

INTERNATIONAL CARRIAGE BY AIR ACT  
B.E. 2558

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BHUMIBOL ADULYADEJ, REX;  
Given on the 7<sup>th</sup> Day of February B.E. 2558;  
Being the 70 Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on international carriage by air;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly as follows:

**Section 1** This Act is called the “International Carriage by Air Act B.E. 2558”.

**Section 2** This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

**Section 3** In this Act:

“**carriage by air**” means carriage of passengers, baggage or cargo by air performed by aircraft;

“**international carriage by air under the Convention**”<sup>1</sup> means the international carriage by air, pursuant to Section 4, paragraph 2, in which the place of departure and the place of destination are situated within the territories of any State Party;

“**domestic carriage by air**”<sup>2</sup> means any carriage of passengers, baggage or cargo by air performed by aircraft in which, according to the agreement between the parties, the

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<sup>1</sup> Added by Section 4 of International Air Carriage Act (No. 2) B.E. 2560.

<sup>2</sup> Amended by Section 3 of International Air Carriage Act (No. 2) B.E. 2560.

place of departure and the place of destination, are situated within the territories of a single State without an agreed stopping place within the territory of another State;

“**passenger**” means any person, except members of the crew, carried or to be carried in an aircraft with the consent of carrier;

“**baggage**” means checked and unchecked baggage;

“**checked baggage**” means baggage of which the carrier takes sole custody and for which carrier has issued a baggage identification tag;

“**unchecked baggage**” means baggage which is retained in the custody of the passenger except the checked baggage;

“**cargo**” means any goods which the consignor delivers to be in the charge of the carrier for the purpose of carriage by air;

“**aircraft**” means aircraft in accordance with the law on air navigation;

“**carrier**” means any person who undertakes in carriage by air whether it is the contracting carrier or the actual carrier, and includes a person who undertakes carriage of passengers, baggage or cargo by air performed by the aircraft;

“**the contracting carrier**” means any person as a principal makes a contract of carriage with a passenger or consignor or with a person acting on behalf of the passenger or consignor;

“**the actual carrier**” means any person performs, by virtue of authority from the contracting carrier, the whole or part of the carriage;

“**consignor**” means any person who is the party of the contract with the carrier to deliver object in accordance with the air carriage contract;

“**consignee**” means any person who is identified as the consignee in the Air waybill, receipt or in a note in which the data appears by any other means in the case where there is no Air Waybill or receipt as the case may be;

“**servant**” means any person who works for the carrier with or without remuneration;

“**Special Drawing Right**” means Special Drawing Right in accordance with the law on authorization of and some provisions relating to Special Drawing Right in the International Monetary Fund;

“**the Convention**”<sup>3</sup> means Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on May 28, 1999;

“**State Party**”<sup>4</sup> means a State Party to the Convention.

**Section 4**<sup>5</sup> This Act applies to all carriage by air for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking, whether such carriage is an international carriage by air or an international carriage by air under the Convention.

The international carriage by air under the first paragraph means any carriage by air 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 if there is an agreed stopping place within the territory of another State.

Carriage to be performed by several successive carriers is deemed 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.

This Act applies also to carriage by air performed by a person other than the contracting carrier, subject to the terms contained in Chapter 4.

This Act applies to carriage performed by the State or by legally constituted public bodies provided it is an international carriage by air under the Convention.

**Section 5**<sup>6</sup> This Act shall not apply to:

(1) the carriage of postal items, for which 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;

(2) the carriage by air performed and operated directly by state entities for non-commercial purposes in respect to its functions and duties as a sovereign State;

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<sup>3</sup> Added by Section 5 of International Air Carriage Act (No. 2) B.E. 2560.

<sup>4</sup> Added by Section 5 of International Air Carriage Act (No. 2) B.E. 2560.

<sup>5</sup> Amended by Section 6 of International Air Carriage Act (No.2) B.E. 2560.

<sup>6</sup> Amended by Section 6 of International Air Carriage Act (No.2) B.E. 2560.

(3) the carriage by air for its military authorities on aircraft registered in accordance with the law on air navigation or aircraft leased for its military authorities, the whole capacity of which has been reserved by or on behalf of such authorities.

If the carriages as specified in (2) and (3) fall within the scope of the international carriages by air under the Convention, this Act shall not apply when the Government declares by a notification addressed to the Depositary as stated in the Convention.

**Section 6** A carrier who performs carriage by air within, into or out of the Kingdom shall maintain adequate insurance covering their liability under this Act.

Rules, means and conditions on the insurance under the first paragraph shall be as prescribed in the Ministerial Regulation.

