

LEGISLATIVE COUNCIL BRIEF

Carriage by Air Ordinance
(Chapter 500)

CARRIAGE BY AIR (AMENDMENT) BILL 2005

INTRODUCTION

Annex A

At the meeting of the Executive Council on 31 May 2005, the Council ADVISED and the Acting Chief Executive ORDERED that the Carriage by Air (Amendment) Bill 2005, at Annex A, should be introduced into the Legislative Council to give effect to the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999 in Hong Kong.

JUSTIFICATIONS

The Warsaw System

Annex B

2. For many years, air carriers' liabilities with regard to international carriage of passengers, baggage and cargo have been governed by a set of international legal instruments as listed below. They were extended to Hong Kong first through two UK Orders and then through the localized Carriage by Air Ordinance (the Ordinance) (at Annex B). These are -

- (a) Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw in 1929;
- (b) Protocol to Amend the Warsaw Convention done at the Hague in 1955; and

- (c) Convention Supplementary to the Warsaw Convention signed at Guadalajara in 1961.

These three instruments, commonly referred to as the “Warsaw System”, provide internationally unified rules which govern the documents of international carriage (i.e. air tickets and air waybills); carriers’ liability for injury or death of passengers, damage or loss of baggage and cargo, and losses caused by delays; as well as jurisdictions and time limit for bringing proceedings to claim compensation.

3. Participation in the three instruments is limited to sovereign States and the continued application of these instruments to Hong Kong Special Administrative Region were confirmed by the Central People’s Government’s (CPG) notifications to the depositories of these instruments at the time of reunification.

The Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999 (the Montreal Convention)

4. The Warsaw system dates back to the 1920’s when civil aviation was at the embryonic stage. Over the years, there have been piecemeal efforts to up-date the system in response to aviation developments. In 1995, the International Civil Aviation Organisation (ICAO) began to revise the Warsaw system in a holistic manner, resulting in the drawing up of the Montreal Convention. This Convention consolidates and modernizes the various instruments under the Warsaw system. It was signed on 28 May 1999 and came into force on 4 November 2003 upon ratification by the 30th contracting State. As of April 2005, 64 States, including many of Hong Kong’s major aviation partners such as EU Member States, USA and Japan, have ratified the Convention. The Standing Committee of the National People's Congress has also approved the application of the Convention to the Mainland. Applying the Montreal Convention to Hong Kong would bring our regulatory framework on a par with international standards, which is of crucial importance to the maintenance of our status as an international aviation centre. The key features of the Montreal Convention are explained in detail below.

(A) Improved Compensation Levels

5. The Montreal Convention substantially increases the out-dated compensation levels provided for under the Warsaw system. In the case of carriage of passengers, the compensation level in relation to death or injury, which is capped at HK\$188,500 equivalent under the Warsaw system, is replaced by a two-tier system - a first tier of liability of up to HK\$1.14 million which airlines cannot exclude or limit, and a second tier of fault-based, unlimited liability. The liability limit for baggage damage or loss is increased by about 50% to HK\$11,400 per passenger.

6. The Montreal Convention also introduces a new mechanism for regular review of the liability limits. Under this mechanism, the limits would be reviewed by ICAO every five years and be revised accordingly when a weighted inflation factor exceeds 10%. This would enable timely up-dating of the liability limits to reflect changing prices.

(B) Additional Choice of Jurisdiction

7. The Warsaw system provides for the following four jurisdictions for passengers or shippers to claim compensation -

- (a) domicile of the carrier;
- (b) principal place of business of the carrier;
- (c) the carrier's place of business through which the contract of carriage was made; and
- (d) destination of the carriage.

The Montreal Convention introduces a fifth avenue by allowing legal actions in relation to the death or injury of passengers to be brought in the place of the passenger's residence. This additional jurisdiction would make it easier for a Hong Kong resident to seek redress in a local court against a foreign carrier.

(C) Recognition of Electronic Tickets

8. To keep pace with the new developments in the aviation industry, new provisions have been introduced in the Montreal Convention to

recognize electronic tickets and air waybills, in addition to physical tickets and air waybills, as proof of carriage.

Proposed Legislative Amendment

9. Under the existing Ordinance, the provisions of the Warsaw instruments applied to Hong Kong are reproduced in a number of Schedules. The Ordinance also contains necessary implementing provisions which give effect to the Warsaw instruments, define parties eligible to enforce the liabilities in the case of fatal accidents, specify power of the court in determining the liability and time limits for bringing proceedings, and provide for the conversion of monetary units. These Schedules and implementing provisions would need to be retained to govern international carriage between Hong Kong and countries which have yet to ratify the Montreal Convention. To apply the Montreal Convention, a new Schedule reproducing the Convention needs to be added to the Ordinance. Implementing provisions similar to those in the existing Ordinance would also be made.

