as applied by App. III. p. CH1 Sch. 1]
- (2) The liability is enforceable for the benefit of any members 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) 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; and, subject thereto;
 - (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) 除本部另有規定外,凡有關法律責任憑藉第(4)款可為某人的利益而強制執行,強制執行有關法律責任的訴訟可由該乘客的遺產代理人或該人提起,但只可就任何一名乘客的死亡提起一項訴訟,而無論由何人提起,每項該等訴訟必須為所有有權享有該等利益人士的利益提起,而他們須是以香港為其居籍的,如非以香港為其居籍,則須表明希望得到該在此項訴訟的利益。
- (6) 除本部另有規定外,在強制執行有關法律責任的訴訟中追討得的款額,在減除未能向被告人追討的任何訟費之後,須按法院(或如該訴訟案審訊時有陪審團的話,則按該陪審團)所指示的比例分給有權享有該等權益的人。

[由附錄 III CH1 頁的附表 1 的第 I 部的附件修改的 1961 c. 27 s. 3 U.K.]

16. 法律責任的限制

- (1) 附表 3 第 I 部第 22 條及附表 4 第 I 部第 22 條 (在本條內稱為"第 22 條")對法律責任的限制,適用於任何性質的可藉以強制執行法律責任的法律程序,而——
 - (a) 該等限制尤其適用於侵權人為向另一名侵權人取得法律責任分擔而提起 的法律程序;及
 - (b) 第 22 條第 (1) 款就每名乘客所設的限制,尤其適用於承運人在可根據香港法律針對承運人提出的所有法律程序中連同在香港以外地方針對承運人提出的任何法律程序中的總法律責任。
- (2) 凡為強制執行受第 22 條限制的法律責任而在任何法院提起法律程序,該法院在該法律程序的任何階段,可作出任何該法院認為在考慮到第 22 條條文及已經或相當可能會在香港或其他地方開始的為完全或局部強制執行法律責任而進行的任何其他法律程序後,屬公正和公平的命令。
- (3) 在不影響第(2)款的情況下,凡任何人為強制執行受第22條限制的法律責任 而在任何法院提起法律程序,而該法律責任於在香港或其他地方進行的其他法律程序 中是可以或可能可以局部強制執行的,則如假使該限制只適用於在該法院提起的法律 程序法院便會判給某數額,該法院具有司法管轄權判給一筆數額少於該某數額的款 額;或將其判給的任何部分定為須視乎任何其他法律程序的結果。

- (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 subsection (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.

[1961 c. 27 s. 3 U.K. as modified by App. III, p. CH1 Annex to Part I of Sch. 1]

16. Limitations on liability

- (1) The limitations on liability in Article 22 in Part I of Schedule 3 and in Part I of Schedule 4 (in this section called "Article 22") 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 limitation for each passenger in paragraph (1) of Article 22 applies 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 22 may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of Article 22, 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 22 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.

- (5) 為施行附表 3 第 1 部第 22 條及附表 4 第 1 部第 22 條以及尤其是為施行該 2 條的第(5)及(4)款,由金融管理專員或其代表依據第(4)款發出的證明書,即為其內 所述資料的不可推翻的證據,而看來是該證明書的文件,須在任何法律程序中被接受 為證據,而除非相反證明成立,否則該文件須當作是該證明書。
- (6) 金融管理專員可就任何根據本條發出的證明書收取合理費用,而該等費用須 撥入政府--般收入。
- (7) 本條內對第 22 條的提述,在經任何必要的變通後,包括附表 3 第 I 部內第 25A 條及附表 4 第 I 部內第 25A 條施行的該條的提述。

[由附錄 III CH1 頁的附表 1 施行的 1961 c. 27 s. 4 U.K.]

17. 提起法律程序的時限

- (1) 如承運人的僱員或代理人是在其受僱範圍內行事,在從下列日期起計的2年 後,任何人不得向該僱員或代理人提起因由本條例施行的(經修訂公約)所關乎的損失 而導致的訴訟---
 - (a) 抵達目的地的日期;
 - (b) 飛機應該抵達的日期;或
 - (c) 運輸停止的日期。
- (2) 附表 3 第 I 部第 29 條及附表 4 第 I 部第 29 條 (在本條內稱為 "第 29 條") 不 適用於為法律責任分擔而在侵權人之間提起的法律程序,但在取得到尋求獲得法律實 任分擔的人敗訴的判決之日起計的2年屆滿後,侵權人不得就該條適用的侵權行為提 起向承運人取得法律責任分擔的訴訟。
- (3) 第(1) 與(2) 款及第29條在猶如該等條文中對一項訴訟的提述包括對一宗仲 裁的提述的情况下具有效力。

[由附錄 III CHI 頁的附表 1 施行的 1961 c. 27 s. 5 U.K.]

- (4) The Monetary Authority may specify in Hong Kong dollars the respective amounts which for the purpose of Article 22 in Part I of Schedule 3 and in Part I of Schedule 4, and in particular of paragraphs (5) and (4) of the respective Articles, are to be taken as equivalent for a particular day to the sums expressed in special drawing rights and in francs respectively in the 2 Articles.
- (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 purpose of Article 22 in Part I of Schedule 3 and in Part I of Schedule 4 and in particular of paragraphs (5) and (4) of the respective Articles, 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 Article 22 include, subject to any necessary modifications, references to that Article as applied by Article 25A in Part I of Schedule 3 and in Part I of Schedule 4.

[1961 c. 27 s. 4 U.K. as applied by App. III, p. CH1 Sch. 1]

17. Time for bringing proceedings

CAP. 500

- (1) No action against a carrier's servant or agent which arises out of damage to which the amended Convention as applied by this Ordinance relates shall, if he 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 29 in Part I of Schedule 3 and in Part I of Schedule 4 (in this section called "Article 29") 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 Article 29 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 29 have effect as if references in those provisions to an action included references to an arbitration.

[1961 c. 27 s. 5 U.K. as applied by App. III, p. CH1 Sch. 1]

18. 《經修訂公約》的適用範圍

- (1) 在第 16(1)(a)、(2) 及 (3) 條中 (該條是解釋附表 3 第 I 部第 22 條及附表 4 第 I 部第 22 條中的法律責任的限制,以及令法院能作出適當的命令及判給以施行該等限制),對上述第 22 條的提述經必需的變通後,包括對附表 3 第 II 部第 VI 條及附表 4 第 II 部第 VI 條的提述。
- (2) 在第 17 條中 (該條是限制向承運人的僱員或代理人提起法律程序和向承運人取得法律責任分擔費的時效)對承運人的提述,包括對附表 3 第 II 部第 I 條 (c) 段及附表 4 第 II 部第 I 條 (c) 段所界定的實際承運人的提述。

[由附錄 III CH1 頁的附表 1 的第 II 部施行的 1962 c. 43 s. 3 U.K.]

第IV部

雜項條文

19. 適用於官方的範圍以及官方所進行的免費運輸

- (1) 本條例對官方具約東力。
- (2) 除第(3) 款另有規定外,第 II 及 III 部均適用於官方所進行的免費運輸,猶如它適用於官方為報酬而進行的運輸一樣。 [附錄 III CH1 頁第 8(1)(a)條]
- (3) 官方並不因為 (第 II 部所適用的) 乘客機票未有交付或該票未有包括所需的 通知而被《經修訂公約》第 3 條第 (2) 款禁止其本身引用該公約第 22 條條文 (該條對運送乘客的承運人的法律責任作出限制)。

[附錄 III CH1 頁第 8(1)(b)條]

20. 廢除及保留條文

- (I) 《Carriage by Air (Overseas Territories) Order 1967》(附錄 III CG1 頁) 現予修訂,在附表 3 中,廢除 "Hong Kong."。
- (2) 《Carriage by Air Acts (Application of Provisions) (Overseas Territories) Order 1967》(附錄 III CH1 頁) 現予修訂,在附表 5 中,廢除"Hong Kong."。

18. Application of amended Convention

- (1) In section 16(1)(a), (2) and (3) (which explains the limitations on liability in Article 22 in Part I of Schedule 3 and in Part I of Schedule 4 and enables a court to make appropriate orders and awards to give effect to those limitations) references to the said Article 22 include, subject to any necessary modifications, references to Article VI in Part II of Schedule 3 and in Part II of Schedule 4.
- (2) In section 17 (which limits the time for bringing proceedings against a carrier's servant or agent and to obtain contribution from a carrier) references to a carrier include references to an actual carrier as defined in paragraph (c) of Article I in Part II of Schedule 3 and in Part II of Schedule 4.

 [1962 c. 43 s. 3 U.K. as applied by App. III, p. CHI Part II of Sch. I]

PART IV

MISCELLANEOUS

19. Application to Crown and gratuitous carriage by Crown

(1) This Ordinance binds the Crown.

(2) Subject to subsection (3), Parts II and III apply to gratuitous carriage by the Crown as they apply to carriage by the Crown for reward. [App. III,

p. CHI art. 8(1)(a)

(3) The Crown is not precluded by paragraph (2) of Article 3 of the amended Convention as applied by Part II from availing itself of the provisions of Article 22 of that Convention (which provides for the limitation of the carrier's liability in the carriage of persons) by reason of a passenger ticket not having been delivered or of the ticket not including the required notice.

[App. III, p. CH1 art. 8(1)(b)]

20. Repeals and savings

(1) The Carriage by Air (Overseas Territories) Order 1967 (App. III, p. CG1) is amended in Schedule 3 by repealing "Hong Kong.".

(2) The Carriage by Air Acts (Application of Provisions) (Overseas Territories) Order 1967 (App. III, p. CH1) is amended in Schedule 5 by repealing "Hong Kong.".

- (4) 即使有第 (1) 款的規定, (Carriage by Air (Overseas Territories) (Hong Kong Dollar Equivalents) Order》(附錄 I ADI 頁) 繼續有效,猶如它已根據第 6(4) 條訂立並 經過能夠使本款生效所需或合宜的改編和變通一樣。
- (5) 即使有第(2)款的規定,《Carriage by Air Acts (Application of Provisions) (Overseas Territories) (Hong Kong Dollar Equivalents) Order) (附級 I AC] 頁) 繼續有 效,猶如它已根據第16(4)條訂立並經過能夠使本款生效所需或合宜的改編和變通一 槎。
- (6) 《釋義及通則條例》(第 1 章) 第 23 至 25 條適用於根據第 (1)、(2) 及 (3) 款作 出的修訂,猶如它們是對某條例作出的修訂一樣。
 - (7) (已失時效而略去)
- (8) 如根據《Carriage by Air (Overseas Territories) Order 1967》(附錄 III CG1 頁) 提起的訴訟或根據 (Carriage by Air Act 1961) (1961 c. 27 U.K.) 提出的申索,在根據 第(7)款作出修訂時尚未予以處置,可繼續予以處置,猶如它是根據本條例提起的訴 訟或提起的申索一樣。

附表1

[第 2(1) 及 3 條]

《維修訂公約》

統一關於國際航空運輸 若干規則的公約

範圍──定義

第1條

- 本公約適用於所有為報酬而以飛機運載人、行李或貨物的關際運輸。本公約同樣補用 於由航空運輸事業以飛機進行的免費運輸。
- (2) 就本公約而言,"國際運輸" (international carriage) 一詞指符合以下所述的運輸:按照 有關各方的協議,不論在運輸過程中是否有間斷或轉運、運輸出發地和目的地是在兩個締約方 的領土內,或均在一個締約方的領土內而在另一國家(即使該國家並非締約方)的領土內有一個 協定的中途著陸地點的任何運輸。如運輸在單一個締約方的領土內兩個點之間進行而在另一國 家的領土內沒有一個協定的中途著陸地點,則該運輸不屬就本公約而言的國際運輸

(3) The Carriage by Air Acts (Application of Provisions) (Overseas Territories) (Amendment) Order 1984 (App. III, p. CII) is repealed in its application to Hong Kong.