In regard to the insurance under the first paragraph, a carrier may be required by the Director-General of the Civil Aviation Authority of Thailand to furnish evidence showing that it maintains adequate insurance covering its liability.<sup>7</sup>

In the case of violation or failing to comply with the first paragraph or paragraph 3, the competent official with the authority to grant permission on air carriage shall order the carrier to stop its carriage by air within, into or out of the Kingdom until such carrier complies with the first paragraph or paragraph 3 as the case may be.

**Section 7** The limits of liability of the carrier under this Act may be revised by Royal Decree.

**Section 7/1**<sup>8</sup> The provisions of Section 9, Section 24, Section 25, Section 27 and Section 28 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of such carrier's business.

**Section 7/2** A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Act or to no limits of liability whatsoever.

**Section 7/3** In the carriage by air, nothing contained in this Act shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available, or from laying down conditions which do not conflict with the provisions of this Act.

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<sup>7</sup> Amended by Section 7 of International Air Carriage Act (No.2) B.E. 2560.

<sup>8</sup> Section 7/1 – 7/5 Added by Section 8 of International Air Carriage Act (No.2) B.E. 2560.

**Section 7/4** 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 Act, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

**Section 7/5** The expression “days” when used in this Act means calendar days, not working days.

**Section 8** The Minister of Transport shall have charge and control of this act and shall have the power to prescribe Ministerial Regulation for the execution of this Act.

The Ministerial Regulation shall come into force upon its publication in the Government Gazette.

## CHAPTER 1

### Carriage of Passengers and Baggage

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**Section 9** In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing, at least, the followings:

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

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

Any other means which preserves the information indicated in the first paragraph 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.

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

The passenger shall be given written notice to the effect that where this Act 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.

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 Act.

**Section 10** 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.

**Section 11** 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.

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.

**Section 12** The carrier is liable for damage occasioned by delay in the carriage by air of passengers or baggage. 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.

**Section 13** 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 Section applies to all the liability provisions in this Act.

**Section 14** For damages arising under Section 10 not exceeding one hundred and thirteen thousand and a hundred Special Drawing Rights<sup>9</sup> for each passenger, the carrier shall not be able to exclude or limit its liability unless the carrier can prove under Article 13.

The carrier shall not be liable for damages arising under Section 10 to the extent that they exceed for each passenger one hundred and thirteen thousand and a hundred Special Drawing Rights<sup>10</sup> if the carrier proves that:

(1) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or

(2) such damage was solely due to the negligence or other wrongful act or omission of a third party.

**Section 15** In the case of damage occasioned by delay as specified in Section 12 in the carriage of persons, the liability of the carrier for each passenger is limited to four thousand six hundred and ninety-four Special Drawing Rights<sup>10</sup>.

**Section 16** In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to one thousand one hundred and thirty one Special Drawing Rights<sup>11</sup> 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 the case where the passenger has made a special declaration and paid a supplementary sum as specified in the first paragraph, 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.

**Section 17** The provisions of Section 15 and Section 16 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

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<sup>9</sup> Section 3 (1) of the Royal Decree Revising Limits of Liability of a Carrier under the Law on International Carriage by Air B.E. 2563 prescribes **one hundred and twenty-eight thousand eight hundred and twenty-one Special Drawing Rights (128,821 SDRs)**.

<sup>10</sup> Section 3 (2) of the Royal Decree Revising Limits of Liability of a Carrier under the Law on International Carriage by Air B.E. 2563 prescribes **five thousand three hundred and forty-six Special Drawing Rights (5,346 SDRs)**.

<sup>11</sup> Section 3 (3) of the Royal Decree Revising Limits of Liability of a Carrier under the Law on International Carriage by Air B.E. 2563 prescribes **one thousand two hundred and eighty-eight Special Drawing Rights (1,288 SDRs)**.

agent, it is also proved that such servant or agent was acting within the scope of its employment.

**Section 18** The limits prescribed in Section 14, Section 15 and Section 16 shall not prevent the court from awarding 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 provision in the first paragraph 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; and, by calculation, the award the plaintiff received does not exceed limit of liability prescribed in Section 14, Section 15, or Section 16, as the case may be.

**Section 19** Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Act 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 Act.

**Section 20** In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall 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 under the first paragraph shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

**Section 21** If an action is brought against a servant or agent of the carrier arising out of damage to which this Act 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 Act.

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

The provisions of the first paragraph and paragraph 2 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.



**Section 22**<sup>12</sup> Receipt by the person entitled to delivery of checked baggage without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the baggage identification tag or with the record preserved by the other means referred to in paragraph 2 of Section 9.

In the case of damage sustained to the checked baggage, 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 of the checked baggage.

In the case of delay in the carriage, the complaint must be made at the latest within twenty-one days from the date on which the baggage has been placed at his or her disposal.