Other Proposed Amendments

(A) Application of Montreal Convention to Non-international Carriage and Carriage of Postal Packages

10. Even though the Warsaw system does not cover non-international carriage (mainly carriage within Hong Kong and carriage between Hong Kong and the Mainland, Taiwan and Macau) or carriage of postal packages, the existing Ordinance in effect extends the system to cover such carriage through a separate Schedule (Schedule 3) which contains provisions largely adapted from the Warsaw instrument. As a matter of principle, passengers and shippers should be accorded the same level of protection regardless of whether the carriage is international or not, and whether the consignments are ordinary cargoes or postal packages. We therefore propose that the requirements under the Montreal Convention should also apply to non-international carriage and carriage of postal packages. Specifically, we propose to replace the Warsaw provisions in Schedule 3 by the Montreal provisions.

(B) Repeal of Provisions regarding Designation of Contracting Parties

11. The Ordinance empowers the Government to make subsidiary legislation to certify the contracting parties to the various Warsaw instruments. So far no subsidiary legislation has been made. As the updated information about which countries are the contracting parties to the various instruments can be conveniently obtained from the depositories of these instruments and ICAO (e.g. through the ICAO web-site), we do not see the need to invoke the power to make the subsidiary legislation and propose to delete the empowering provisions.

(C) Repeal of Certain Out-dated Provisions

12. The liability limits contained in the Warsaw system are expressed in special drawing rights or gold francs. To convert these monetary units into local currency, sections 6(4) to (6) and 16(4) to (6) of the Ordinance provide for the Hong Kong Monetary Authority (HKMA) to issue certificates specifying the Hong Kong dollar equivalents of these units on a particular day. In parallel, section 20 of the Ordinance also contains provisions which preserve two Orders made back in 1984 to specify the conversion rates then. The rates contained in these two Orders are out-dated. To avoid confusion, we propose to repeal the provisions and the two Orders. The HKMA would continue to exercise its legal power to specify the Hong Kong dollar equivalents as and when required.

(D) Mandatory Advance Payment Scheme

13. The Montreal Convention provides a discretion for individual governments to make domestic law to require their home-based carriers to make advance payments to air accident victims to meet their immediate economic needs. The EU has introduced a mandatory scheme to require EU carriers to make advance payments. Although Hong Kong airlines are prepared to provide advance payments on a voluntary basis, we consider that Hong Kong, as an international aviation centre, should benchmark the highest world standard and enhance the legal protection to passengers. We therefore propose to introduce a scheme to require Hong Kong carriers to make advance payment in the event of aircraft accidents which result in death or injury of passengers.

Such payments should be made without delay in order to meet the immediate economic needs of the victims or their families. We propose to empower the Director-General of Civil Aviation (DGCA) to make subsidiary legislation to provide for the implementation details of the scheme.

THE BILL

14. The main provisions are –

(a) **Clauses 4 and 22 –**

Clause 4 introduces a new Part IA containing necessary implementing provisions to give effect to the Montreal Convention. Clause 22 provides for a new Schedule 1A which reproduces the provisions of the Montreal Convention.

(b) **Clause 23 –**

This clause repeals the existing Schedule 3, which contains provisions adapted from the Warsaw instruments to govern non-international carriage and carriage of postal packages, and replaces it with provisions adapted from the Montreal Convention.

(c) **Clauses 7 and 13 –**

These two clauses repeal the provisions that empower the Government to certify by order the contracting parties to the various Warsaw instruments.

(d) **Clause 19 –**

This clause repeals two Orders concerning conversion rates and other out-dated provisions.

(e) **Clause 20 –**

This clause enables DGCA to make a notice in the Gazette to announce the revision of the liability limits as and when they are revised by ICAO. It also empowers DGCA to make subsidiary legislation to implement the advance payment scheme.

(f) **Other clauses –**

The remaining clauses mainly deal with consequential and technical amendments.

LEGISLATIVE TIMETABLE

15. The Bill will be gazetted on 10 June 2005 and introduced into the Legislative Council for First Reading and commencement of Second Reading debate on 22 June 2005.

16. The CPG consulted us on the application of the Montreal Convention to Hong Kong in accordance with Article 153 of the Basic Law and we have indicated our intention to apply the Convention. Upon enactment of the Bill, we will seek the CPG's assistance to notify ICAO, depository of the Montreal Convention, that the Convention would be applied to Hong Kong.

IMPLICATIONS OF THE PROPOSAL

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance. It has no financial, civil service, environmental or sustainability implications.

Economic Implications

18. The proposal would bring our regulatory framework regarding carriers' liability in line with the widely-accepted international standards and enhance Hong Kong's status as an international and regional aviation centre. It would enhance legal protection to passengers and shippers. Application of the modernised Montreal Convention would also provide a more clearly defined liability regime for airlines and help improve airlines' operating efficiency. It is not expected to have significant impact on airlines' operating costs. The proposal is supported from the competition policy point of view.