(4) Notwithstanding subsection (1), the Carriage by Air (Overseas Territories) (Hong Kong Dollar Equivalents) Order (App. I, p. ADI) continues in force as if it had been made under section 6(4) with such adaptations and modifications as are necessary or expedient to enable this subsection to have effect.

(5) Notwithstanding subsection (2), the Carriage by Air Acts (Application of Provisions) (Overseas Territories) (Hong Kong Dollar Equivalents) Order (App. I, p. ACI) continues in force as if it had been made under section 16(4) with such adaptations and modifications as are necessary or expedient to enable this subsection to have effect.

(6) Sections 23 to 25 of the Interpretation and General Clauses Ordinance (Cap. 1) apply to the amendments effected under subsections (1), (2) and (3) as if they were amendments to an Ordinance.

(7) (Omitted as spent)

CAP. 500

(8) An action under the Carriage by Air (Overseas Territories) Order 1967 (App. III, p. CG1) or a claim brought under the Carriage by Air Act 1961 (1961 c. 27 U.K.) and not disposed of at the time of the amendments under subsection (7) may be continued and disposed of as if it was an action or claim brought under this Ordinance.

SCHEDULE 1

[ss. 2(1) & 3]

THE AMENDED CONVENTION

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR

CHAPTER I

SCOPE—DEFINITIONS

Article I

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

CAP. 500 Carriage by Air

(3) 就本公約而言,如幾個接續的航空承運人所進行的運輸被有關各方視為一項單一的作 業(不論它是以單一份合約或一系列的合約形式協定進行的),則該運輸須當作是一項單一運 **躺,而該項運輸並不只因一份合約或一系列的合約須完全在同一個國家的領土內履行而喪失其** 國際性質。

第 2 條

- (1) 本公約適用於由國家或合法組成的公共機構進行的運輸,但該項運輸須符合第1條所 前的條件。
 - (2) 本公約不適用於郵件和郵包的運輸。

第Ⅱ章

運輸文件

第3條

- (1) 須就關於乘客的運輸交付載有下列資料的機票:
 - (a) 出發地和目的地的顯示;
 - (b) 如出發地和目的地均是在單一個締約方的領土內,而在另一個國家的領土內有一 個或多於一個協定的中途著陸地點。則至少一個上述中途著陸地點的顯示;
 - (c) 一項通知, 說明如乘客的旅程涉及在出發國家以外的國家內的一個最終目的地或 中途著陸地點,則《華沙公約》可予適用和施行管限,以及在大多數情形下限制承 延人就死亡或人身傷害以及行李的遺失或損壞的個案所負的法律責任。
- (2) 乘客機票須構成運輸合約的訂立及條件的表面證據。如沒有乘客機票或乘客機票有欠 妥之處或遭避失,並不影響該運輸合約的存在及有效性,而這項運輸合約仍受本公約的規則所 規限。但如該乘客在承運人同意下在沒有乘客機票交付的情況下登上飛機,或如該乘客機票沒 有包括本條第(1)(c) 款所規定的通知,則該承運人本身無權引用第22條的條文。

第2節--行李機票

第4條

- (1) 須就經發記行李的運載交付行李機票,該行李機票除非已納入符合第3條第(1)款的條 文的乘客機票內或已與該等乘客機票合併,否則須載有:
 - (a) 出發地和目的地的顯示;
 - (b) 如出發地和目的地均是在單一個締約方的領土內,而在另一個國家的領土內有一 個或多於一個協定的中途著陸地點,則至少一個中途著陸地點的顯示;
 - (c) 一項通知, 說明如該運輸涉及在出發國家以外的國家內的一個最終目的地或中途 著陸地點,則《華沙公約》可予適用和施行管限,以及在大多數情形下限制承顯人 就行李的遺失或損壞的個案所負的法律責任。

(3) Carriage to be performed by several successive air 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.

Article 2

(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 inticle 1.

(2) This Convention shall not apply to carriage of mail and postal packages.

CHAPTER II

DOCUMENTS OF CARRIAGE

SECTION 1—PASSENGER TICKET

Article 3

In respect of the carriage of passengers a ticket shall be delivered containing:
 (a) an indication of the places of departure and destination;

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

(c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss or damage to

(2) The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1)(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

SECTION 2-BAGGAGE CHECK

- (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of paragraph (1) of Article 3, shall contain:
 - (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
 - (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.

(2) 行李機票須構成發配行李及運輸合約的條件的表面證據。如沒有行李機票或行李機票 有欠妥之處或遭遺失,並不影響該運輸合約的存在及有效性,而這項運輸合約仍受本公約的規 則所規限。但如承埋人在沒有行李機票交付的情況下接管行李,或如該行李機票(除非它被納入 符合第 3 條第 (1)(c) 款的條文的規定的乘客機票內或已與該等乘客機票合併) 沒有包括本條 第(1)(c)款所规定通知,則該承揮人本身無權引用第22條第(2)款的條文。

第3節---航空貨運置

第 5 條

- (1) 铒名貨物承運人有權要求付貨人製備一份稱為"航空貨運單"的文件和將該文件交給 他;每名付货人有權要求承運人接受這份文件。
- (2) 但沒有該文件或該文件有欠妥之處或遭遺失,並不影響運輸合約的存在沒有效性,除 第9條的條文另有規定外,這份運輸合約仍受本公約的規則所規限。

第6條

- (1) 付货人須製備航空貨運單正本一式三份,連同貨物一併提交。
- (2) 第一部分須註明 "for the carrier", 並須由付貨人簽署; 第二部分須註明 "for the consignee",並須由付貨人及承運人簽署並附在貨物上;第三部分須由承運人在接受貨物後簽署 並交給付货人。
 - (3) 承进人須在裝載貨物上飛機前簽署。
 - (4) 承述人的簽名可以批印完成,付貨人的簽署則可以印刷或戳印完成。
- (5) 如承運人按付貨人的請求,製備航空貨運單,除非有相反的證明,否則承運人須當作 **是代付货人如此行事。**

第7條

當有多過一件包裝物時,貨物承運人有權要求付貨人製備分開的航空貨運單。

第8條

航空货運單須載有下列資料:

- (a) 出發地和目的地的顯示;
- (b) 如該出發地和目的地均是在單一個締約方的領土內,而在另一個國家的領土內有 一個或多於一個協定的中途著陸地點,則至少一個上述中途著陸地點的顯示;
- (c) 一項向付貨人發出的通知: 説明如該運輸涉及在出發國家以外的國家內的一個最 終目的地或中途著陸地點,則《雜沙公約》可予適用及施行管限,以及在大多數情 形下限制承運人就貨物的損失或損壞的個業所負的法律責任。

第9條

如貨物是在承週人同意下在沒有製備航空貨運單的情況下被裝載上飛機的,或如該航空貨 避單沒有包括第 8 條 (c) 段所規定的通知,則該承運人本身無權引用第 22 條第 (2) 款的條文。

(2) The baggage check shall constitute prima facie evidence of the registration of the baggage and of the conditions of the contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of paragraph (1)(c) of Article 3) does not include the notice required by paragraph (1)(c) of this Article, he shall not be entitled to avail himself of the provisions of paragraph (2) of Article 22.

SECTION 3—AIR WAYBILL

Article 5

- (1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to
- (2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

Article 6

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

CAP. 500

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

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

Article 7

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

Article 8

The air waybill shall contain:

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

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

(c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

Article 9

If, with the consent of the carrier, cargo is loaded on board the aircraft without an air waybill having been made out, or if the air waybill does not include the notice required by paragraph (c) of Article 8, the carrier shall not be entitled to avail himself of the provisions of paragraph (2) of Article 22.

第10條

- (1) 付貨人須就其在航空貨運單中所填報有關貨物的詳情及說明的正確性負上責任。
- (2) 付貨人須就承運人或承運人須向其負法律責任的任何其他人因付貨人提供的詳情及說 明有欠妥之處、不正確或不完備而蒙受的一切損失,彌償付貨人。

第11條

- (1) 航空貨運單是訂立合約、收取貨物和運輸條件的表面證據。
- (2) 航空貨運單內關於貨物的重量、尺寸和包裝的說明以及包裝物件數的說明,是所述事 實的表面證據;除非承運人在付貨人在場下已查核有關的説明並且在該航空貨運單內述明此項 查核,又或除非是關於貨物表面狀況的說明、否則關於貨物的數量、體積和狀況的說明並不構 成對承揮人不利的舒捷。

第12條

- (1) 在付貨人履行其在運輸合約下其一切義務的法律實任的規限下,付貨人有權藉在出發 地的機場或目的地的機場將貨物撤回,或在中途著陸時中止運輸,或指令貨物在目的地或途中 交給非航空貨運單上所指的收貨人,或要求將貨物退回出發地的機場,處置貨物。但他不得在 使承迎人或其他付貨人受損害的情況下行使此項處置權,並必須償還因行使該權利所引致的任 何費用。
 - (2) 如執行付貨人的指令闖不可能,承運人必須隨即通知該付貨人。
- (3) 如承遲人遵從付貨人的處置貨物的指令而沒有要求出示已交付給該付貨人的航空貨運 單的部分,則在不損害其可向該付貨人追討的權利下,他須就可能因以上事宜而對任何合法管 有該航空貨運單的該部分的人造成的任何損害負上法律責任。
- (4) 凿授予收貨人的權利按照第 13 條的規定開始時,授予付貨人的權利即告終止。但如收 貨人拒絕接受航空貨運單或貨物,或如無法聯絡收貨人,則付貨人恢復其處置權。

第13條

- (1) 除在以上條文所列的情況外,收貨人在貨物到達目的地時,有權在繳付已到期須付的 **對用並在繼從航空貨運單上所列的運輸條件後,要求承運人向他移交航空貨運單並交付貨物給**
 - (2) 除另有協定外,承運人有責任在貨物到達後盡快通知收貨人。
- (3) 如承運人承認貨物已遭遺失,或如貨物在應該到達的日期後的7日屆滿時尚未到達, 删收貨人有權針對該承運人行使源自運輸合約的權利。

第 14 條

付貨人及收貨人在履行合約所施加的義務的情況下,不論是為了自己或別人的利益行事, 可各自用自己的名義分別行使第12及13條給予他們的所有權利。

Article 10

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

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

Article U

(1) The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of

the cargo and of the conditions of carriage.