Complaint pursuant to this Section must be made in writing and given or dispatched to the carrier within the times aforesaid in paragraph 2 or paragraph 3, as the case may be.

In the case in which no complaint is made by the person who is entitled to delivery within the times specified in paragraph 2 or paragraph 3, no action shall lie against the carrier, save in the case of fraud on its part.

**Section 23** In the case of carriage of passengers and baggage to be performed by various successive carriers which is deemed to be one undivided carriage as set out in paragraph 3 of Section 4, each carrier that accepts passengers or baggage is subject to the rules set out in this Act 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.

In the case of carriage according to the first paragraph, 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.

As regards baggage, the passenger will have a right of action against the first carrier, and the passenger 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.

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<sup>12</sup> Amended by Section 9 of International Air Carriage Act (No.2) B.E. 2560.

## CHAPTER 2

### Carriage of Cargo

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**Section 24** In respect of the carriage of cargo, an air waybill shall be delivered.

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.

**Section 25** The air waybill or the cargo receipt shall include at least the items under the first paragraph of Section 9 and an indication of the weight of the consignment.

**Section 26** 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.

The provision in the first paragraph creates for the carrier no duty, obligation or liability resulting therefrom.

**Section 27** The air waybill shall be made out by the consignor in three original parts as follows:

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

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

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.

**Section 28** When there is more than one package:

- (1) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (2) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Section 24 are used.

**Section 29** Non-compliance with the provisions of Section 24, Section 25, Section 26, Section 27 or Section 28 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Act.

**Section 30** 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 Section 24.

The provision of the first paragraph shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.

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.

Subject to the provisions of this Section, 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 Section 24.

**Section 31** 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.

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.

**Section 32** 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:

- (1) withdrawing it at the airport of departure or destination; or
- (2) stopping it in the course of the journey on any landing; or
- (3) 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
- (4) 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.

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

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.

The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Section 33. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

**Section 33** Except when the consignor has exercised its right under Section 32, 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.

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

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 air carriage.

**Section 34** The consignor and the consignee can respectively enforce all the rights given to them by Section 32 and Section 33, 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 air carriage.

**Section 35** Section 32 Section 33 and Section 34 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.

The provisions of Section 32 Section 33 and Section 34 can only be varied by express provision in the air waybill or the cargo receipt.

**Section 36** 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.

The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents as specified in the first paragraph.

**Section 37** 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.

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:

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

The carriage by air within the meaning of this Section comprises the period during which the cargo is in the charge of the carrier.

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 except in the following cases:

(1) if 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.

(2) 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.

**Section 38** The provisions in Section 12 shall apply *mutatis mutandis* to the liability of the carrier for damage occasioned by delay in the carriage by air of cargo.

**Section 39** 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 nineteen Special Drawing Rights<sup>13</sup> 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 the case where the carrier has made a special declaration and has paid a supplementary sum under the first paragraph, the carrier will be liable to pay a sum not

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<sup>13</sup> Section 3 (4) of the Royal Decree Revising Limits of Liability of a Carrier under the Law on International Carriage by Air B.E. 2563 prescribes **twenty-two Special Drawing Rights (22 SDRs)**.

exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

**Section 40** 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 Section 24, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

**Section 41** The limits prescribed in Section 39 shall not prevent the court from awarding 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 provision in the first paragraph 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; and, by calculation, the award the plaintiff received does not exceed the limit of liability prescribed in Section 39.

**Section 42** Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Act 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 Act.

**Section 43** If an action is brought against a servant or agent of the carrier arising out of damage to which the Act 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 Act.

In the case referred in the first paragraph, the aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

**Section 44**<sup>14</sup> Receipt by the person entitled to delivery of cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the air waybill; or with the cargo receipt; or with the record preserved by the other means referred to in paragraph 2 of Section 24.

In the case of damage sustained to the cargo, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within fourteen days from the date of receipt of the cargo.

In the case of delay in the carriage, the complaint must be made at the latest within twenty-one days from the date on which the cargo has been placed at his or her disposal.

Complaint pursuant to this Section must be made in writing and given or dispatched to the carrier within the times aforesaid in paragraph 2 or paragraph 3, as the case may be.

In the case in which no complaint is made by the person who is entitled to delivery within the times specified in paragraph 2 or paragraph 3, no action shall lie against the carrier, save in the case of fraud on its part.

**Section 45** In the case of carriage of cargo to be performed by various successive carriers which is deemed to be on undivided carriage and falling within the definition set out in paragraph 3 of Section 4, each carrier, who accepts cargo, is subject to the rules set out in this Act 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.

In the case of carriage according to the first paragraph, the consignor will have a right of action against the first carrier, and the 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 consignor or consignee.