PUBLIC CONSULTATION

19. The Legislative Council Panel on Economic Services, the Aviation Advisory Board, the airline industry, Consumer Council and trade organizations representing the travel industry, shippers and legal profession have been consulted. They support the proposal in general.

PUBLICITY

20. A press release will be issued on 8 June 2005. A spokesman will be available to respond to enquiries.

ENQUIRIES

21. Any enquiries on this brief can be addressed to Mr Darryl Chan, Principal Assistant Secretary for Economic Development and Labour (Economic Development), at 2810 2687.

A BILL

To

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

Enacted by the Legislative Council.

1. Short title

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

2. Commencement

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

3. Interpretation

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

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

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

- (a) the amended Convention;

(b) the Guadalajara Convention;

(c) the Warsaw Convention;”;

(b) by repealing the definition of “special drawing rights” and substituting –

““Special Drawing Rights” (特別提款權) means units of account used by the International Monetary Fund and known as Special Drawing Rights;”;

(c) by adding –

““the Montreal Convention” (《蒙特利爾公約》) means the Convention for the Unification of Certain Rules for International Carriage by Air done at Montreal on 28 May 1999, the provisions of which are set out in Schedule 1A;

“State Party” (當事國) means a party to the Montreal Convention;”.

(2) Section 2(2) is repealed and the following substituted –

“(2) In this Ordinance, “court” (法院) includes, in an arbitration allowed by the Montreal Convention, the amended Convention, the Warsaw Convention or the Guadalajara Convention, an arbitrator.”.

4. Part IA added

The following is added –

“PART IA

**INTERNATIONAL CARRIAGE TO WHICH THE
MONTREAL CONVENTION APPLIES**

2A. Montreal Convention to have the force of law

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

2B. Fatal accidents

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

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

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

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

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

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

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

2C. Limitations on liability

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

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

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

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

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

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

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

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

2D. Time for bringing proceedings

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

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

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

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

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

2E. Action against State Parties

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

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

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

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

5. Part II heading amended

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

6. Amended Convention to have the force of law

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

(2) Section 3 is amended by adding –

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

7. References to territory of High Contracting Party

(1) Section 4(1) is repealed.

(2) Section 4(3) is repealed.

8. Fatal accidents

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

(2) Section 5(3) is amended –

(a) by adding “外祖父母、” after “祖父母、” ;

(b) by adding “、外孫、外孫女” after “孫女”.

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

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

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

9. Guadalajara Convention to have the force of law

Section 10(2) is repealed.

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

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

11. Part III heading amended

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

12. Application

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

13. International carriage under the Warsaw Convention

(1) Section 14(2) is repealed.

(2) Section 14(3) is repealed.

14. Fatal accidents

(1) Section 15(1) is amended –

(a) by repealing “Article 17 in Part I of Schedule 3 and in Part I of Schedule 4” and substituting “paragraph (1) of Article 17 of Schedule 3 or Article 17 in Part I of Schedule 4, as may be appropriate,”;

(b) by repealing “by and” and substituting “by whom or”.

(2) Section 15(3) is amended –

(a) by adding “外祖父母、” after “祖父母、” ;

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

15. Limitations on liability

- (1) Section 16(1) is amended –
 - (a) by repealing “Article 22 in Part I of Schedule 3 and in Part I of Schedule 4 (in this section called “Article 22”)” and substituting “Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”;
 - (b) in paragraph (b), by repealing “paragraph (1) of Article 22” and substituting “Article 21 or paragraph (1) of Article 22 of Schedule 3, or paragraph (1) of Article 22 in Part I of Schedule 4, as may be appropriate,”.
- (2) Section 16(2) is amended –
 - (a) by repealing “by Article 22” and substituting “by Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”;
 - (b) by repealing “in view of Article 22” and substituting “in view of that Article”.
- (3) Section 16(3) is amended by repealing “Article 22” and substituting “Article 21 or 22 of Schedule 3, or Article 22 in Part I of Schedule 4, as may be appropriate,”.
- (4) Section 16(4) is repealed and the following substituted –
 - “(4) The Monetary Authority may specify in Hong Kong dollars the amounts which for the purposes of Article 21 or 22 of Schedule

3, or Article 22 in Part I of Schedule 4, as may be appropriate, are to be taken as equivalent for a particular day to the sums expressed in Special Drawing Rights or francs in that Article.”.

(5) Section 16(5) is repealed and the following substituted –

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

(6) Section 16(7) is repealed and the following substituted –

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

16. Time for bringing proceedings

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

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

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

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

17. Application of provisions of sections 16 and 17

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

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

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

18. Application of this Ordinance

Section 19(2) is amended by adding “1A,” after “Parts”.