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

Article 12

(1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome 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 named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him

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

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

disposition.

Article 13

- (1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.
 - (2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as

soon as the cargo arrives.

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of 7 days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

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

第15條

- (1) 第 12、 13 及 14 條不影響付貨人與收貨人之間或收貨人與付貨人之間的關係,亦不影 響它們與自付貨人或收货人獲得權利的第三者之間的關係。
 - (2) 第12、13及14條的條文只可藉航空貨運單內的明訂條文予以重改。
 - (3) 本公約並不禁止發出可轉讓的航空貨運單。

第16條

- (1) 付貨人必須提供所需資料並將所需文件附於航空貨運單上,以便在貨物可交付收貨人 之前完成海關、入市稅徵收所或警察的手續。凡沒有上述資料或文件或上述資料或文件有不足 或欠妥之處而造成任何損害。除非該損害是由於承運人或其僱員或代理人的過錯所致,否則付 货人须就該损失向承揮人負上法律實任。
 - (2) 承述人沒有查究上述資料或文件的正確性或足夠程度的義務。

第川章

承運人的法律責任

第17條

凡乘客因死亡或受傷或任何其他身體傷害而蒙受損害,如造成上述損害的意外是發生在滌 機上或在任何上落飛機的運作過程中的,則承運人須就該損害負上法律責任。

第 18 條

- (1) 凡有人因任何經登記行李或任何貨物遭毀滅、遺失或損壞而蒙受損害,如造成上述損 害的事故是發生在航空運輸期間的,承運人須就該損害負上法律責任。
- (2) 前款所指的航空運輸,包括有關行李或貨物出承運人保管的期間,不論是在機場內或 飛機上保管;如在機場外降落,則不論是在任何地方保管。
- (3) 航空運輸的期間並不延展至包括在機場以外進行的任何陸上運輸、海上運輸或河道運 輪。但如該等運輸是在履行航空運輸合約時為了裝載、交付或轉運而作出的,則除非有相反證 明,任何揭害均須推定為在航空揮輸期間所發生的事件的結果。

第19條

承迎人須就因乘客、行李或貨物的航空運輸過程中的延滯造成的損害,負上法律責任。

第 20 條

承班人知證明自己及其僱員或代理人已採取一切必要的措施以避免損害,或證明自己及其 僱員或代理人不可能採取上述措施、即他無須負上法律責任。

Article 15

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

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

CAP. 500

(3) Nothing in this Convention prevents the issue of a negotiable air waybill,

Article 16

(1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the 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 or his 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

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

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

第21條

承迎人如證明損害是由於受傷的人的疏忽所導致或助成的,則法院可按照其法律的規定, 完全或局部寬免該承揮人的法律責任。

第 22 條

- (1) 在運載乘客時,承運人就每一名人士所負的法律責任以 250,000 法郎款項為限。如按 照受理有關個案的法院的法律是可以分期付款方式作出賠償的,則上述付款的資本值不得超過 250,000 法郎,但承運人可與乘客協定,以特別合約規定一個較高的法律責任限額。
 - (2) (a) 在運載經登記行李和貨物時, 承運人就行李或貨物所負的法律責任以每公斤 250 法郎款項為限,但如乘客或付貨人在將包裝物交予承運人時,曾特別聲明行李或 貨物運到目的地後的利益,並已繳付所需的附加費(如情况有需要的話),在該種 情況下,承運人有法律責任繳付不超過聲明的款項,除非他證明該款項高於行李 或貨物運到目的地後對該乘客或付貨人的實際利益。
 - 如部分的經登記行李或貨物(或該部分行李或貨物所載的任何物件) 遭遭失、損壞 或延滯時,在艦定承運人法律責任限額的款額時所考慮的重量須只是有關的包裝 物的總重量。但如部分的經登記行李或貨物(或該部分行李或貨物所載的任何物 件) 遭遺失、損壞或延滯影響在同一行李機票或同一航空貨運單所涵蓋的其他包裝 物的價值,則在臘定法律責任的限額時亦須考慮該包裝物或該等包裝物的線面
 - (3) 就乘客自己保管的物件而言,承遲人的法律責任以每名乘客 5,000 法郎為限。
- (4) 本條訂明的限額不得阻止法院按照其本身的法律,額外判給全部或部分法院費用和原 告人所招致的訴訟的其他支出。如所判給的損害賠償款額減除法院費用和訴訟的其他支出後不 超過承運人在損失造成後的6個月內或訴訟開始前(如該日期為較後日期)以書面向原告人建議 的款項,則上述條文不適用。
- 等款項可折算為収其整數計算的任何國家的貨幣。如進行司法程序,將該款額折算為非黃金的 其他國家貨幣時,須按照在判決日期當日該貨幣的黃金價格計算。

第 23 條

- (1) 任何傾向於免除承運人的法律責任或定出一個低於本公約所訂的限額的條文,均屬無 效,但任何該等條文的無效並不涉及整份合約的無效,而該合約在符合本公約條文的規定下仍 繼續留存。
- (2) 本條第(I) 款不適用於規管因運輸貨物的固有缺陷、品質或缺點所導致的遺失或損壞的 條文。

第 24 條

- (1) 在第 18 及 19 條所涵蓋的個案中,任何申索損害賠償的訴訟 (不論其依據為何) 只能在 本公約所列的條件和限額的規限下提出。
- (2) 在第 17 條所涵蓋的個案中, 在不損害關於誰有權提起訴訟以及他們各自的權利為何的 問題的原則下,前款條文趣用。

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 250,000 francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 250,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or 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 loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(4) The limits prescribed 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. 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 6 months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of 654 milligrammes of gold of millesimal fineness 900. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such

currencies at the date of the judgment.

Article 23

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

- (1) In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.
- (2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

第 25 條

凡承運人、其僱員或代理人的作為或不作為導致損害、並證明該作為或不作為是在蓄意造 成损害的情况下作出或有的,或罔顧後集地作出或有的,以及在明知頗有可能導致該損害的情 祝下作出或有的,則第 22 條所指明的法律責任限額不適用;但如屬僱員或代理人的作為或不作 為所導致的,則亦須證明他是在其受僱範圍內行事的。

第 25A 條

- (1) 如針對承運人的僱員或代理人提起的訴訟是因本公約所關乎的損害而導致的,而該僱 員或代理人證明他是在其受僱範圍內行事的,則他有權自己引用承運人本身根據第22條有權援 引的法律責任限額。
 - (2) 在上述情形下,可向承運人、其僱員和代理人追討的總計款額不得超過上述限額。
- (3) 凡僱員或代理人的作為或不作為導致損害,並證明該作為或不作為是在蓄意造成損害 的情況下作出或有的,或問顧後果地作出或有的,以及在明知頗有可能會導致該損害的情況下 作出或有的,則本條第(1)及(2)款均不適用。

第 26 條

- (1) 有權獲交付行李或貨物的人收取行李或貨物而沒有作出投訴,即為該行李或貨物已在 良好狀況下並按照運輸文件的規定的情況下交付的表面證據。
- (2) 如行李或貨物遭損壞,有權獲交付該行李或貨物的人在發現損壞後必須隨即向承運人 作出投訴,而嚴遲須在收到的日期後(如屬行李)7日或(如屬貨物)14日內作出投訴。如有延 滯,則最遲必須在該行李或貨物交由其處置之目起計的21日內作出投訴。
 - (3) 每項投訴必須以幣而在運輸文件上作出或另以在上述限期內送交的書面通知作出。
- (4) 除非承運人方面有欺詐行為,否則如沒有在上述限期內作出投訴,則不得針對承運人 提起訴訟。

第 27 條

如承擔法律實任的人已死亡,則申索損害賠償的訴訟可按照本公約條款向在法律上代表其 搪磨的人提起。

第 28 條

- (1) 申索捌害賠償的訴訟,必須按原告人的撰擇,在一個締約方的領土內,向承揮人通常 居住地,或其主要營業地點或承運人擁有的簽訂合約的機構的所在地具有司法管轄權的法院提 起,或向在目的地具有司法管轄權的法院提起。
 - (2) 訴訟程序問題須受到受理有關個案的法院的法律管限。

第29條

- (i) 如訴訟沒有在從飛機到達目的地之日,或應該到達目的地之日或運輸停止之日起計的 2年內提起,則獲得損害賠償的權利即告終絕。
 - (2) 計算時效限期的方法須由受理有關個案的法院的法律決定。

Article 25

The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in

that case, shall not exceed the said limits.

(3) The provisions of 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 26

(1) Receipt by the person entitled to delivery of 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.

(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 7 days from the date of receipt in the case of baggage and 14 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 21 days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate

notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

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 estate.

Article 28

(1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.

(2) Questions of procedure shall be governed by the law of the court seised of the case.

- (1) The right to damages shall be extinguished if an action is not brought within 2 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 the period of limitation shall be determined by the law of the court seised of the case.

第 30 條

- (1) 在符合第 1 條第 (3) 款所列的定義並須由若干接續承運人辦理的運輸中,每一名接受乘客、行李或貨物的承運人均受本公約所列的規則所規限,並須在運輸合約開平由其監管進行的一段運輸的範圍內,被當作為該合約的締約一方。
- (2) 如運輸屬該性質,而有關意外或延滯於某段運輸期間發生,乘客或其代表只能向進行該段運輸的承拠人提起訴訟,但如第一承運人按明訂協議須負起整個旅程的法律責任,則屬例外。
- (3) 就行李或貨物而言,乘客或付貨人有針對第一承運人提起訴訟的權利,而有權獲交付 行李或貨物的乘客或收貨人有針對最後承運人提起訴訟的權利,此外,如有關的毀滅、遺失、 損壞或延滯於某段運輸期間發生,他們各人均可針對進行該段運輸的承運人提起訴訟。這些承 運人須對乘客或付貨人或收貨人負上共同及各別的法律責任。

第 IV 章

關於聯合運輸的條文

第31條

- (1) 就部分採用航空運輸和部分採用其他運輸方式進行的聯合運輸而言,本公約的條文只適用於第1條的條款所指的航空運輸。
- (2) 则本公約條文就航空運輸部分而獲遵守,本公約並不禁止聯合運輸的各方將關乎其他 運輸方式的條件列入航空運輸文件內。

第 V 意

一般性及最後條文

第 32 條

如各方本意是藉合約所載的任何條文和所有在根害發生以前訂立的特別協議,違反本公約所訂下的規則,不論是藉決定須適用的法律或改變關於司法管轄權的規則,均屬無效。但在符合本公約的規定下,貨物運輸的合約中可允許有仲裁條款(如該仲裁是在第28條第(1)款所提述的其中一個司法管轄區內進行的)。

第 33 條

本公約並不禁止承運人拒絕訂立任何運輸合約或訂立不抵觸本公約條文的規例。

第 34 條

第3至9條(包括首尾兩條在內)關於遲輸文件的條文不適用於在正常航空運輸業務範圍以 外的特殊情況下辦理的運輸。

Article 30

(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 who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for

the whole journey.