### CHAPTER 3

#### Combined Carriage

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**Section 46** In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Act shall, subject to paragraph 4 of Section 37, apply only to the carriage by air.

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<sup>14</sup> Amended by Section 10 of International Air Carriage Act (No.2) B.E. 2560.

Nothing in this Act shall prevent the parties, in the case of combined carriage, referred in the first paragraph, from inserting in the document of air carriage conditions relating to other modes of carriage.<sup>15</sup>

## CHAPTER 4

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

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**Section 47** 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 Act 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 Act. Such authority shall be presumed in the absence of proof to the contrary.

**Section 48** If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Section 47, is governed by this Act, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Act, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

**Section 49** 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.

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 this Act.

Any special agreement under which the contracting carrier assumes obligations not imposed by this Act or any waiver of rights or defenses conferred by this Act or any special declaration of interest in delivery at destination contemplated in Section 16 and Section 39 shall not affect the actual carrier unless agreed to by it.

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<sup>15</sup> Added by Section 11 of International Air Carriage Act (No.2) B.E. 2560.



**Section 50** Any complaint to be made or instruction to be given under this Act to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Section 32 shall only be effective if addressed to the contracting carrier.

**Section 51** 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 Act 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 Act.

**Section 52** 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 Act, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

**Section 53** 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.

**Section 53/1**<sup>16</sup> Except as provided in Section 56/2, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

## CHAPTER 5

### Action for Damages

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**Section 54** In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Act 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 Act.

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<sup>16</sup> Added by Section 12 of International Air Carriage Act (No.2) B.E. 2560.

In any such action under the first paragraph, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

**Section 54/1**<sup>17</sup> In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Act against those legally representing his or her estate.

**Section 55** 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.

The method of calculating that period under the first paragraph shall be determined by the law of the court seised of the case.<sup>18</sup>

**Section 56** Conversion of the sums mentioned in terms of Special Drawing Right into Thai Baht shall, in case of judicial proceedings, be made according to the value of the exchange rate determined by the Bank of Thailand at the date of the judgment.

**Section 56/1**<sup>19</sup> An action for damages, sustained from any international carriage by air under the Convention, must be brought, at the option of the plaintiff, in the territory of one of the State Parties, either before one of the following courts:

- (1) the court of the domicile of the carrier;
- (2) the court of the carrier's principal place of business;
- (3) the court [in the territory] where the carrier has a place of business through which the contract of carriage has been made;
- (4) the court at the place of destination.

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 the first paragraph, the plaintiff is also entitled to bring an action 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.

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

For the purposes of this Section,

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<sup>17</sup> Added by Section 13 of International Air Carriage Act (No.2) B.E.2560.

<sup>18</sup> Added by Section 14 of International Air Carriage Act (No.2) B.E.2560.

<sup>19</sup> Section 56/1 – 56/6 Added by Section 15 of International Air Carriage Act (No.2) B.E. 2560.

“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;

“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.

**Section 56/2** 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 the actual carrier or the contracting carrier, that carrier shall have the right to require the other carrier to be joined in the proceedings.

The procedures and effects of the action shall be governed by the law of the court seised of the case.

**Section 56/3** Any action for damages, sustained from an international carriage by air under the Convention, for the carriage performed by the actual carrier contemplated in Section 56/2 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 Section 56/1, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

**Section 56/4** In relation to an international carriage by air, if a plaintiff has an option to bring an action for damages before a court in the Kingdom, such action shall fall within jurisdiction of the Intellectual Property and International Trade Court.

**Section 56/5** The parties to the contract of carriage for cargo in any carriage by air may stipulate, in writing, that any dispute relating to the liability of the carrier under this Act shall be settled by arbitration.

The arbitration proceedings shall, at the option of the claimant for damages sustained from an international carriage by air under the Convention, take place within one of the jurisdictions of the courts in any State Party’s territory referred to in Section 56/1. If such proceedings, at the option of such claimant, takes place in the Kingdom, the arbitrator or arbitration tribunal shall apply the provisions of this Act.

The provisions of paragraph 2 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.

**Section 56/6** Nothing in this Act 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 6

### Domestic Carriage by Air

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**Section 57** The provision in this Act shall apply *mutatis mutandis* to domestic carriage by air.

**Section 58** Cases on domestic carriage by air shall fall within the jurisdiction of the Intellectual Property and International Trade Court.

### Transitory Provision

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**Section 59** All the cases concerning domestic carriage by air under the consideration of the Court before the date of promulgation of this Act shall be considered and decided by such Court and it shall be deemed that such cases are not cases concerning carriage by air under this Act.

Countersigned by:

General Prayut Chan-O-Cha

Prime Minister