

Zambia

## Carriage by Air Act, 1968 Chapter 447

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## Zambia

# Carriage by Air Act, 1968

## Chapter 447

Commenced on 1 June 1970

*[This is the version of this document at 31 December 1996.]*

*[59 of 1968]*

**An Act to make provision with respect to carriage by air and to give effect to the Warsaw Convention, The Hague Protocol; to repeal certain laws relating to carriage by air; and for connected purposes.**

### Part I – Preliminary

#### 1. Short title

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

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**the Guadalajara Convention**" 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 Party opened for signature at Guadalajara on the 18th September, 1961;

"**The Hague Protocol**" means the Protocol to amend the Warsaw Convention opened for signature at The Hague on the 28th September, 1955;

"**the Warsaw Convention**" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air opened for signature at Warsaw on the 12th October, 1929, including the Additional Protocol to that Convention with reference to Article 2 of that Convention.

#### 3. Text of Conventions and Protocol

- (1) Subject to subsection (4), the text of the Warsaw Convention shall, for the purposes of this Act, be deemed to be the text set out in the First Schedule in the English language.
- (2) Subject to subsection (4), the text of The Hague Protocol shall, for the purposes of this Act, be deemed to be the text set out in the Second Schedule in the English language.
- (3) Subject to subsection (4), the text of the Guadalajara Convention shall, for the purposes of this Act, be deemed to be the text set out in the Third Schedule in the English language.
- (4) If any inconsistency is shown between the text set out in the First Schedule or the Second Schedule or the Third Schedule and the authentic text in the French language of the Warsaw Convention or The Hague Protocol or the Guadalajara Convention, as the case may be, the authentic French text shall prevail.
- (5) A certificate in writing under the hand of the Minister that a document to which the certificate is annexed is a true copy of the authentic text in the French language of the Warsaw Convention or The Hague Protocol or the Guadalajara Convention is conclusive evidence that the document is such a true copy.

#### 4. Designation of High Contracting Parties

- (1) The Minister may from time to time—
  - (a) certify who are the High Contracting Parties to the Warsaw Convention or The Hague Protocol, the territory in respect of which any such party is bound by the Convention and to what extent they have availed themselves of the provisions of the Additional Protocol to the Convention;
  - (b) certify who are the States that have or have not taken any action referred to in Article II, III, XIV, XV or XVI of the Guadalajara Convention and as to the particulars of any action so taken.
- (2) Any certificate issued under subsection (1) shall, except in so far as it has been superseded by a subsequent certificate, be conclusive evidence of the matters so certified.

### Part II – Carriage to which the Warsaw Convention and The Hague Protocol apply

#### 5. Meaning of "the Convention" in Part II

In this Part, "the Convention" means the Warsaw Convention and The Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of The Hague Protocol.

#### 6. Convention to have force of law

The provisions of the Convention shall have, subject to this Part, the force of law in the Republic in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

#### 7. Conversion of damages into Zambian currency

Any sum in francs mentioned in Article 22 of the Convention shall, for the purposes of an action against a carrier, be converted into Zambian currency at the rate of exchange prevailing on the date on which the amount of any damages to be paid by the carrier is ascertained by the court.

#### 8. Provisions relating to proceedings for damages in respect of death of passenger

- (1) The provisions of this section shall apply in relation to liability imposed by the Convention on a carrier in respect of the death of a passenger (including the injury that resulted in death).
- (2) Subject to section ten, the liability under the Convention shall be in substitution for any civil liability of the carrier under any other law in respect of the death of the passenger or in respect of the injury that resulted in such death.
- (3) Subject to subsection (4), the liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.
- (4) To the extent that the damages recoverable include loss of earnings or profits up to the date of death, or funeral, medical or hospital expenses paid or incurred by the passenger before his death or by his personal representative, the liability shall be enforceable for the benefit of the personal representative of the passenger in his capacity as personal representative.
- (5) For the purposes of subsection (3), the members of the passenger's family shall be deemed to be the wife or husband, parents, step-parents, grandparents, brothers, sisters, half-brothers, half-sisters, children, step-children and grandchildren of the passenger, and, in ascertaining the members of the passenger's family, an illegitimate person or an adopted person shall be treated as being or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adoptors.