(3) As regards baggage or 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 who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention 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

GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in paragraph (1) of Article 28.

Article 33

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

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

CAP. 500

第 35 條

本公約所用的"目" (days) 一詞指連續目,而不是指工作目。

第 40A 條

[本段不予戒列。本段界定"締約方"。]

(2) 為施行本公約,"領域"(territory)一詞不僅指某國家的本部領域,亦指由該國負責處理 其外交關係的所有其他地區。

[第36、37、38、39、40及41條及本公約的最後字句不予載列。該等條文和文字閱於 本公約的存放和開始生效的事育。)

《附加議定書》

(參照第2條者)

締約方在確認或加入本公約時,保留宣布本公約第2條第(I)款不適用於國家、其殖民地、 受保護國、受托管領土或在其主權、宗主權、或權限下的任何其他地區所直接進行的國際航空 準輪的權利。

附表 2

[第 2(1) 及 10 條]

《瓜達拉哈拉公約》

第『條

在本公約中:

- (b) "訂約承運人" (contracting carrier) 指以主事人身分與任何乘客或付貨人或與代表 乘客或付貨人行事的人訂立受《華沙公約》規管的運輸的協議的人;
- (c) "實際承運人" (actual carrier) 指 (訂約承運入則除外) 憑藉得自訂約承運人的權限 而進行(b) 段所籌算的運輸的全部或部分的人,但就該部分運輸而喜,他並不是 (雄沙公約)所指的接續承運人。在沒有相反證明的情況下須推定有上述構限。

第11條

凡運輸按照第1條(4)段所提述的協議是受(華沙公約)規管的,如實際承運人進行該運輸 的全部或部分,則除非該公約另有規定。否則訂約承運人和實際承運人均受《華沙公約》的規則 所規限:訂約承運人須就該協議所籌算運輸的全部受該公約規限,而實際承運人只就他所進行 的運輸受該公約規限。

第Ⅲ條

(1) 就實際承運人所辦理的運輸面言,該實際承運人及在其受僱範圍內行事的該實際承運 人的僱員及代理人的作為及不作為,須當作亦是訂約承運人的作為及不作為。

Article 35

The expression "days" (目) when used in this Convention means current days not working days.

Article 40A

[This paragraph is not reproduced. It defines "High Contracting Party".]

(2) For the purposes of the Convention the word "territory" (領域) means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

[Articles 36, 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They deal with the deposition and coming into force of the Convention.)

ADDITIONAL PROTOCOL

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that paragraph (1) of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority

SCHEDULE 2

[ss. 2(1) & 10]

THE GUADALAJARA CONVENTION

ARTICLE I

In this Convention:

(b) "contracting carrier" (訂約承運人) means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor; "actual carrier" (實際承運人) means a person, other than the contracting carrier,

who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary,

ARTICLE II

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

ARTICLE III

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

(2) 就實際承運人所辦理的運輸而言,訂約承運人及在其受僱範圍內行事的該訂約承運人 的僱員及代理人的作為及不作為,須當作亦是該實際承運人的作為及不作為。但該等作為或不 作為不得使該實際承運人承擔超逾《華沙公約》第22條所指明的限額的法律責任。任何訂約承 運人據以負起並非 (華沙公約) 所規定的義務的特別協議、任何由公約賦予的權利的放棄或在該 公約第22條所籌算的就行李或貨物運到目的地後的利益作出的特別聲明,均不得影響該實際承 遲人(除非他同意)。

第17條

根據《掩沙公約》向承運人作出的任何投訴或發出的任何指令,不論是向訂約承運人或是向 實際承運人作出或發出的,均具有相同效力。但《華沙公約》第 12 條所提述的指令只是在向訂 約承運人發出時才具有效力。

第 V 條

就實際承運人辦理的運輸而言,該承運人或訂約承運人的任何僱員或代理人如證明他是在 其受僱範圍內行事的,則他有權本身引用根據本公約適用於僱用他的承運人的法律責任的限 制,除非證明他行事的方式根據(華沙公約)阻止他援引該法律責任限額。

第 VI 條

就實際承運人辦理的運輸而言,可向該承運人及訂約承運人及在其受僱範圍內行事的他們 的僱員及代理人追討的款額的繳數,不得超逾根據本公約可針對該訂約承運人或該實際承運人 定給的最高款額,但上述各人均無須就超逾適用於他的款額限額的款項負土法律實任。

第 VII 條

就實際承運人辦理的運輸而言,原告人可在其選擇下針對該承運人或訂約承運人,或共同 或各別地針對他們兩人提起申索損害賠償的訴訟。如訴訟只針對上述的其中一名承運人提起, 則該承運人有權要求將另一承運人加入該項法律程序中,而程序和效果則由受理有關個案的法 院的法律管限。

第 VIII 條

申索本公約第 VII 條所籌算的損害賠償的訴訟,必須在原告人選擇下向《華沙公約》第 28 條規定可在其處針對訂約承運人提起訴訟的法院提起,或向在實際承運人通常居住的地方或其 主要營業地點所在地具有司法管轄權的法院提起。

第 IX 條

- (1) 任何傾向於免除訂約承運人或實際承運人在本公約下的法律實任的合約條文,或任何 傾向於定出較按照本公約適用的限額為低的限額的合約條文,均屬無效,但任何該等條文的無 效並不涉及整份協議的無效,而該協議在符合本公約條文的規定下仍繼續留存。
- (2) 就實際承遲人進行的運輸而言,前款不適用於管限因所運輸的貨物的固有缺陷、品質 或缺點所導致的遺失或損壞的合約條文。

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

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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 him.

ARTICLE VII

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 VIII

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

ARTICLE IX

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

(2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect.

quality or vice of the cargo carried.

CAP. 500 Carriage by Air

(3) 如各方本意是藉迎輸協議所載的任何條款和所有在損害發生以前訂立的特別協議,違 反本公約所訂下的規則,則不論是決定須適用的法律或變更司法管轄權的規定,均屬無效。但 在符合本公約的規定下,貨物運輸的合約中可允許有仲裁條款(如該仲裁是在第 VIII 條所提述 的其中一個司法管轄協內推行)。

第X條

餘第 VII 條另有規定外,本公約的條文不得影響兩名承運人之間的權利及義務。

附表3

(第 2(1)、13 、 15 、 16 . 17 及 18 條

非國際運輸與郵件和郵包的運輸

第1部

《經修訂公約》的適用範圍

就本條例第 13 條所描述的運輸而言。《經修訂公約》經以下所列的形式改編和變通後適 朋-

第1章

範圍--定義

第1條

(1) 本附表適用於所有為報酬而以飛機運載人、行李或貨物的運輸。本附表同樣適用於航 空運輸事業用飛機進行的免費運輸。

第2條

(1) 本附表適用於由國家或合法組成的公共機構進行的運輸,但該項運輸須符合第1條所 定的條件。

第III 育

承继人的法律費任

第17條

凡乘客因死亡或受傷或任何其他身體傷害而蒙受損害,如造成上述損害的意外是發生在飛 機上或在任何上落飛機的運作過程中的,則承遲人須就該損害負上法律實任。

(3) Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe 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. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

ARTICLE X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

SCHEDULE 3

[ss. 2(1), 13, 15, 16, 17 & 18]

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

PART I

Application of the amended Convention

The amended 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

SCOPE--DEFINITIONS

Article 1

(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.

Article 2

(I) 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 III

LIABILITY OF THE CARRIER

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

第 18 條

- (1) 凡有人困任何經發記行李或任何貨物遭毀滅、遭失或損壞而蒙受損害,如造成上並損害的事故是發生在航空運輸期間的,承運人須就該損害負上法律責任。
- (2) 前款所指的航空運輸,包括有關行李或貨物由承運人保管的期間,不論是在機場內或 飛機上保管;如在機場外降落,則不論是在任何地方保管。
- (3) 航空運輸的期間不延展至包括在機場以外進行的任何陸上運輸、海上運輸或河道運輸。但如該等運輸是在履行航空運輸合約時為了裝載、交付或轉運而作出的,則除非有相反證明,任何損害均須推定為在航空運輸期間所發生的事件的結果。

第 19 條

承與人須就因乘客、行李或貨物的航空運輸中的延滯造成的損害,負上法律責任。

第 20 條

革運人如證明自己及其僱員或代理人已採取一切必要的措施以避免損害,或證明自己及其僱員或代理人不可能採取上述措施,則他無須負上法律責任。

第21條

承運人如證明損害是由於受傷的人的疏忽所導致或助成的,法院可按照其法律的規定,完全或局部寬免該承運人的法律實任。

第 22 條

- (1) 在運椒乘客時,承運人就每一名人士所負的法律責任以 100,000 特別提款權單位為限。如按照受理有關個案的法院的法律是可以分期付款方式作出賠償的,則上述付款的資本值不得超過 100,000 特別提款權單位,但乘客可與承運人協定,以特別合約規定一個較高的法律責任限額。
 - (2) (a) 在運搬經發配行李和貨物時,承運人就行李或貨物所負的法律實任以每公斤17特別提款權單位為限,但如乘客或付貨人在包裝物交予承運人時,曾特別聲明行李或貨物運到目的地後的利益,並已繳付所需的附加費(如情況有需要的話),在該種情況下,承運人有法律責任繳付不超過聲明的款額,除非他證明該款額高於行李或貨物運到目的地後對該乘客或付貨人的實際利益。
 - (b) 如部分的經登記行李或貨物(或該部分行李或貨物所載的任何物件)遭遺失、損壞或延誤時,在歷定承運人法律實任限額的款額時所考慮的重量須只是有關該包裝物的總重量。但如部分的經登記行李或貨物(或該部分行李或貨物所載的任何物件)遭遺失、損壞或延誤影響在同一行李機票或同一航空貨運單所涵蓋的其他包裝物的價值,則在歷定法律責任限額時亦須考慮該包裝物或該等包裝物的總重量。
- (3) 就乘客自己保管的物件而言,承運人的法律責任以每名乘客 332 特別提款權單位為限。

Article 18

(1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

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

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 100,000 special drawing rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 100,000 special drawing rights. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) (a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 special drawing rights per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.

(b) In the case of loss, damage or delay of part of registered baggage or 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 loss, damage or delay of a part of the registered baggage or cargo, or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 special drawing rights per passenger.