19. Repeals and savings

Section 20 is repealed.

20. Sections added

The following are added –

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

(1) Where the limits of liability specified in Article 21, 22 or 23 of the Montreal Convention have been revised in accordance with

Article 24 of that Convention, the Director-General of Civil Aviation shall, by notice published in the Gazette, announce -

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

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

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

22. Power to make regulations

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

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

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

- (a) may be of general or special application and may be made so as to apply only in specified circumstances;

- (b) may make different provisions for different circumstances and provide for different cases or classes of cases;
- (c) may authorize any matter or thing to be determined, applied or regulated by any specified person;
- (d) may provide for the exercise of discretion in specified cases;
- (e) may provide for any exemption of different cases or classes of cases, with or without conditions or restrictions, from the application of any provision of such regulations;
- (f) may provide for –
 - (i) the fixing of any fee to be paid for anything that may be done in accordance with any provision of such regulations; and
 - (ii) the method of payment of such fee;
- (g) may, for the better and more effectual carrying into effect of any provision of this Ordinance or of such regulations, include any savings, transitional, incidental, supplemental and evidential provisions; and
- (h) may, for the purpose of securing compliance with any provision of such regulations –
 - (i) create offences and provide for the imposition of penalties on conviction in the form of a fine not exceeding level 6; and

- (ii) provide for the imposition of any other sanctions, including but not limited to the charging of any interest on any payment required under such regulations.

(3) Without limiting the generality of regulations which may be made under subsection (1), such regulations may, in particular –

- (a) require any specified carrier to make a payment of any specified amount to meet the immediate economic needs of any specified person arising out of any accident in any specified carriage by air;
- (b) provide for the application or other procedures in relation to any payment required under such regulations;
- (c) provide for any condition in relation to any payment required under such regulations;
- (d) empower the court or any person to determine any matter on application by any person and provide for the effect of such determination;
- (e) provide for the set-off or recovery of any payment required under such regulations;
- (f) provide for the effect of the making of or receiving of any payment required under such regulations;
- (g) provide that any payment which is not made in accordance with such regulations or any payment which is specified to be recoverable is a civil debt due to the person entitled to such payment; and

- (h) provide for the making of any guidelines and the effect of such guidelines.

23. Saving of existing rights and liabilities

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

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

21. The amended Convention

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

22. Schedule 1A added

The following is added –

“SCHEDULE 1A [ss. 2, 2A & 21]

THE MONTREAL CONVENTION

CONVENTION

FOR THE UNIFICATION OF CERTAIN RULES FOR
INTERNATIONAL CARRIAGE BY AIR

Chapter I

General Provisions

Article 1 – Scope of Application

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

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

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

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

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

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

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

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

Chapter II

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

Article 3 – Passengers and Baggage

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

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

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

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

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

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

Article 4 – Cargo

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

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

identification of the consignment and access to the information contained in the record preserved by such other means.

Article 5 – Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

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

Article 6 – Document Relating to the Nature of the Cargo

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

Article 7 – Description of Air Waybill

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

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

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

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

Article 8 – Documentation for Multiple Packages

When there is more than one package:

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

Article 9 – Non-compliance with Documentary Requirements

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

Article 10 – Responsibility for Particulars of Documentation

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

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

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

Article 11 – Evidentiary Value of Documentation

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

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

Article 12 – Right of Disposition of Cargo

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

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

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

any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

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

Article 13 – Delivery of the Cargo

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

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

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

Article 14 – Enforcement of the Rights of Consignor and Consignee

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

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

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

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

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

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

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

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

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

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

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

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

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

Article 18 – Damage to Cargo

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

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

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

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

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

Article 19 – Delay

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

Article 20 – Exoneration

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

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

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

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

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

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

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

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

(3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 17

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

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

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

(6) The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in

addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Article 23 – Conversion of Monetary Units

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

(2) Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph (1) of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their

territories; 62 500 monetary units per passenger with respect to paragraph (1) of Article 22; 15 000 monetary units per passenger with respect to paragraph (2) of Article 22; and 250 monetary units per kilogramme with respect to paragraph (3) of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

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

Article 24 – Review of Limits

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

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

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

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

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

Article 26 – Invalidity of Contractual Provisions

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

Article 27 – Freedom to Contract

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

Article 28 – Advance Payments

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

Article 29 – Basis of Claims

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

Article 30 – Servants, Agents – Aggregation of Claims

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

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

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

Article 31 – Timely Notice of Complaints

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

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

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

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

Article 32 – Death of Person Liable

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

Article 33 – Jurisdiction

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

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

(3) For the purposes of paragraph (2),

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

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

Article 34 – Arbitration

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

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

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

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

Article 35 – Limitation of Actions

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

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

Article 36 – Successive Carriage

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

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

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

Article 37 – Right of Recourse against Third Parties

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

Chapter IV Combined Carriage

Article 38 – Combined Carriage

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

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

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

Article 39 – Contracting Carrier – Actual Carrier

The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue

of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

Article 40 – Respective Liability of Contracting and Actual Carriers

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

Article 41 – Mutual Liability

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

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

special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 – Addressee of Complaints and Instructions

