

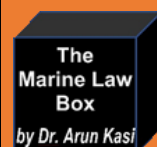
# MALAYSIAN STATUTES

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## CARRIAGE OF GOODS BY SEA ACT 1950 (Act 527)

(As at 15<sup>th</sup> July 2021)

The Marine Law Box



# CARRIAGE OF GOODS BY SEA ACT 1950

## ACT 527

Incorporating all amendments up to 15 July 2021

First enacted	1950 (Ord. No. 13 of 1950)
Revised	1994 (Act 527 w.e.f. 12 December 1994)
Date of coming into operation	23 May 1950

### Preamble

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## **Preamble**

An Act relating to the Carriage of Goods by Sea.

[23 May 1950]

## **1 Short title and application**

(1) This Act may be cited as the Carriage of Goods by Sea Act 1950.

(2) This Act shall apply to the States of Peninsular Malaysia only.

## **2 Application of Rules**

Subject to this Act, the Rules set out in the First Schedule (hereinafter referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in Malaysia to any other port whether in or outside Malaysia.

## **3 Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply**

There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Every sea carriage document issued in Malaysia which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the said Rules as applied by this Act.

[Am. Act A1613:s.2]

## **4 Statement as to application of Rules to be included in sea carriage documents**

Every sea carriage document issued in Malaysia which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the said Rules as applied by this Act.

[Am. Act A1613:s.2]

## **5 Modification of Article VI of Rules in relation to local trade**

Article VI of the Rules shall, in relation to-

(a) the carriage of goods by sea in sailing ships carrying goods from any port in Malaysia to any other port whether in or outside Malaysia; and

(b) the carriage of goods by sea in ships carrying goods from any port in Malaysia to any other port in Malaysia,

have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted.

## **6 Modification of Rules 4 and 5 or Article III in relation to bulk cargoes**

Where under the custom of any trade the weight of any bulk cargo inserted in the sea carriage document is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the sea carriage document, then, notwithstanding anything in the Rules, the sea carriage document shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the sea carriage document, and the accuracy thereof at the time of the shipment shall not be deemed to have been guaranteed by the shipper.

[Am. Act A1613:s.3]

## **6A Power to amend Schedule**

The Minister may, by order published in the Gazette, amend the Schedule to the Act.

[6A. Ins. Act A1613:s.4]

## **7 Saving in operation**

Nothing in this Act shall affect the operation of sections 289 to 294, both inclusive, 359 and 360 of the Merchant Shipping Ordinance 1952 [*Ord. 70 of 1952*], or the operation of any other written law for the time being in force limiting the liability of the owners of sea-going vessels.

## **8 (Omitted)**

*(Omitted)*

## FIRST SCHEDULE

[Section 2]

### Rules Relating to Sea Carriage Documents

*Am. PU(A) 305/2021:O.2*

Gazetted Date: 14 July 2021

In Force from: 15 July 2021

#### ARTICLE I

#### DEFINITIONS

In these Rules the following expressions have the meanings hereby assigned to them respectively:

(a) "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper;

(aa) "consignment note" means a non-negotiable document that-

(i) contains or evidences a contract of carriage by sea in connection with which no bill of lading or similar document of title has been issued;

(ii) clearly states that no liability for any loss of, damage to or delay of the goods will be accepted by the carrier of the goods; and

(iii) is clearly marked as being non-negotiable;

(b) "contract of carriage" applies only to contracts of carriage covered by a sea carriage document, in so far as such document relates to the carriage of goods by sea, including a negotiable sea carriage document issued under or pursuant to a charter-party from the moment at which the document regulates the relations between its holder and the carrier concerned;

(ba) "data message" means information generated, stored or communicated by electronic, optical or analogous means, including electronic data interchange, electronic mail, telegram, telex or telecopy, even if the information is never reproduced in printed form;

(c) "goods" includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals;

(d) "ship" means any vessel used for the carriage of goods by sea;

(e) "carriage of goods by sea" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship;

(f) "negotiable sea carriage document" means-

(i) a bill of lading other than a bill of lading that, by law, is not negotiable; or

(ii) a negotiable document of title that is similar to a negotiable bill of lading and that contains or evidences a contract of carriage of goods by sea;

(g)"sea carriage document" means-

(i) a bill of lading;

(ii) a negotiable document of title that is similar to a bill of lading and that contains or evidences a contract of carriage of goods by sea;

(iii) a bill of lading that, by law, is not negotiable; or

(iv) a non-negotiable document including a consignment note and a document of the kind known as a sea waybill or the kind known as a ship's delivery order which either contains or evidences a contract of carriage of goods by sea; and

(h) "writing" includes electronic mail, electronic data interchange, facsimile transmission, and entry in a database maintained on a computer system.