- (4) 本條訂明的脫額不得阻止法院按照其本身的法律,額外判給全部或部分法院費用和原 告人所招致的訴訟的其他支出。如所判給的損害賠償款額減除法院費用和訴訟的其他支出後不 超過承運人在損失造成發生後的 6 個月內或訴訟開始前 (如該日期為較後日期) 以書面向原告人 建議的款項, 則上述條文不適用。
 - (5) (a) 一個特別提款權單位在某一目的價值須當作相等於國際貨幣基金定為——
 - (i) 就該目而言;或
 - (ii) (如沒有就該日定出數項) 該日之前的有為其如此定出數項的最後一日而言, 船相等於一個特別提款權單位的港幣數項,但如國際貨幣基金沒有如此定出港幣 數項,則一個特別提款權單位在某一目的價值須視為相等於按照本數的(b)(ii)段 發出的證明審內所述明的雜幣數項。
 - (b) 為施行本條,由金融管理專員發出或代表金融管理專員發出的並述明——
 - (i) 已如上述就某一日定出的港幣數項的證明書;或
 - (ii) 沒有就某一日定出數項,以及為在該日之前的有為其如此定出數項的最後一 日所定出的港幣數項的證明書;或
 - (iii) 某港幣數項視為就某一日而言相等於一個特別提款權單位的證明書, 須為該等事宜的不可推翻的證據;任何看來是該等證明書的文件須在任何法律程 序中獲收取為證據,而除非相反證明成立,否則該文件須當作為該等證明書。

[由附錄 III CII 頁插入]

第 23 條

- (1) 任何傾向於免除承運人的法律責任或定出一個低於本附表所訂的限額的條文。均屬無 效,但任何該等條文的無效並不涉及整份合約的無效,而該合約在符合本附表條文的規定下仍 繼絀留存。
- (2) 本條第(1)款不適用於規管固運輸貨物的固有缺陷、品質或缺點所導致的遺失或損壞的 條文。

第24條

- (1) 在第 18 及 19 條所涵蓋的個案中。任何申索損害賠償的訴訟 (不論其依據為何) 只能在 本附表所列的條件和限額的規限下提起。
- (2) 在第 17 條所涵蓋的個案中,在不損害關於離有權提起訴訟以及他們各自的權利為何的 問題的原則下,前款條文適用。

第 25 條

凡承運人或其僱員或代理人的作為或不作為導致損害,並證明該作為或不作為是在蓄意造 成損害的情况下作出或有的,或罔顧後果地作出或有的,以及在明知頗有可能導致該損害的情 况下作出或有的,则第22條所指明的法律責任限額不適用;但如屬僱員或代理人的作為或不作 為所導致的,則亦須證明他是在其受佩範圍內行事的。

- (4) The limits prescribed 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. 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 6 months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
 - (5) (a) The value on a particular day of one special drawing right shall be treated as equal to such a sum in Hong Kong dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right-

(i) for that day; or

CAP. 500

(ii) if no sum has been so fixed for that day, for the last day before that day for

which a sum has been so fixed:

Provided that if the International Monetary Fund have not so fixed a sum in Hong Kong dollars, the value on a particular day of one special drawing right shall be taken to be the equivalent of a sum in Hong Kong dollars stated in a certificate given in accordance with subparagraph (b)(iii) of this paragraph. A certificate given by or on behalf of the Monetary Authority stating—

(i) that a particular sum in Hong Kong dollars has been fixed as aforesaid for a particular day; or

(ii) that no sum has been so fixed for a particular day and that a particular sum in Hong Kong dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day; or

(iii) that a particular sum in Hong Kong dollars is to be taken as the equivalent of

one special drawing right for a particular day, shall be conclusive evidence of those matters for the purposes of this Article; and a document purporting to be such a certificate shall in any proceedings be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

[Inserted by App. III, p. CII]

Article 23

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

Article 24

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

(2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

Article 25

The limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

第 25A 條

- (1) 如針對承運人的僱員或代理人提起的訴訟是因本附表所關平的損害而導致的,而該僱員或代理人證明他是在其受僱範圍內行事的,則他有權自己引用承運人本身根據第 22 條有權援引的法律責任限額。
 - (2) 在上述情形下,可向承運人、其僱員及代理人追討的總計款額不得超逾上述限額。
- (3) 凡偏員或代理人的作為或不作為導致損害,並證明該作為或不作為是在蓄意造成損害的情況下作出或有的,或罔顧後果地作出或有的,以及在明知頗有可能導致該損害情況下作出或有的,則本條第(1)及(2)款均不適用。

第26條

- (1) 有權獲交付行李或貨物的人收取行李或貨物而沒有作出投訴,即為該行李或貨物已在良好狀況下並按照運輸文件的規定的情況下交付的表面證據。
- (2) 知行李或貨物遭損壞,有權獲交付該行李或貨物的人在發現損壞後必須隨即向承運人 作出投訴,而最遲須在收到的日期後(如屬行李)7日或(如屬貨物)14日內作出投訴。如有延 體,則最遲必須在該行李或貨物交由其處置之日起計的21日內作出投訴。
 - (3) 每項投訴必須以審面作出並在上述限期內送交。
- (4) 除非承遲人方而有欺詐行為,否則如沒有在上述限期內作出投訴,則不得針對承遲人提出訴訟。

第 27 條

如承擔法律責任的人已死亡,則申索損害賠償的訴訟可按照本附表條款向在法律上代表其 遗產的人提起。

第29條

- (1) 如訴訟沒有在從飛機到達目的地之日,或應該到達目的地之日或運輸停止之日起計的 2年內提出,則獲得損害賠償的權利即告終絕。
 - (2) 計算時效限期的方法須由受理有關個案的法院的法律而決定。

第 30 條

- (1) 在須由若干接續承遲人辦理的運輸中,每一名接受乘客、行李或貨物的承運人均受本 附表所列的規則所規模,並須在運輸合約關乎由其監管進行的一段運輸的範圍內,被當作為該 合約的締約一方。
- (2) 如運輸觸該性質,而有關意外或延滯於某段運輸期間發生,乘客或其代表只能向進行 該段運輸的承運人提起訴訟,但如第一承運人按明訂協議須負起整個旅程的法律責任,則屬例 外。
- (3) 就行李或貨物而官,乘客或付貨人有針對第一承運人提起訴訟的權利,而有權獲交付行李或貨物的乘客或收貨人有針對最後承運人提起訴訟的權利。此外,如有關的毀滅、遭失、損壞或延滯於某段運輸期間發生,他們各人均可針對進行該段運輸的承運人提起訴訟。這些承運人須對乘客或付貨人或收貨人負上共同及各別法律責任。

Article 25A

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.

(2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in

that case, shall not exceed the said limits.

(3) The provisions of 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 26

(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is prima

facie evidence that the same has been delivered in good condition.

(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 7 days from the date of receipt in the case of baggage and 14 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 21 days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

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 estate.

Article 29

(1) The right to damages shall be extinguished if an action is not brought within 2 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 the period of limitation shall be determined by the law of the

court seised of the case.

Article 30

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

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for

the whole journey.

(3) As regards baggage or 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 who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CAP. 500.

28

第IV意

關於聯合運輸的條文

第 31 條

- (1) 就部分採用航空運輸和部分採用其他運輸方式進行的聯合運輸而言,本附表的條文只 適用於第1條的條款所指的航空運輸。
- (2) 如本附表的條文就航空運輸部分而獲遵守,本附表並不禁止聯合運輸的各方將關平其 他運輸方式的條件列入航空運輸文件內。

第 V 意

一般性及最後條文

第32條

如各方本意是藉合約所載的任何條文和所有在損害發生以前訂立的特別協議,違反本附表 所訂下的規則,不論是藉決定須適用的法律或改變關於司法管轄權的規則,均屬無效。但在符 合本附表的規定下,貨物運輸的合約中允許有仲裁條款。

第 33 條

本附表並不禁止承继人拒絕訂立任何運輸合約或訂立不抵觸本附表條文的規例。

第35條

本附表所用的"目"(days) 一詞是指連續日,而不是指工作日。

第Ⅱ部

《瓜達拉哈拉公約》的擴用範圍

《瓜達拉哈拉公約》於經以下所列的形式改編和變通後就本條例第 13 條所描述的運輸而適 用一

第 [條

在由本附表施行的(瓜達拉哈拉公約)中---

- (a) "《菲沙公約》" (the Warsaw Convention) 指由本附表施行的《經修訂公約》;
- (b) "訂約承運人" (contracting carrier) 指以主事人身分與任何乘客或付貨人或與代表 乘客或付貨人行事的人訂立受(華沙公約)規管的運輸的協議的人;
- "實際承運人"(actual carrier) 指(訂約承運人則除外)憑藉得自訂約承運人的權限 而推行(b) 段所籌算的運輸的全部或部分的人,但就該部分運輸而言,他並不是 (菲沙公約)所指的接續承運人。在沒有相反證明的情況下須推定有上述權限。

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

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

GENERAL AND FINAL PROVISIONS

Article 32

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

Article 33

Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

Article 35

The expression "days" (A) when used in this Schedule means current days not working days.

PART II

Application of the Guadalajara Convention

The Guadalajara 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-

ARTICLE I

In the Guadalajara Convention as applied by this Schedule--

(a) "the Warsaw Convention" (華沙公約) means the amended Convention as applied by

"contracting carrier" (訂約承運人) means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

"actual carrier" (實際承運人) means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

第Ⅱ條

如實際承運人所辦理該運輸的全部或部分是受《華沙公約》規管的,則除非由本附表施行的 《瓜達拉哈拉公約》另有規定,否則訂約承運人和實際承運人均受《華沙公約》的規則所規限:訂 約承運人須就該協議所籌算運輸的全部受該公約規限,而實際承運人只就他所進行的運輸受該 公約規限。

第III條

- (1) 就實際承運人所辦理的運輸而言,該實際承運人及在其受僱範圍內行事的僱員及代理人的作為和不作為,須當作亦是訂約承運人的作為和不作為。
- (2) 就實際承運人所辦理的運輸而言, 訂約承運人及在其受僱範圍內行事的該訂約承運人的其僱員及代理人的作為及不作為,須當作亦是實際承運人的作為和不作為。但該等作為或不作為不得使該實際承運人承擔超逾(華沙公約)第22條所指明的限額的法律責任。任何訂約承運人據以負起並非(菲沙公約)所規定的義務的特別協議、任何由公約所賦予的權利的放棄或在該公約第22條中所籌算的就行李或貨物運到目的地後的利益籌劃作出的特別聲明,均不得影響該實際承運人(除非他同意)。

第 IV 條

根據(華沙公約)對承運人作出的任何投辦,不論是向訂約承運人或是向實際承運人作出的,均具有相同效力。

第V條

就實際承運人辦理的運輸而言,該承運人或訂約承運人的任何僱員或代理人如證明他是在 其受僱範圍內行事,則他須有權本身引用根據由本附表施行的《瓜達拉哈拉公約》適用於僱用他 的承述人的法律質任的限制,除非證明他行事的方式根據《華沙公約》阻止他提引該法律責任限 額。

第 VI 條

就實際承遲人辦理的運輸而言,可向該承運人及訂約承運人及在其受僱範圍內行事的他們的僱員及代理人追討的款額的總數,不得超逾根據由本附表予以施行的《瓜達拉哈拉公約》可針對該訂約承遲人或該實際承遲人定給的最高款額,但上述各人均無須就超逾適用於他的款額限額的款項負上法律責任。

第 VII 條

就實際承運人辦理的運輸而官,原告人可在其選擇下針對該承運人或訂約承運人,或共同 或各別地針對他們兩人提起中索賠償的訴訟。

第IX條

(1) 任何傾向於免除訂約承運人或實際承運人在由本附表施行的《瓜達拉哈拉公約》下的法律責任的合約條文,或任何傾向於定出較按照由本附表施行的《瓜達拉哈拉公約》適用的限額為低的限額的合約條文,均屬無效,但任何該等條文的無效並不涉及整份協議的無效,而該協議在符合由本附表施行的《瓜達拉哈拉公約》的條文的規定下仍繼續留存。

ARTICLE II

If an actual carrier performs the whole or part of carriage which is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in the Guadalajara Convention as applied by this Schedule, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

ARTICLE III

(1) The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be

deemed to be also those of the contracting carrier.