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

Article 43 – Servants and Agents

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

Article 44 – Aggregation of Damages

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

Article 45 – Addressee of Claims

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

Article 46 – Additional Jurisdiction

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

Article 47 – Invalidity of Contractual Provisions

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

Article 48 – Mutual Relations of Contracting and Actual Carriers

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

Chapter VI

Other Provisions

Article 49 – Mandatory Application

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

Article 51 – Carriage Performed in Extraordinary Circumstances

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

Article 52 – Definition of Days

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

Chapter VII

Final Clauses

Article 56 – States with more than one System of Law

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

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

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

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

Article 57 – Reservations

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

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

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

23. The Guadalajara Convention

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

24. Schedule 3 substituted

Schedule 3 is repealed and the following substituted –

“SCHEDULE 3 [ss. 13, 15, 16,
17, 18 & 21]

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

Application of the Montreal Convention

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

Chapter I

General Provisions

Article 1 – Scope of Application

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

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

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

Article 2 – Carriage Performed by State

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

Chapter II

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

Article 3 – Passengers and Baggage

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

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

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

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

(5) Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of

carriage, which shall, nonetheless, be subject to the rules of this Schedule including those relating to limitation of liability.

Article 4 – Cargo

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

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

Article 5 – Contents of Air Waybill or Cargo Receipt

The air waybill or the cargo receipt shall include:

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

Article 6 – Document Relating to the Nature of the Cargo

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

Article 7 – Description of Air Waybill

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

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

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

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

Article 8 – Documentation for Multiple Packages

When there is more than one package:

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

Article 9 – Non-compliance with Documentary Requirements

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

Article 10 – Responsibility for Particulars of Documentation

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

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

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

Article 11 – Evidentiary Value of Documentation

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

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

Article 12 – Right of Disposition of Cargo

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

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

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

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

Article 13 – Delivery of the Cargo

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

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

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

Article 14 – Enforcement of the Rights of Consignor and Consignee

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

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

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

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

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

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

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

Chapter III

Liability of the Carrier and Extent of Compensation for Damage

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

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

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

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

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

Article 18 – Damage to Cargo

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

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

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

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

(4) The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to

have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19 – Delay

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

Article 20 – Exoneration

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

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

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

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

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

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

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

(2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 000 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be

liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.

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

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

(5) The foregoing provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably

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

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

Article 23 – Conversion of Monetary Units

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

Article 25 – Stipulation on Limits

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

Article 26 – Invalidity of Contractual Provisions

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

Article 27 – Freedom to Contract

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

Article 29 – Basis of Claims

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

Article 30 – Servants, Agents – Aggregation of Claims

(1) If an action is brought against a servant or agent of the carrier arising out of damage to which the Schedule relates, such servant or agent, if they prove that they acted within the scope of their

employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Schedule.

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

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

Article 31 – Timely Notice of Complaints

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

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

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

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

Article 32 – Death of Person Liable

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

Article 34 – Arbitration

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

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

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

Article 35 – Limitation of Actions

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

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

Article 36 – Successive Carriage

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

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

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

delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37 – Right of Recourse against Third Parties

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

Chapter IV

Combined Carriage

Article 38 – Combined Carriage

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

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

Chapter V

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

Article 39 – Contracting Carrier – Actual Carrier

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

Article 40 – Respective Liability of Contracting and Actual Carriers

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

Article 41 – Mutual Liability

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

(2) The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in

relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21 and 22. Any special agreement under which the contracting carrier assumes obligations not imposed by this Schedule or any waiver of rights or defences conferred by this Schedule or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Article 42 – Addressee of Complaints and Instructions

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

Article 43 – Servants and Agents

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

Article 44 – Aggregation of Damages

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

Article 45 – Addressee of Claims

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

Article 47 – Invalidity of Contractual Provisions

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

Article 48 – Mutual Relations of Contracting and Actual Carriers

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

Chapter VI

Other Provisions

Article 49 – Mandatory Application

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

Article 51 – Carriage Performed in Extraordinary Circumstances

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

Article 52 – Definition of Days

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

Article 52A – Postmaster General of Hong Kong

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

25. International carriage under the Warsaw Convention

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

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

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

“Application of the Warsaw Convention”.

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

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

Consequential Amendments

Rules of the High Court

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

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

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

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

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

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

Rules of the District Court

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

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

(a) by repealing “to the convention set out in section 4” and substituting “or State Party, as may be appropriate, within the meaning of section 2(1)”;

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

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

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

Explanatory Memorandum

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

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

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

3. Clause 6 deals with the relationship between the Montreal Convention and other conventions concerning international carriage by air.