- (6) The action to enforce the liability may be brought by the personal representative of the passenger or by a person for whose benefit the liability is, under the preceding provisions of this section, enforceable, but only one action shall be brought in Zambia in respect of the death of any one passenger, and the action, by whomsoever brought, shall be for the benefit of all persons for whose benefit the liability is so enforceable.
- (7) The damages recoverable in the action include loss of earnings or profits up to the date of death and the reasonable expenses of the funeral of the passenger and medical and hospital expenses reasonably incurred in relation to the injury that resulted in the death of the passenger.
- (8) In awarding damages, the court is not limited to the financial loss resulting from the death of the passenger.
- (9) Subject to subsection (10), the amount recovered in the action, after deducting any costs not recoverable from the defendant, shall be divided amongst the persons entitled in such proportions as the court directs.
- (10) The court may at any stage of the proceedings make any such order as appears to it to be just and equitable in view of the provisions of the Convention limiting the liability of the carrier and of any proceedings which have been, or are likely to be, commenced against the carrier, whether within or outside Zambia.

## **9. Liability of carrier for personal injuries to be exclusive of other civil liability**

Subject to section ten, the liability of a carrier under the Convention in respect of personal injury suffered by a passenger, not being injury that has resulted in the death of the passenger, shall be in substitution for any civil liability of the carrier under any other law in respect of the injury.

## **10. Liability of carrier to persons other than passengers**

Nothing in the Convention or in this Part shall be deemed to exclude any liability of a carrier—

- (a) to indemnify an employer of a passenger in respect of liability of that employer under the law of the Republic providing for compensation to workmen or employees in respect of accidents arising out of or in the course of their employment; or
- (b) to pay contribution to a tortfeasor who is liable in respect of the death of, or injury to, a passenger;

but this section does not operate to increase the limit of liability of a carrier in respect of a passenger beyond the amount fixed by or in accordance with the Convention.

## **11. Certain sums not to be taken into account in assessment of damages**

In assessing damages in respect of liability under the Convention, there shall not be taken into account by way of reduction of the damages—

- (a) a sum paid or payable on the death of, or personal injury to, a passenger under a contract of insurance;
- (b) a sum paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union;
- (c) any sum in respect of a pension, social service benefit or repatriation benefit paid or payable, consequent upon the death or injury, by any government or person;
- (d) in the case of death, any sum in respect of the acquisition by a spouse or child of the deceased, consequent upon the death of, or of an interest in, a dwelling used at any time as the home of that spouse or child, or of, or of an interest in, the household contents of any such dwelling; or
- (e) in the case of death, a premium that would have become payable under a contract of insurance in respect of the life of the deceased passenger if he had lived after the time at which he died.

## 12. Contributory negligence

- (1) Effect shall be given to Article 21 of the Warsaw Convention in accordance with the provisions of this section.
- (2) If, in an action against a carrier under the Convention, the carrier proves that the damage was caused by or contributed to by the negligence of the passenger or the consignor, the damages recoverable shall be assessed in accordance with this section.
- (3) The court shall first determine the damages that would have been recoverable if there were no limit on the amount of those damages fixed by or in accordance with the Convention and there had been no negligence on the part of the passenger or consignor.
- (4) The damages determined under subsection (3) shall be reduced to such extent as the court thinks just and equitable having regard to the share of the passenger or the consignor in the responsibility for the damage.
- (5) If the damages as reduced in accordance with subsection (4) exceed the maximum liability of the carrier fixed by or in accordance with the Convention, the court shall further reduce the damages to that maximum amount.

## 13. Jurisdiction in certain cases

- (1) A Party to the Convention which has not availed itself of the provisions of the Additional Protocol to the Warsaw Convention with reference to Article 2 of that Convention shall, for the purpose of an action under the Convention brought in a court in Zambia to enforce a claim in respect of carriage undertaken by that Party, be deemed to have submitted to the jurisdiction of that court.
- (2) Nothing in this section shall be deemed to authorise the issue of execution against the property of a Party to the Convention.