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

ARTICLE IV

Any complaint to be made under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier.

ARTICLE V

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

ARTICLE VI

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 the Guadalajara Convention as applied by this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

ARTICLE VII

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.

ARTICLE 1X

(1) Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under the Guadalajara Convention as applied by this Schedule or to fix a lower limit than that which is applicable according to the Guadalajara Convention as applied by this Schedule shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of the Guadalajara Convention as applied by this Schedule.

CAP. 500

(3) 姻各方本意是難運輸協定所載的任何條文和所有在損害發生以前訂立的特別協議,違 反由本跗表施行的《瓜蜂拉哈拉公约》所訂下的規則,不論甚雖決定須適用的法律或變更關於司 法管辖權的規則,均屬無效。但在符合由本附表施行的《瓜達拉哈拉公約》的規定下,貨物運輸 的合約中可允許有仲裁條款。

第X條

由本附表施行的(爪達拉哈拉公約)不得影響兩名承運人之間的權利及義務。

第 XI 條

城於本條的條文不得對香港郵政署署長訂明任何法律責任。

[附錄]II CH! 頁的附表 2]

州表 4

(第 2(1)、13、14、15、

16、17及18條1

(華沙公約)下的國際運輸

- (1) 《經修訂公約》和《瓜達拉哈拉公約》於分別經本附表第 I 及 II 部所列的形式改編和變通 後,分別就本附表第(2)款所界定的"國際運輸"的運輸而適用。
- (2) 就本條例第 14 條及本附表而言, "國際運輸" (international carriage) 具有本附表第 I 部 第 1 條第 (2) 款給予該詞的涵義。

第【部

(經修訂公約)的適用範圍

第1章

舱園---定義

第十條

- (!) 本附表適用於所有為報酬而以飛機運載人、行李或貨物的國際運輸。本附表同樣適用 於航空運輸事業以飛機進行的免費運輸。
- (2) "國際運輸" (international carriage) 指符合以下所述的運輸:按照有關各方所訂的合 約,不論在運輸過程中是否有間斷或轉進,運輸出發地和目的地是在《華沙公約》兩個締約方的 領土內,或均在一個締約方的領土內面在另一國家(即使該國家並非《華沙公約)的締約方)的主 權、宗主權、委任統治權或權限管轄下的地區內有一個協定的中途著陸地點的任何運輸。

(2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

(3) Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by the Guadalajara Convention as applied by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and yold. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to the said Convention as applied by this Schedule

ARTICLE X

Nothing in the Guadalajara Convention as applied by this Schedule shall affect the rights and obligations of the two carriers between themselves,

ARTICLE XI

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

[App. III, p. CHI Sch. 2]

SCHEDULE 4

[ss. 2(1), 13, 14, 15, 16, 17 & 181

INTERNATIONAL CARRIAGE UNDER THE WARSAW CONVENTION

(1) The amended Convention and the Guadalajara Convention as adapted and modified in the forms set out, respectively, in Part I and Part II of this Schedule shall apply in respect of carriage which is "international carriage" as defined in paragraph (2) of this Schedule.

(2) For the purposes of section 14 of this Ordinance and of this Schedule "international carriage" (國際運輸) has the meaning assigned to it in paragraph (2) of Article 1 in Part I of this Schedule.

PART I

Application of the amended Convention

CHAPTER I

SCOPE—DEFINITIONS

Article 1

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

(2) "International carriage" (國際運輸) means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties to the Warsaw Convention or within the territory of a single such State, if there is an agreed stopping place within the territory subject to the sovereignty, suzerainty, mandate or authority of another State, even though that State is not a Party to the Warsaw Convention.

(3) 就本附表而言,如幾個接續的航空承運人所進行的運輸被有關各方視為一項單一的作業(不論它是以單一份合約或一系列的合約形式所進行的),則該運輸須當作是一項單一運輸;而該項運輸並不只因一份合約或一系列合約完全於在同一個國家的主權、宗主權、委任統治權或摧限管轄下的地區內履行而喪失其國際性質。

第2條

- (i) 本附表適用於由並非本身引用《華沙公約》的《附加議定書》的國家所進行的運輸,或由 合法組成的公共機構所進行的運輸(但該運輸須符合第1條所訂的條件)。
 - (2) 本附表不適用於根據任何關際郵務公約的條款推行預運輸。

第11章

運輸文件

第1節----乘客機緊

第3條

- (1) 承迎人必須為運載乘客支付乘客機票,乘客機票須載有下列詳情——
 - (a) 發出機票的地點和目期;
 - (b) 出發地和目的地;
 - (c) 協定的中途著陸地點,但承運人可保留在必要時更改該地點的權利,以及如他行使該權利,該項更改不具有使該運輸喪失其國際性質的效果;
 - (d) 承運人的姓名或名稱及地址;
 - (e) 一項說明,說明該項運輸受由《華沙公約》就法律責任而訂立的有關規則所規限。
- (2) 如沒有乘客機票,或乘客機票有欠妥之處或遭遭失,並不影響運輸合約的存在及有效性,而這項運輸合約仍受本附表的規則所規限。但如承運人接受乘客而不交出乘客機票,則該承運人本身無權引用免除或限制其法律責任的本附表的該等條文。

第2節——行李機票

第4條

- (1) 除由乘客自行保管的小件個人物件外,承運人必須為運載行李交付行李機票。
- (2) 行李機票須以一式兩份發出,一份交給乘客,另一份交給承運人。
- (3) 行李機票須賴有下列詳情——
 - (a) 發出行李機票的地點和日期;
 - (b) 出發地和目的地;
 - (c) 承運人的姓名或名稱及地址;
 - (d) 乘客機票的號碼;
 - (e) --項說明, 説明行李將會交給行李機票持有人;
 - (7) 包装物件敷和重量;
 - (g) 按照本附表第 I 部第 22 條第 (2) 款聲明的價值款額;

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

Article 2

(1) This Schedule applies to carriage performed by the State, not being a State which has availed itself of the Additional Protocol to the Warsaw Convention, or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

(2) This Schedule does not apply to carriage performed under the terms of any international

postal Convention.

CHAPTER II

DOCUMENTS OF CARRIAGE

Section 1-Passenger Ticket

Article 3

- (1) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars—
 - (a) the place and date of issue;
 - (b) the place of departure and of destination;
 - (c) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right, the alteration shall not have the effect of depriving the carriage of its international character;
 - (d) the name and address of the carrier or carriers;
 - (e) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.
- (2) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Schedule. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Section 2—Baggage Check

Article 4

(1) For the carriage of baggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a baggage check.

(2) The baggage check shall be made out in duplicate, one part for the passenger and the other part for the carrier.

(3) The baggage check shall contain the following particulars—

(a) the place and date of issue;

(b) the place of departure and of destination;

(c) the name and address of the carrier or carriers;

(d) the number of the passenger ticket:

- (e) a statement that delivery of the baggage will be made to the bearer of the baggage check;
- (f) the number and weight of the packages;
- (g) the amount of the value declared in accordance with paragraph (2) of Article 22 in Part I of this Schedule;

(4) 如沒有行李機黑,或行李機黑有欠妥之處或遭遺失,並不影響運輸合約的存在及有效 性,而這項運輸合約仍受本附表的規則所規限。但如承運人在沒有行李機票交付的情況下接受 行李,或如該行李機票沒有載有上述(d)、(f)及(h) 致所列的詳情,則該承運人本身無權引用 免除或限制其法律责任的本附表的該等條文。

第3節---航空貨運單

第5條

- (1) 氨名货物承继人有權要求付货人裝備一份稱為"航空貨運單"的文件和將該文件交給 他;每名付貨人有權要求承運人接受適份文件。
- (2) 但沒有該文件、或該文件有欠妥之處或遭遺失,並不影響運輸合約的存在及有效性。 除第9條的條文另有規定外,這份運輸合約仍受本附表規則所規限。

第6條

- (1) 付货人須製備航空貨運單正本一式三份,運同貨物一併提交。
- (2) 第一部分預註明 "for the carrier", 並須由付貨人簽署; 第二部分須註明 "for the consignee", 並須由付貨人及承運人簽署並附在貨物上; 第三部分須由承運人在接受貨物後簽署 並交給付貨人。
 - (3) 承型人須在接受貨物時簽署。
 - (4) 承運人的簽名可以戳印完成,付貨人的簽署則可以印刷或戳印完成。
- (5) 如承運人按付貨人的請求,製備航空貨運單,除非有相反證明,否則承運人須當作是 **- 代付货人如此行事。**

第7條

當有多過一件包裝物時,貨物承迎人有權要求付貨人製備分開的航空貨運單。

第8條

航空貨運單須載有下列詳情---

- (a) 航空貨運單的簽立地點和日期;
- (b) 出發地和目的地;
- (c) 協定的中途著陸地點;但承運人可保留在必要時更改該地點的權利,以及如他行 使該權利,該項更改不具有使該運輸喪失其國際性質的效果;
- (d) 付货人的姓名或名称及地址;
- (e) 第一承迎人的姓名或名稱及地址;
- (f) 收货人的姓名或名稱及地址(如情况所需的話);
- (e) 货物的性質;
- (h) 包裝物件數、包裝方式和包裝物表面的特定標誌或號碼;
- (i) 货物的兼量、數量、體積或尺寸;
- (7) 货物和包装的外表狀況;
- (k) 獔覆(如已協定的話),付囊且期和地點,以及付費人;

(h) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.

(4) The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to the rules of this Schedule. Nevertheless, if the carrier accepts baggage without a baggage check having been delivered, or if the baggage check does not contain the particulars set out at subparagraphs (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

SECTION 3-Air Waybill

Article 5

(1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an "air waybill"; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, he none the less governed by the rules of this Schedule.

Article 6

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

The carrier shall sign on acceptance of the cargo.