4. Clause 7 repeals the provision that empowers the making of an order relating to the certification of High Contracting Parties to the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929 (the “Warsaw Convention”) as amended by the Hague Protocol of 28 September 1955 (the “amended Convention”).

5. Clause 12 provides that Part III of the principal Ordinance applies to all carriage by air not being carriage to which the Montreal Convention and the amended Convention apply.

6. Clause 13 repeals the provision that empowers the making of an order relating to the certification of High Contracting Parties to the Warsaw Convention.
7. Clauses 14 to 17 amend sections 15 to 18 of the principal Ordinance to substitute references to the Articles in the proposed Schedule 3 to the principal Ordinance with references to the Articles in the existing Schedule 3 to the principal Ordinance.
8. Clause 19 repeals an obsolete provision.
9. Clause 20 –
 - (a) adds a new provision empowering the Director-General of Civil Aviation to publish a notice in the Gazette announcing the revision of the limits of liability specified in Article 21, 22 or 23, as the case may be, of the proposed Schedule 1A and Article 21 or 22, as the case may be, of the proposed Schedule 3;
 - (b) empower the Director-General of Civil Aviation to make regulations to carry out Article 28 of the Montreal Convention and to apply the requirements of that Article to any carriage by air, not being carriage to which the Montreal Convention applies.
10. Clause 22 adds a new Schedule 1A to the principal Ordinance that contains the provisions of the Montreal Convention.
11. Clause 24 substitutes a new Schedule 3 that contains the provisions based on the Montreal Convention for the existing Schedule 3 to the principal Ordinance that is based on the amended Convention.

CARRIAGE BY AIR (AMENDMENT) BILL 2005

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核對表及指引
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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 II 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 I 部。

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無

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Nil

第 500 章

航空運輸條例

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CHAPTER 500

航空運輸條例

CARRIAGE BY AIR

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。

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.

[1997 年 2 月 5 日]

[5 February 1997]

第 1 部

PART I

導言

PRELIMINARY

1. 簡稱

本條例可引稱為《航空運輸條例》。

1. Short title

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

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；

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》(視乎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 CGI 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屬何國籍。

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

“the Guadalajara 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. CGI 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證據。

[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擔的任何法律責任；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；
- (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。

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，在減除未能向被告入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 CGI 頁附件 2 的附表 I]

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)款的情況下，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]

6. Limitations on liability

(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責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述。

(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

(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.

(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 CHI 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 CHI 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 CHI 頁第 5(1) 條]

(2) 總督可藉於憲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而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. CHI 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. CHI 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. CHI 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. CHI 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 CHI 頁的附表 3 施行的 1961 c. 27 s. 2 U.K.]

(4) 本身沒有引用《附加議定書》的《華沙公約》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 CHI 頁的附表 3 施行的 1961 c. 27 s. 8 U.K.]

15. 致命意外

(1) 附表 3 第 I 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 CHI 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，則有關法律責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. CHI Sch. 3]

(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. CHI 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. CHI 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，在減除未能向被告入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 CHI 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. CHI Annex to Part I of Sch. I]

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.

(4) 金融管理專員可指明以港幣為單位的各個別款額，而為施行附表 3 第 I 部第 22 條及附表 4 第 I 部第 22 條以及尤其是分別為施行該 2 條的第 (5) 及 (4) 款，該等款額須視為就某一日而言相等於該 2 條內分別以特別提款權單位和以法郎為單位的款項。

(5) 為施行附表 3 第 I 部第 22 條及附表 4 第 I 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一般收入。

(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。

[由附錄 III CH1 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

(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) 本條例對官方具約束力。

(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

(1) 《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. CH1 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. CH1 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.”.

(3) 《Carriage by Air Acts (Application of Provisions) (Overseas Territories) (Amendment) Order 1984》(附錄 III CII 頁) 適用於香港的規定，現予廢除。

(4) 即使有第 (1) 款的規定，《Carriage by Air (Overseas Territories) (Hong Kong Dollar Equivalents) Order》(附錄 I AD1 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》(附錄 I AC1 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樣。

(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]

《經修訂公約》

統一關於國際航空運輸 若干規則的公約

第 I 章

範圍——定義

第 1 條

(1) 本公約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。本公約同樣適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. AD1) 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. AC1) 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)

(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.