## ARTICLE IA

### APPLICATION TO SEA CARRIAGE DOCUMENT

1. These Rules apply, with necessary modifications, to a sea carriage document in the form of a data message in the same way as they apply to such a document in printed form.

2. Without limiting paragraph 1, for these Rules in their application to such sea carriage documents:

(a) a sea carriage document is issued when a data message is generated in a way that constitutes issue of such a document within the system being used by the parties to the relevant contract of carriage; and

(b) a sea carriage document is transferred when a data message is generated in a way that constitutes transfer of the sea carriage document within the system being used by the parties to the relevant contract of carriage.

## ARTICLE II

### RISKS

1. Subject to this Article and Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

2. For the purpose of paragraph 1, "[goods](#)" includes goods, except live animals, carried on or above deck.

3. Where the shipper has specific stowage requirements for goods carried on or above deck, then, for paragraph 1 to apply, the shipper shall tell the carrier in writing of those requirements at or before the time of booking the cargo.

4. Notwithstanding Article IVbis, if a carrier carries goods on or above deck contrary to an express agreement with the shipper of the goods made at or before the time of booking the cargo, then, for any loss or damage to the goods that results solely from the goods being carried on or above deck, the carrier is not entitled-

(a) to any exception or exemption under these Rules; or

(b) to any limit provided by these Rules to its liability for the loss or damage.

### ARTICLE III

#### RESPONSIBILITIES AND LIABILITIES

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to-

(a) make the ship seaworthy;

(b) properly man, equip, and supply the ship;

(c) make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.

2. Subject to Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a sea carriage document showing among other things-

(a) the leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;

(b) either the number of packages or prices, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;

(c) the apparent order and condition of the goods:

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the sea carriage document any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a sea carriage document shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with subparagraph 3(a), (b) and (c). However, proof to the contrary shall not be admissible in the case of a negotiable sea carriage document that has been transferred to a third party acting in good faith.

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the sea carriage document.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

Subject to paragraph 6bis, the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

7. After the goods are loaded, the sea carriage document to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" negotiable sea carriage document, provided that if the shipper shall have previously taken up any sea carriage document to such goods, he shall surrender the same as against the issue of the "shipped" negotiable sea carriage document, but at the option of the carrier a negotiable



sea carriage document may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" negotiable sea carriage document.

8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

#### ARTICLE IV RIGHTS AND IMMUNITIES

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from-

(a) act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship;

(b) fire, unless caused by the actual fault or privity of the carrier;

(c) perils, dangers and accidents of the sea or other navigable waters;

(d) act of God;

(e) act of War;

(f) act of public enemies;

(g) arrest or restraint of princes, rulers or people, or seizure under legal process;

(h) quarantine restrictions;

(i) act or omission of the shipper or owner of the goods, his agent or representative;

(j) strikes or lockouts or stoppage or restraints of labour from whatever cause, whether partial or general;

(k) riots and civil commotions;

(l) saving or attempting to save life or property at sea;

(m) wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;

(n) insufficiency of packing;

(o) insufficiency or inadequacy of marks;

(p) latent defects not discoverable by due diligence;

(q) any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. (a) Unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the sea carriage document, neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the goods in an amount exceeding 666.67 units of account per package or unit or 2 units of account per kilogramme of gross weight of the goods lost or damaged, whichever is the higher.