The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

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

Article 7

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

Article 8

The air waybill shall contain the following particulars—

- (a) the place and date of its execution;
- (b) the place of departure and of destination;
- the agreed stopping places; provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character:
- (d) the name and address of the consignor;
- the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the cargo;
- (h) the number of the packages, the method of packing and the particular marks or numbers upon them:
- the weight, the quantity and the volume or dimensions of the cargo;
- (i) the apparent condition of the cargo and of the packing:
- (k) the freight, if it has been agreed upon, the date and place of payment, and the person who is to pay it;

- (1) 貨物的價格(如貨物是以交貨後付款的方式送交的)和所招致的費用額(如情況所需的話);
- (m) 按照本附表第 I 部第 22 條第 (2) 款聲明的價值款額;
- (n) 航空貨運單的份數;
- (a) 連同航空貨運單交給承運人的文件;
- (p) 所定出的完成運輸的期限和會經過的路線的概要説明(如就上述事項已有協定的話);
- (q) 一項説明,説明該運輸受由《華沙公約》就法律責任而訂立的有關規則所規限。

第9條

如承運人接受貨物時並沒有製備航空貨運單,或如航空貨運單沒有包括第8條(a)至(i)段及(q)段所列的詳情,則該承運人本身無權引用本附表關於免除或限制其法律實任的條文。

第 10 條

- (1) 付貨人須就其在航空貨運單中所填報的有關貨物的詳情及說明的正確性負上責任。
- (2) 付貨人須就承運人因上述評情和聲明有欠妥之處、不正確或不完備而數受的一切損害 負上法律責任。

第11條

- (1) 航空貨運單是訂立合約、收取貨物和運輸條件的表面證據。
- (2) 航空貨運單內關於貨物的重量、尺寸和包裝的說明以及包裝物件數的說明,是所述事實的表面證據;除非承運人在付貨人在場下已查核有關的說明並且在該航空貨運單內述明此項查核,又或除非是關於貨物表面狀況的説明,否則關於貨物的數量、體積和狀況的說明並不構成對承運人不利的證據。

第12條

- (1) 在付貨人履行其在運輸合約下其一切義務的法律實任的規限下,付貨人有權賴在出發地的機場或目的地的機場將貨物撤回,或在中途著陸時中止運輸,或指令貨物在目的地或途中交給非航空貨運單上所指的收貨人,或要求將貨物退回出發地的機場,處置貨物。但他不得在便承運人或其他付貨人受損害的情況下行使此項處置構,並必須償還因行使該權利所引致的任何數用。
 - (2) 如執行付貨人的指令屬不可能,承運人必須隨即通知該付貨人。
- (3) 如承運人遵從付貨人的處置貨物的指令而沒有要求出示已交付給該付貨人的航空貨運 單的部分,則在不損害其可向該付貨人追討的權利下,他須就可能因以上事宜而對任何合法管 有該航空貨運單的該部分的人造成的任何損害負上法律責任。
- (4) 當授予收貨人的權利按照第13條的規定開始時,授予付貨人的權利即告終止。但如收貨人拒絕接受航空貨運單或貨物,或如無法聯絡收貨人,則付貨人恢復其處置權。

- if the cargo is sent for payment on delivery, the price of the cargo, and, if the case so
 requires, the amount of the expenses incurred;
- (in) the amount of the value declared in accordance with paragraph (2) of Article 22 in Part I of this Schedule:
- (n) the number of parts of the air waybill;
- (o) the documents handed to the carrier to accompany the air waybill:
- (p) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon:
- (q) a statement that the carriage is subject to the rules relating to liability established by the Warsaw Convention.

Article 9

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

Article 10

- (1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.
- (2) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

Article 11

- (1) The air waybill is prima facie evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.
- (2) The statements in the air waybill 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 to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the cargo.

- (1) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome 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 named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
- (2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
- (3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.
- (4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the air waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

CAP. 500

第13條

- (1) 除在以上條文所列的情况外,收貨人在貨物到達目的地時,有權在繳付已到期須付的 避用並在轉從航空貨運單上所列的運輸條件後,要求承運人向他移交航空貨運單並交付貨物給
 - (2) 除另有協定外,承運人有實任在貨物到達後撒快通知收貨人。
- (3) 如承遲人承認貨物已遭遭失,或如貨物在應該到達的日期後的7日屆滿時尚未到達, 則收貨人有權針對該承運人行使源自運輸合約的權利。

第 14 條

付货人及收货人在履行合約所施加的義務的情况下,不論息為了自己或別人的利益行事。 可各自用自己的名義分別行使第 12 及 13 條給予他們的所有權利。

第15條

- (1) 第12、13及14條不影響付貨人與收貨人之間或收貨人與付貨人之間的關係,亦不影 響他們與自付货人或收货人獲得權利的第三者之間的關係。
 - (2) 第 12 13 及 14 條的條文只可藉航空貨運單內的明訂條文予以更改。
 - (3) 本附表並不禁止發出可轉讓的航空貨運單。

第16條

- (1) 付貨人必須提供所需資料並將所需文件附於航空貨運單上,以便在貨物可交付收貨人 之前完成海關、入市税徵收所或警察手續。凡沒有上述資料或文件或上述資料或文件有不足或 欠妥之處而造成任何損害,除非該損害是由於承運人或其僱員或代理人的過錯所致,否則付貨 人須就該損失向承迎人負上法律責任。
 - (2) 承運人沒有查究上述資料或文件的正確性或足夠程度的義務。

第川直

承继人的法律責任

第 17 條

凡乘客因死亡或受傷或任何其他身體傷害而蒙受損害,如造成上述損害的意外是發生在飛 機上或在任何上落飛機的運作過程中的,則承運人須就該損害負上法律責任。

第 18 條

- (1) 凡有人因任何經登記行李或任何貨物遭毀滅、遺失或損壞而蒙受損害,如造成上述損 害的事故是發生在航空運輸期間的,承運人須就該損害負上法律責任。
- (2) 前款所指的航空運輸,包括有關行李或貨物由承運人保管的期間,不論是在機場內或 **飛機上保管**;如在機場外降落,則不論是在任何地方保管。

Article 13

- (1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.
- (2) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
- (3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of 7 days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

Article 14

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

Article 15

- (1) Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
- (2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.
 - (3) Nothing in this Schedule prevents the issue of a negotiable air waybill.

Article 16

- (1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the 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 or his 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

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

- (1) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered baggage or any cargo, if the occurrence which caused the damage so sustained took place during the carriage by air.
- (2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) 航空運輸的期間並不延展至包括在機場以外進行的任何陸上運輸、海上運輸或河道運輸。但如該等運輸是在履行航空運輸合約時為了裝載、交付或轉運而作出的,則除非有相反證明,任何損害均須推定為在航空運輸期間所發生的事件的結果。

第19條

承運人須就因乘客、行李或貨物的航空運輸過程中的延滯造成的損害,負上法律責任。

第 20 條

- (1) 承極人如證明自己及其代理人已採取一切必要的措施以避免損害,或證明自己及其代理人不可能採取上述措施,則他無須負上法律責任。
- (2) 在運載貨物和行李時,承運人如證明損害是因疏忽駕駛或在操縱飛機上或在導航上的疏忽行為所造成的,而他及其僱員或代理人在所有其他方面均已採取一切必要的措施以避免損害,則他無須負土法律責任。

第21條

派運人如體明損害是由於受傷的人的疏忽所導致或助成的,則法院可按照其法律的規定, 完全或局部寬免該派運人的法律責任。

第 22 條

- (1) 在運載乘客時,承運人就每一名人士所負的法律責任以 125,000 法郎獻項為限。如按 照受理有關個案的法院的法律是可以分期付款方式作出賠償的,則上述付款的資本值不得超 過 125,000 法郎,但承運人可與乘客協定,以特別合約規定一個較高的法律責任限額。
- (2) 在翅載經登紀行李和貨物時,承運人就行李或貨物所負的法律責任以每公斤 250 法郎款項為限,但如付貨人在將包裝物交予承運人時,曾特別聲明行李或貨物在運送時的價值,並已繳付所帶的附加費(如情況有需要的話),在該種情況下,承運人有法律責任繳付不超過聲明的款項,除非他證明付貨人變明的款項高於行李或貨物運送時對付貨人的實際價值。
 - (3) 就乘客自行保管的物件而言,承運人的法律實任以每名乘客 5,000 法郎為限。
- (4) 上述數項須當作提述有千分之九百純度的65½毫克黃金的法郎。該等數項可折算為取 其整數的任何國家的貨幣。

第 23 條

任何傾向於免除承運人的法律責任或定出一個低於本附表所訂的限額的條文,均屬無效,但任何該等條文的無效並不涉及使整份合約的無效,而該合約在符合本附表條文的規定下仍繼續附存。

第 24 條

- (1) 在第 18 及 19 條所涵蓋的個案中,任何申索損害賠償的訴訟 (不論其依據為何) 只能在本附表所列的條件和限額的規限下提起。
- (2) 在第 17 條所涵蓋的假案中,在不損害關於誰有權提起訴訟以及他們各自的權利為何的問題的原則下,前款條文適用。

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

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

(2) In the carriage of cargo and baggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his servants or agents have taken all necessary measures to avoid the damage.

Article 21

If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.

Article 22

(1) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

(2) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier

is limited to 5,000 francs per passenger.

(4) The sums mentioned above shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

Article 23

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.

- (1) In the cases covered by Articles 18 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Schedule.
- (2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

CAP. 500

第 25 條

- (1) 如损害是因承避人故意的不常行為所造成的,或因承遲人的錯失所造成的,而按照受 理該個案的法院的法律,這種錯失被認為相等於故意的不當行為,則承運人本身無權引用本附 表中免除或限制該承運人的法律責任的條文。
- (2) 同樣地,如掛害是因在其受僱範圍內行事的承邏人的任何僱員或代理人作出上述行為 而造成的,則承遲人亦本身無權引用上述條文。

第 25A 條

- (1) 如針對承仰人的條貫或代理人而提出的訴訟是因本附表所關乎的損害所引致的。而該 僱員或代理人證明他是在其受僱範圍內行事的,則他有權自己引用承運人本身根據第22條有權 援引的法律實任限額。
 - (2) 在上述情形下,可向承继人、其偏屬和代理人追討的總計數額不得超過上述限額。
- (3) 凡僱員或代理人的作為或不作為導致損害,並證明該作為或不作為是在蓄意造成損害 的情況下作出或有的,或問顧後果地作出或有的,以及在明知頗有可能會導致該損害的情況下 作出或有的,則本條第(1)及(2)款均不適用。

第 26 條

- (1) 有權獲交付行李或貨物的人收取行李或貨物而沒有作出投訴,即為該行李或貨物已在 良好狀況並按照運輸文件的規定的情况下交付的表面證據。
- (2) 如行李或貨物遭損壞;有權獲交付該行李或貨物的人在發現損壞後必須隨即向承運人 作出投訴,兩最遞須在收到的日期後(如屬行李)3日或(如屬貨物)7日內作出投訴。如有延 滯,回最鄉必須在該行李或貨物交由其處對之日起前的14日內作出投訴。
 - (3) 每項投訴必須以書面在運輸文件上作出或另以在上述限期內送交的書面通知作出。
- (4) 除非承運人方面有欺詐行為,否則如沒有在上述限期內作出投訴,則不得針對承運人 提出訴訟。

第 27 條

如承搬法律責任的人已死亡,則有關申索損害賠償的訴訟可按照本附表條款向在法律上代 装其跗产的人提起。

第 28 條

- (1) 申素揭害賠償的訴訟,必須按原告人的選擇,在一個《華沙公約》締約方的領土內,向 承運人通常居住地、其主要營業地點或承運人擁有的簽訂合約的機構的所在地具有司法管轄權 的法院提起,或向在目的地具有司法管轄權的法院提起。
 - (2) 訴訟程序問題須受到受到有關個案的法院的法律管限。

第29條

- (1) 如訴訟沒有在從飛機到達目的地之日,或應該到達目的地之日或運輸停止之日起計的 2年內提起,則獲得損害賠償的權利則告終絕。
 - (2) 計算時效限期的方法須由受理有關個案的法院的法律決定。

Article 25

- (1) The carrier shall not be entitled to avail himself of the provisions of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court seised of the case, is considered to be equivalent to wilful misconduct.
- (2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any servant or agent of the carrier acting within the scope of his

Article 25A

- (1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Schedule relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
- (3) The provisions of 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 26

- (1) Receipt by the person entitled to delivery of 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.
- (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 3 days from the date of receipt in the case of baggage and 7 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 14 days from the date on which the baggage or cargo have been placed at his disposal.
- (3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

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 estate.