(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（不論它是以一一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輸，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 條所訂的條件。

(2) 本公約不適用於郵件和郵包的運輸。

第 II 章

運輸文件

第 1 節——乘客機票

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運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) 須就經登記行李的運輸交付行李機票，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運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 Article 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

(1) In respect of the carriage of passengers a ticket shall be delivered containing:

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

(2) The passenger ticket shall constitute prima facie evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to 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

Article 4

(1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of 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) 行李機票須構成登記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。但如承運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) 款所規定通知，則該承運人本身無權引用第 22 條第 (2) 款的條文。

第 3 節——航空貨運單

第 5 條

(1) 每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；每名付貨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公約的規則所規限。

第 6 條

(1) 付貨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貨人。

(3) 承運人須在裝載貨物上飛機前簽署。

(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，除非有相反的證明，否則承運人須當作是代付貨人如此行事。

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

航空貨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，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》可予適用及施行管限，以及在大多數情形下限制承運人就貨物的遺失或損壞的個案所負的法律責任。

第 9 條

如貨物是在承運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，或如該航空貨運單沒有包括第 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 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, 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 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.

(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 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 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;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to 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、不正確或不完善而蒙受的一切損失，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責任的規限下，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。但他不得在使承運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。

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費用並在遵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他。
- (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，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 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.

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 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.

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貨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，否則付貨人須就該損失向承運人負上法律責任。

(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 III 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。

(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

承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。

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 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

承運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 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。

(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、損壞或延滯時，在釐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，則在釐定法律責任的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 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。

(5) 本條所述的法郎數項須當作提述含有千分之九百純度的 65 $\frac{1}{2}$ 毫克黃金的貨幣單位。該等款項可折算為取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 (1) 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，前款條文適用。

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 65 $\frac{1}{2}$ 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.

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 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的情況下作出或有的，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，或罔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。如有延滯，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) 每項投訴必須以書面在運輸文件上作出或另以在上述限定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定期內作出投訴，則不得對承運人提起訴訟。

第 27 條

如承擔法律責任的人已死亡，則中索損害賠償的訴訟可按照本公約條款向在法律上代表其遺產的人提起。

第 28 條

(1) 中索損害賠償的訴訟，必須按原告人的選擇，在一個締約方的領土內，向承運人通常居住地，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

(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.

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.

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，並須在運輸合約關乎由其監管進行的一段運輸的範圍內，被當作該合約的締約一方。

(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) 如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 章

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) 款所述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）關於運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.

第 35 條

本公約所用的“日”(days)一詞指連續日，而不是指工作日。

第 40A 條

[本段不予載列。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。該等條文和文字關於本公約的存放和開始生效的事宜。]

《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 (1) 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運輸的權利。

附表 2

[第 2(1) 及 10 條]

《瓜達拉哈拉公約》

第 I 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(訂約承運人則除外)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，但就該部分運輸而言，他並不是《華沙公約》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。

第 II 條

凡運輸按照第 I 條 (b) 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及不作為。

Article 35

The expression “days” (日) 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;
- (c) “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, 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) 就實際承運人所辦理的運輸而言，訂約承運人及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過《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運人（除非他同意）。

第 IV 條

根據《華沙公約》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，不得超過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過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

中索本公約第 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責任的合約條文，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損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 seized 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 nullity 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.

(3) 如各方本意是藉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，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區內進行）。

第 X 條

除第 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 I 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用——

第 I 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 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。

(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

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

CHAPTER 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。

(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

承運人須就因乘客、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

承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 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 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，在釐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，則在釐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 seized of the case, damages may be awarded in the form of periodical payments the equivalent capital value of the said payments shall not exceed 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日的價值須當作相等於國際貨幣基金定為——

(i) 就該日而言；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，則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日的價值須視為相等於按照本款的 (b)(iii) 段發出的證明書內所述明的港幣數項。

(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續留存。

(2) 本條第 (1) 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。

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的情況下作出或有的，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。

(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

(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.

(b) 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、其僱員及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) 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。如有延滯，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) 每項投訴必須以書面作出並在上規定期限內送交。

(4) 除非承運人方面有欺詐行為，否則如沒有在上規定期限內作出投訴，則不得針對承運人提出訴訟。

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遺產的人提起。

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 seized 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.

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乎其其他運輸方式的條件列入航空運輸文件內。

第 V 章

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 35 條

本附表所用的“日”(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》的適用範圍

《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——

第 I 條

在由本附表施行的《瓜達拉哈拉公約》中——

- (a) “《華沙公約》”(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；
- (c) “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” (日) 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 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;
- (c) “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過《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訴，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總數，不得超過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過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 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 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.