### **Part III – Carriage to which the Warsaw Convention without The Hague Protocol applies**

## 14. Meaning of "the Convention" in Part III

In this Part, "the Convention" means the Warsaw Convention as unamended and unaffected by The Hague Protocol.

## 15. Warsaw Convention to have force of law

The provisions of the Convention shall have, subject to this Part, the force of law in the Republic in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

## 16. Provisions of Part II applicable to this Part and repeal

- (1) The provisions of sections eight to thirteen apply for the purpose of this Part as if contained in this Part.
- (2) This Part shall continue in force until a date to be appointed by the Minister by statutory instrument, being a date not earlier than the date upon which a denunciation by the Republic of the Convention in accordance with Article 39 of the Convention takes effect.
- (3) Upon the date fixed in pursuance of subsection (2), this Part shall be deemed to be repealed for all purposes.



## **Part IV – Carriage to which the Guadalajara Convention applies**

### **17. Guadalajara Convention to have force of law**

The provisions of the Guadalajara Convention shall have, subject to Parts II and III as modified and affected by section eighteen, the force of law in the Republic in relation to any carriage by air to which that Convention applies, irrespective of the nationality of the aircraft performing that carriage.

### **18. Construction of Parts II and III for purposes of Guadalajara Convention**

In relation to carriage to which the Guadalajara Convention applies, references in Part II (other than section six) and Part III (other than section fifteen) to "the Convention" shall be read and construed as including references to those provisions of the Guadalajara Convention which have the force of law by virtue of this Part.

## **Part V – Other carriage to which this Act applies**

### **19. Meaning of "the amended Warsaw Convention" in Part V**

In this Part, "the amended Warsaw Convention" means the Warsaw Convention and The Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of The Hague Protocol.

### **20. Modification of Conventions for purposes of this Part**

Subject to the provisions of section twenty-one, the provisions of the amended Warsaw Convention and of the Guadalajara Convention as having the force of law in the Republic and as adapted and modified in the Fourth and Fifth Schedules respectively shall apply to all carriage by air, not being international carriage as defined in Article I of the Second Schedule.

### **21. Powers of Minister**

The Minister may, by statutory instrument, direct that the provisions of this Part shall not apply to any carriage by air, or to any class of carriage by air, and any such direction may be expressed to be, or if so expressed shall take effect, subject to any conditions or limitations which in the circumstances of the case appear to the Minister to be required.

## **Part VI – Miscellaneous**

### **22. Liability of persons other than carrier**

- (1) In an action for damages arising out of the death or bodily injury of a passenger by air occasioned by the negligence of any person other than the carrier, the sum awarded shall not exceed twelve thousand kwacha in addition to the costs of the action and, in making its award, the court shall take into consideration any sum paid or to be paid by the carrier.
- (2) The provisions of subsections (3), (4), (5), (6), (7) and (8) of section eight apply to this section as if contained in this section.

### **23. Regulations**

The Minister may, by statutory instrument, make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or

convenient to be prescribed for carrying out or giving effect to this Act, the Warsaw Convention, the Warsaw Convention as amended and affected by The Hague Protocol or the Guadalajara Convention.

#### **24. Act to bind the Republic**

This Act shall bind the Republic.

#### **25. Repeals and saving**

- (1) Subject to subsection (2), the laws specified in the Sixth Schedule shall be repealed to the extent specified in the second column thereof with effect from such date as the Minister may, by statutory instrument, appoint in respect of each such law.
- (2) Neither a repeal effected by subsection (1) nor any provision of this Act shall apply so as to affect rights or liabilities arising out of an occurrence before the date of such repeal or the date of any such provision coming into force.