(b) The total amount recoverable shall be calculated by reference to the value of such goods at the place and time at which the goods are discharged from the ship in accordance with the contract or should have been so discharged. The value of the goods shall be fixed according to the commodity exchange price, or, if there be no such price, according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

(c) Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the sea carriage document as packed in such article of transport shall be deemed the number of packages or units for the purpose of this

paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

(d) The unit of account mentioned in this Article is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in subparagraph (a) shall be converted into national currency on the basis of the value of that currency on a date to be determined by the law of the court seized of the case. The value of the national currency, in terms of the Special Drawing Right, of a State 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 in question for its operations and transactions.

The value of the national currency, in terms of the Special Drawing Right, of a State which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State.

Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of the preceding sentences may, at the time of ratification of the Protocol of 1979 or accession thereto or at any time thereafter, declare that the limits of liability provided for in these Rules to be applied in its territory shall be fixed as follows:

(i) in respect of the amount of 666.67 units of account mentioned in subparagraph (a), 10,000 monetary units;

(ii) in respect of the amount of 2 units of account mentioned in subparagraph (a), 30 monetary units.

The monetary unit referred to in the preceding sentence corresponds to 65.5 milligrammes of gold of millesimal fineness 900'.

The conversion of the amounts specified in that sentence into the national currency shall be made according to the law of the State concerned.

The calculation and the conversion mentioned in the preceding sentences shall be made in such a manner as to express in the national currency of the State as far as possible the same real value for the amounts in subparagraph (a) as is expressed there in units of account.

States shall communicate to the depositary the manner of calculation or the result of the conversion as the case may be, when depositing an instrument of ratification of the Protocol of 1979 or of accession thereto and whenever there is a change in either.

(e) Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

(f) The declaration mentioned in subparagraph (a), if embodied in the sea carriage document, shall be prima facie evidence, but shall not be binding or conclusive on the carrier.

(g) By agreement between the carrier, master or agent of the carrier and the shipper, other maximum amounts than those mentioned in subparagraph (a) may be fixed, provided that no maximum amount so fixed shall be less than the appropriate maximum mentioned in that subparagraph.

(h) Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the sea carriage document.

6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

#### ARTICLE IVbis

##### DEFENCE AND LIMIT OF LIABILITY

1. The defences and limits of liability provided for in these Rules shall apply in any action against the carrier in respect of loss or damage to goods covered by a contract of carriage whether the action be founded in contract or in tort.

2. If such an action is brought against a servant or agent of the carrier, such servant or agent not being an independent contractor, such servant or agent shall be entitled to avail himself of the defences and limits of liability which the carrier is entitled to invoke under these Rules.

3. The aggregate of the amounts recoverable from the carrier, and such servants and agents, shall in no case exceed the limit provided for in these Rules.

4. A servant or agent of the carrier shall not be entitled to avail himself of the provisions of this Article 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 V

## SURRENDER OF RIGHTS AND IMMUNITIES, AND INCREASE OF RESPONSIBILITIES AND LIABILITIES

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the sea carriage document issued to the shipper.

These Rules shall not be applicable to charter-parties, but if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a sea carriage document of any lawful provision regarding general average.

## ARTICLE VI SPECIAL CONDITIONS

Notwithstanding the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, storage, carriage, custody, care, and discharge of the goods carried by sea.

However-

- (a) the terms so agreed must be set out in a receipt or consignment note; and
- (b) the receipt or consignment note must be, and must be marked as being, non-negotiable; and
- (c) the receipt or note must state that no other sea carriage document has been, or will be, issued for the carriage.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement.

## ARTICLE VII LIMITATIONS ON THE APPLICATION OF THE RULES

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII  
LIMITATION OF LIABILITY

These Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

These Rules shall not affect the provisions of any international Convention or national law governing liability for nuclear damage.

## SECOND SCHEDULE

*(Omitted)*

### **LIST OF AMENDMENTS**

ACT A1613                      Carriage of Goods by Sea (Amendment) Act 2020  
*Royal Assent:*        22 January 2020  
*Gazetted Date:*       4 February 2020  
*In Force from:*       15 July 2021 [PU(A) 363/2021]

### **LIST OF SUBSIDIARY LEGISLATIONS**

PU(A) 305/2021              Carriage of Goods by Sea (Amendment of First Schedule) Order 2021  
*Gazetted Date:*       14 July 2021  
*In Force from:*       15 July 2021