(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) 如各方本意是藉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，違反由本附表施行的《瓜達拉哈拉公約》所訂下的規則，不論是藉決定須適用的法律或變更關於司法管轄權的規則，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《瓜達拉哈拉公約》不得影響兩名承運人之間的權利及義務。

第 XI 條

載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 III CHI 頁的附表 2]

附表 4

[第 2(1)、13、14、15、
16、17 及 18 條]

《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 I 部

《經修訂公約》的適用範圍

第 I 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運，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而在另一國家(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 void. 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 & 18]

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 I 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、委任統治權或權限管轄下的地區內履行而喪失其國際性質。

第 2 條

(1) 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國際郵務公約的條款進行的運輸。

第 II 章

運輸文件

第 1 節——乘客機票

第 3 條

(1) 承運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) 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) 行李機票須載有下列詳情——
 - (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) 一項說明，說明行李將會交給行李機票持有人；
 - (f) 包裝物件數和重量；
 - (g) 按照本附表第 1 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;

(h) 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。

(4) 如沒有行李機票，或行李機票有欠妥之處或遺失，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) 段所列的詳情，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 3 節——航空貨運單

第 5 條

(1) 每名貨物承運人有權要求付貨人裝備一份稱為“航空貨運單”的文件和將該文件交給付貨人；每名付貨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) 付貨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貨人。

(3) 承運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貨人如此行事。

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，該項更改不具使該運輸喪失其國際性質的效果；
- (d) 付貨人的姓名或名稱及地址；
- (e) 第一承運人的姓名或名稱及地址；
- (f) 收貨人的姓名或名稱及地址（如情況所需的話）；
- (g) 貨物的性質；
- (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) 貨物的重量、數量、體積或尺寸；
- (j) 貨物和包裝的外表狀況；
- (k) 運費（如已協定的話）、付費日期和地點，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, be 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.

(3) The carrier shall sign on acceptance of the cargo.

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

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

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;
- (c) the agreed stopping places; provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character;
- (d) the name and address of the consignor;
- (e) the name and address of the first carrier;
- (f) the name and address of the consignee, if the case so requires;
- (g) the nature of the cargo;
- (h) the number of the packages, the method of packing and the particular marks or numbers upon them;
- (i) the weight, the quantity and the volume or dimensions of the cargo;
- (j) 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;

- (f) 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;
- (o) 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說明(如就上述事項已有協定的話);
- (q) 一項說明, 說明該運輸受由《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責任的條文。

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詳情和聲明有欠妥之處、不正確或不完備而蒙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責任的規限下, 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。但他不得在使承運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。

- (f) 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;
- (m) 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.

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 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.

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費用並在遵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他。

(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，則收貨人有權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。

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貨人或收貨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、入市稅徵收所或警察手續。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運人負上法律責任。

(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 III 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.

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 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) 承運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，則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 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項，除非他證明付貨人聲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，承運人的法律責任以每名乘客 5,000 法郎為限。

(4) 上述款項須當作提述有千分之九百純度的 65 $\frac{1}{2}$ 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留存。

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 65 $\frac{1}{2}$ 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.

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.

第 25 條

(1) 如損害是因承運人故意的不當行為所造成的，或因承運人的錯失所造成的，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，如損害是因在其受僱範圍內行事的承運人的任何僱員或代理人作出上述行為而造成的，則承運人亦本身無權引用上述條文。

第 25A 條

(1) 如針對承運人的僱員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，或罔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，而最遲須在收到的日期後(如屬行李)3日或(如屬貨物)7日內作出投訴。如有延滯，則最遲必須在該行李或貨物交由其處置之日起計的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定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定期內作出投訴，則不得針對承運人提出訴訟。

第 27 條

如承擔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表其遺產的人提起。

第 28 條

(1) 申索損害賠償的訴訟，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理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

(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 employment.

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.

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.

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附表所列的規則所規限，並須在運輸合約關乎由其監督進行的一段運輸的範圍內，被當作該合約的締約一方。

(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、遺失、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 章

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開闢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 I.

(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.

第 35 條

本附表所用的“日”(days)一詞指連續日，而不是指工作日。

《華沙公約》的《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 (1) 款不適用於該國家、其殖民地、受保護國、受託管領土或在其主權、宗主權、或權限下的任何其他地區所直接進行的國際航空運輸的權利。

第 II 部

《瓜達拉哈拉公約》的適用範圍

第 I 條

在由本附表施行的《瓜達拉哈拉公約》中——

- (a) “《華沙公約》”(the Warsaw Convention) 指由本附表施行的《經修訂公約》；
- (b) “訂約承運人”(contracting carrier) 指以主事人身份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》所指的接續承運人。在沒有相反證明的情況下須推定有上述權限。

第 II 條

凡運輸按照第 I 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《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。

(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過《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 條中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運人(除非他同意)。

Article 35

The expression “days” (日) when used in this Schedule means current days not working days.

ADDITIONAL PROTOCOL TO THE WARSAW CONVENTION

(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.

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;
- (c) “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由本附表施行的《瓜達拉哈拉公約》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制。

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追討的款額的總數，不得超過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過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

中索在由本附表施行的《瓜達拉哈拉公約》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) 如各方本意是藉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，違背由本附表施行的《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 seized 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.

(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 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 CHI 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)