### **First Schedule (Section 3(1))**

#### **Convention for the unification of certain rules relating to international carriage by air**

##### **Chapter I Scope-definitions**

##### **Article 1**

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 High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to this Convention. A carriage without such an agreed stopping place between territories subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purpose of this Convention.
3. Carriage to be performed by several successive air carriers is deemed, for the purpose 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 a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

##### **Article 2**

1. The 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 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 this 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 Convention. 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 Convention 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 Article 22 (2);
  - (h) a statement that the carriage is subject to the rules relating to liability established by this 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 Convention. 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 (d), (f) and (h) above, the carrier shall not be entitled to avail himself of those provisions of the Convention which exclude or limit his liability.

### **Section 3 - Airway bill**

#### **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 "airway bill"; every consignor has the right to require the carrier to accept this document.
2. The absence, irregularity or loss of this document does not effect 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 airway bill 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 airway bill, 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 airway bills when there is more than one package.

#### **Article 8**

The airway bill 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;
- (l) 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 Article 22 (2);
- (n) the number of parts of the airway bill;
- (o) the documents handed to the carrier to accompany the airway bill;
- (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 this Convention.

### **Article 9**

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

### **Article 10**

1. The consignor is responsible for the correctness of the particulars and statements relating to

## **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

1. The carrier is not liable if he proves that he and his servants and 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 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 651/2 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 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 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

## **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 the first paragraph 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**

This Convention 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.

#### **Article 35**

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

#### **Article 36**

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

#### **Article 37**

1. This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.

2. As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.
3. It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

### **Article 38**

1. This Convention shall, after it has come into force, remain open for accession by any State.
2. The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.
3. The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

### **Article 39**

1. Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.
2. Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

### **Article 40**

1. Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession, declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
2. Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.
3. Any High Contracting Party may denounce this Convention, in accordance with its provisions,

### **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 the first paragraph 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.

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Additional Protocol was signed.)



## Second Schedule (Section 3(2))

### Protocol

to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12th October, 1929.

THE GOVERNMENTS UNDERSIGNED

CONSIDERING that it is desirable to amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929,

HAVE AGREED as follows:

### Chapter I Amendments to the Convention

#### Article I

In Article 1 of the Convention—

- (a) paragraph 2 shall be deleted and replaced by the following:

"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 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."

- (b) paragraph 3 shall be deleted and replaced by the following:

"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 II

In Article 2 of the Convention, paragraph 2 shall be deleted and replaced by the following:

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

#### Article III

In Article 3 of the Convention—

- (a) paragraph 1 shall be deleted and replaced by the following:

"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 of damage to baggage."
- (b) paragraph 2 shall be deleted and replaced by the following:
- "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."

## Article IV

In Article 4 of the Convention—

- (a) paragraphs 1,2 and 3 shall be deleted and replaced by the following:
- "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 Article 3, paragraph 1, shall contain—
- (a) an indication of the places of departure and destination;
  - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
  - (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage."
- (b) paragraph 4 shall be deleted and replaced by the following:

## Chapter II

### Scope of application of the Convention as amended

## Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place within the territory of another State.

## **Chapter III**

### **Final clauses**

#### **Article XIX**

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955.

#### **Article XX**

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

#### **Article XXI**

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

#### **Article XXII**

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

#### **Article XXIII**

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

#### **Article XXIV**

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.

3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

### **Article XXV**

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.
2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
3. Any State may subsequently, by notification to the Government of the People's Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

### **Article XXVI**

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military

## **Third Schedule (Section 3(3))**

### **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.

THE STATES SIGNATORY TO THE PRESENT CONVENTION

NOTING that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances

HAVE AGREED AS FOLLOWS:

### **Article I**

In this Convention:

- (a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

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

## Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph (b), 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. 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 a 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,

## Fourth Schedule (Section 20)

### Chapter I Scope

#### Article I

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

#### Article II

- (2) This Schedule does not apply to the carriage of mail and postal packets.

### Chapter II Documents of carriage

#### 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 an airway bill.
- (2) The absence or loss of this document does not affect the existence or the validity of the contract of carriage which shall be nonetheless governed by the provisions of this Schedule.