Article 28

- (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties to the Warsaw Convention either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.
 - (2) Questions of procedure shall be governed by the law of the court seised of the case.

- (1) The right to damages shall be extinguished if an action is not brought within 2 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 the period of limitation shall be determined by the law of the court seised of the case.

第 30 條

- (1) 在符合本附表第 I 部第 1 條第 (3) 款所列的定義並須由若干接續承埋人辦理的運輸中,每一名接受乘客、行李或貨物的承運人均受本附表所列的規則所規限,並須在運輸合約關乎由其監管進行的一段運輸的範圍內,被當作為該合約的締約一方。
- (2) 如理輸閥該性質,而有關意外或延滯於某段運輸期間發生,乘客或其代表只能向進行該段運輸的承遲人提起訴訟,但如第一承運人按明訂協議須負起整個旅程的法律實任,則屬例外。
- (3) 就行李或貨物而言,乘客或付貨人有針對第一承運人提起訴訟的權利,而有權獲交付行李或貨物的乘客或付貨人有針對最後承運人提起訴訟的權利,此外,如有關的毀滅、瓊失、損壞或延滯於某段運輸期間發生,他們各人均可以針對進行該段運輸的承運人提起訴訟。這些承班人須對乘客或付貨人或收貨人負上共同及各別的法律實任。

第IV章

關於聯合運輸的條文

第 31 條

- (1) 就部分採用航空運輸和部分採用其他運輸方式進行的聯合運輸而言,本附表條文只適用於第1條的條款所指的航空運輸。
- (2) 如本附表條文就航空運輸部分而獲遵守,本附表並不禁止聯合運輸的各方將關乎其他 運輸方式的條件列入航空運輸文件內。

第 V 意

一般性及最後條文

第 32 條

如各方本意是藉合約所載的任何條文和在損害發生以前訂立的所有特別協議,違反本附表 所訂下的規則,不論是藉決定須適用的法律或改變關於司法管轄權的規則,均屬無效。但在符 合本附表的規定下,貨物運輸的合約中可允許有仲裁條款(如該仲裁是在本附表第 I 部第 28 條 第 (1) 款所提述的其中一個司法管轄區內進行的)。

第33條

本附表並不禁止承運人拒絕訂立任何運輸合約或訂立不抵觸本附表條文的規例。

第 34 條

本附表不適用於航空運輸事業為了期關定期航線而試辦的國際航空運輸,亦不適用於在正 常航空運輸業務範圍以外的特殊情況下辦理的運輸。

Article 30

(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 i in Part I of this Schedule, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for

the whole journey.

(3) As regards baggage or 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 who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV

PROVISIONS RELATING TO COMBINED CARRIAGE

Article 31

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

GENERAL AND FINAL PROVISIONS

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Schedule, if the arbitration is to take place within one of the jurisdictions referred to in paragraph (1) of Article 28 in Part I of this Schedule.

Article 33

Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

Article 34

This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

CAP. 500

第 35 修

本附表所用的"日"(days) 一調指連續日,而不是指工作日。

(華沙公約)的(附加議定費)

(參照第2條者)

締約方在確認或加入本公約時,保留宣布本公約第2條第(1)款不適用於該國家、其殖民 地、受保護國、受托管領土或在其主權、宗主權、或權限下的任何其他地屬所直接進行的國際 航空運輸的構利。

第 II 部

《瓜達拉哈拉公約》的適用範圍

第「條

在由本附表施行的《瓜蓬拉哈拉公約》中---

- (a) "《菲沙公約》" (the Warsaw Convention) 指由本附表施行的《經修訂公約》;
- (b) "訂約承遲人" (contracting carrier) 指以主事人身分與任何乘客或付貨人或與代表 乘客或付貨入行事的人訂立受(華沙公約)規管的運輸的協議的人;
- (c) "實際承塑人" (actual carrier) 指(訂約承運人則除外) 憑藉得自訂約承運人的權限 進行(b)段所籌算的運輸的全部或部分的人,但就該部分運輸而言,他並不是(華 沙公約)所指的接繼承鄧人。在沒有相反證明的情况下須推定有上述構限。

第川條

凡運輸按照第1條(b)段所提述的協議,是受《華沙公約》規管的,如實際承運人辦理該運 輸的全部或部分,則除由本附表施行的《瓜達拉哈拉公約》另有規定,否則訂約承運人和實際承 運人均受(輔沙公約)的規則所規限:訂約承運人須就該協議所籌算運輸的全部受該公約規限, 而實際承揮人具就他所進行的運輸受該公約規限。

第川條

- 就實際承運人所辦理的運輸而言,該實際承運人及在其受僱範圍內行事的該實際承運 人的僱員及代理人的作為及不作為,須當作亦是訂約承運人的作為和不作為。
- (2) 就實際承運人所辦理的運輸面言, 訂約承運人及在其受僱範圍內行事的該訂約承運人 的僱員及代理人的作為和不作為,須當作亦是該實際承運人的作為和不作為。但該等作為或不 作為不得使該實際承運人承擔超逾〈華沙公約〉第22條所指明的閱額的法律實任。任何紅約承 继人據以負起並非《華沙公約》所規定的義務的特別協議、任何由公約賦予的權利的放棄或在該 公約第22條中所籌簿的就行李或貨物運到目的地後的利益作出的特別聲明,均不得影響該實際 承埋人(除非他同意)。

Article 35

The expression "days" (A) when used in this Schedule means current days not working days.

ADDITIONAL PROTOCOL TO THE WARSAW CONVENTION

(With reference to Article 2)

The Righ Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that paragraph (1) of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

PART II

Application of the Guadalajara Convention

ARTICLE I

In the Guadalajara Convention as applied by this Schedule—
(a) "the Warsaw Convention" (華沙公約) means the amended Convention as applied by this Schedule:

(b) "contracting carrier" (訂約承運人) means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or

consignor or with a person acting on behalf of the passenger or consignor; "actual carrier" (實際承運人) means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

ARTICLE II

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

ARTICLE III

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

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

第 IV 條

根據(華抄公約)向承運人作出的任何投訴或發出的任何指令,不論是向訂約承運人或是向實際承運人作出或發出的,均具有相同效力。但(華抄公約)第12條所提述的指令只是在向訂約承運人發出時才具有效力。

第V條

就實際承埋人辦理的運輸而言,該承運人或訂約承運人的任何僱員或代理人如證明他是在 其受僱範閱內行事的,則他有權本身引用根據由本附表施行的《瓜達拉哈拉公約》適用於僱用他 的承埋人的法律責任的限制,除非證明他行事的方式根據《雜沙公約》阻止他提引該法律責任限 額。

第 VI 條

就實際承運人辦理的運輸而言,可向該承運人和訂約承運人及在其受僱範圍內行事的他們的僱員及代理人趋討的款額的總數,不得超逾根據由本附表施行的《瓜達拉哈拉公約》可針對該訂約承運人或該實際承運人定給的最高款額,但上述各人均無須就超逾適用於他的款額限額的款項負上法律責任。

第 VII 條

就實際承運人辦理的運輸而言,原告人可在其選擇下針對該承運人或訂約承運人,或共同或各別地針對他們兩人提起中索損害賠償的訴訟。如訴訟只針對上述的其中一名承運人提起,則該承運人有權要求辦另一承運人加入該項法律程序中,而程序和效果則由受理有關個案的法院的法律管限。

第 VIII 條

申案在由本附表施行的(爪達拉哈拉公約)第 VII 條所籌算的損害賠償的訴訟,必須在原告人選擇下向(華沙公約)第 28 條規定可在其處針對訂約承運人提起訴訟的法院提起,或向在實際承運人通常居住的地方或其主要營業地點所在地具有司法管轄權的法院提起。

(由 2000 年第 32 號第 48 條修訂)

第 IX 條

- (1) 任何傾向於免除訂約承運人或實際承運人在由本附表施行的《瓜達拉哈拉公約》下的法律責任的合約條文,或任何傾向於定出較按照已如此施行的該公約適用的限額為低的限額的合約條文,均屬無效,但任何該等條文的無效並不涉及整份協議的無效,而該協議在符合所適用的上述公約條文的規定下仍繼續留存。
- (2) 就實際承運人進行的運輸而言, 前款不適用於管限因所運輸的貨物的固有缺陷、品質或缺點所導致的遺失或損壞的合約條文。
- (3) 如各方本意是顆運輸協議所載的任何條款和所有在損害發生以前訂立的特別協議,建 背由本附表施行的《瓜達拉哈拉公約》所訂下的規則,則不論是藉决定須適用的法律或變更司法 管轄權的規定,均屬無效。但在符合由本附表施行的《瓜達拉哈拉公約》的規定下,貨物運輸的 合約中可允許有仲裁條款(如該仲裁是在第 VIII 條所提述的其中一個司法管轄區內進行的)。

ARTICLE IV

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

ARTICLE V

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

ARTICLE VI

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 the Guadalajara Convention as applied by this Schedule, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

ARTICLE VII

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 VIII

Any action for damages contemplated in Article VII of the Guadalajara Convention as applied by this Schedule must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has the principal place of business.

ARTICLE IX

(1) Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under the Guadalajara Convention as applied by this Schedule or to fix a lower limit than that which is applicable according to that Convention as so applied shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of the said Convention as so applied.

(2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect,

quality or vice of the cargo carried.

(أ) Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by the Guadalajara Convention as applied by this Schedule, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to the said Convention as so applied, if the arbitration is to take place in one of the jurisdiction referred to in Article VIII.

第X條

除第 VII 條另有規定外,由本附表施行的《瓜達拉哈拉公約》的條文不得影響兩名承運人之間的權利及義務。

[比照 附錄 III CH1 頁的附表 4]

附表 5

(已失時效而略去)

ARTICLE X

Except as provided in Article VII, nothing in the Guadalajara Convention as applied by this Schedule shall affect the rights and obligations of the two carriers between themselves.

[cf. App. III, p. CHI Sch. 4]

SCHEDULE 5

(Omitted as spent)