#### Article 7

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

#### Article 10

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

#### Article 11

- (1) The airway bill, if any, is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.
- (2) Any statements in an airway bill relating to the weight, dimensions and packing of cargo, or relating to the number of packages, are *prima facie* evidence of the facts stated; any such statements 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 airway bills 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 the 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 carriage on any landing, or by calling for it to be delivered at the place of destination or in the course of the carriage to a person other than the original consignee 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 not reasonably practicable to carry out the orders of the consignor the carrier must so inform him forthwith.
- (3) 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 airway bill, if any, 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 deliver the cargo to him, on payment of the charges due and on complying with the conditions of the contract 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 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 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 special contract in writing between the parties.

### **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 luggage or 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 luggage 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) 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 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, luggage or cargo to the extent of the amount of any such damage which may be proved to have been sustained by reason of such delay or of an amount representing double the sum paid for the carriage, whichever amount may be the smaller:

Provided that—

- (i) the carrier may by special contract in writing expressly exclude, increase or decrease the limit of his liability as above provided; and
- (ii) nothing in this Article shall be deemed to affect any rule of law relating to remoteness of damage.

##### **Article 20**

The carrier is not liable if he proves that he and his servants or agents have taken all reasonable measures to avoid the damage or that it was not reasonably possible 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) Subject to the provisions of paragraph (4) of this Article, in the carriage of passengers the liability of the carrier in respect of injury (including injury resulting in the death of) to any passenger is limited to



the sum of 250,000 francs. In a case where damages are awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 250,000 francs.

- (2) Subject to the provisions in paragraph (4) of this Article, in the carriage of luggage of which the carrier takes charge and of goods the liability of the carrier in respect of destruction, loss or damage is limited to a sum of 250 francs per kilogram.
- (3) Subject to the provisions of paragraph (4) of this Article, as regards objects of which the passenger takes charge himself the liability of the carrier in respect of destruction, loss or damage is limited to 5,000 francs per passenger.
- (4) With respect to the carriage referred to in paragraphs (1), (2) and (3) of this Article the carrier and the passenger or the carrier and the consignor, as the case may be, may by special contract in writing agree to a limit of liability higher than specified in those paragraphs.
- (5) The sums mentioned above shall be deemed to refer to the French franc consisting of 651/2 milligrams of gold of millesimal fineness 900. These sums may be converted into any national currency in round figures.

### **Article 23**

Any provision in a contract of carriage tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Schedule, otherwise than in accordance with the provisions of 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.

## **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.
- (2) Nothing in this Schedule shall prevent the parties in the case of combined carriage from agreeing to special 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 provisions 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 by deciding the law to be applied 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 stipulations which do not conflict with the provisions of this Schedule.

## **Fifth Schedule (Section 20)**

### **Article I**

In this Schedule:

- (a) "the Convention" means the Warsaw Convention and The Hague Protocol read and interpreted together as one single instrument in accordance with Article XIX of The Hague Protocol;
- (b) "contracting carrier" means a person who as principal makes an agreement for carriage governed by the Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the 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 Article I, paragraph (b), is governed by the Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Schedule, be subject to the provisions of the 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 Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Convention or any waiver of rights conferred by the Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the Convention, shall not affect the actual carrier unless agreed by him.

### **Article IV**

Any complaint to be made or order to be given under the 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 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 Schedule to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the 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 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.

### Article IX

- (1) Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Schedule or to fix a lower limit than that which is applicable according to 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 this Schedule.
- (2) In respect of the carriage performed by the actual carrier, the preceding paragraph shall not

## Sixth Schedule (Section 25)

### Repeals

	Law	Extent of repeal
S.I. No. 1206 of 1953	The Carriage by Air (Non-international Carriage) (Colonies, Protectorates and Trust Territories) Order, 1953, of the United Kingdom, as it applies in the Republic.	The whole.
S.I. No. 1474 of 1953	The Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953, of the United Kingdom, as it applies in the Republic.	The whole.
Cap. 74	The Law Reform (Miscellaneous Provisions) Act.	(a) In section two in subsection (5) the words "or any law for the time being in force relating to carriage by air"; (b) in section ten, subsection (6).