



SAMOA

## CARRIAGE BY AIR ACT 1964

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## CARRIAGE BY AIR ACT 1964

1964

No.22

**AN ACT** to give effect to the Convention concerning international carriage by air known as the Warsaw Convention as amended at the Hague in the year 1955, and for other purposes.

*[Assent date: 30 December 1964]*

**1. Short title and commencement – (1)** This Act may be cited as the Carriage By Air Act 1964.

(2) This Act comes into force on a date to be fixed for the commencement thereof by Order made by the Head of State, acting on the advice of the Minister.

**2. Interpretation** – In this Act, unless the context otherwise requires:

“Convention” means the Convention set out in Schedule 1, being a Convention for the unification of certain rules

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relating to international carriage by air opened for signature at Warsaw on 12 October 1929, as amended by a Protocol opened for signature at the Hague on 28 September 1955;

“Court” includes (in an arbitration allowed by the Convention) an arbitrator;

“Minister” means the Minister responsible for transport.

**3. Administration of Act** – This Act is administered by the Minister.

**4. Convention to have force of law** – (1) The provisions of the Convention shall, so far as they relate to the rights and liabilities of carriers, carriers’ servants and agents, passengers, consignors, consignees, and other persons, and subject to the provisions of this Act, have the force of law in Samoa in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing that carriage.

(2) If there is any inconsistency between the text in English or Samoan of the Convention in Schedule 1 and the text in French of the Convention which may be seen in Part II of Schedule 1 to the Carriage by Air Act 1967 (NZ), the text in French shall prevail.

**5. Designation of High Contracting Parties** – (1) The Head of State, acting on the advice of Cabinet, may by Order certify who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of the provisions of the Additional Protocol at the end of the Convention as set out in Schedule 1.

(2) Paragraph (2) of Article 40A of the Convention shall not be read as extending references in the Convention to the territory of a High Contracting Party (except such as are references to the territory of any State, whether a High Contracting Party or not) to include any territory in respect of which that High Contracting Party is not a party.

(3) An Order under this section is, except so far as it has been superseded by a subsequent Order, conclusive evidence of the matters so certified.

(4) An Order under this section may contain such transitional and other consequential provisions as appear to be expedient to the Head of State, acting on the advice of Cabinet.

(5) An Order under this section certifying who are High Contracting Parties to the Convention shall specify the date on and from which any such party is or ceased to be a High Contracting Party.

**6. Fatal accidents** – Reference in section 3 of the Fatal Accidents Act 1974 to a wrongful act, neglect, or default includes references to any occurrence which gives rise to a liability under Article 17 of the Convention.

**7. Limitation of liability** – (1) The limitations on liability referred to in Article 22 of the Convention apply whatever the nature of the proceedings by which liability may be enforced and, in particular:

(a) those limitations apply where proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and

(b) the limitation for each passenger referred to in Article 22(1) applies to the aggregate liability of the carrier in all proceedings which may be brought against him or her under the law of Samoa together with any proceedings brought against him or her outside Samoa.

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

(3) Without prejudice to subsection (2), a Court before which proceedings are brought to enforce a liability which is limited by Article 22 shall, where the liability is or may be, partly enforceable in other proceedings in Samoa or elsewhere, have jurisdiction to award an amount less than the Court would have awarded if the limitation applied solely to the proceedings before the Court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Minister of Finance may, by notice in the *Gazette*, specify the respective amounts which for the purposes of Article 22, and in particular of paragraph (5) of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

(5) References in this section to Article 22 include, subject to any necessary modifications, references to that Article as applied by Article 25A of the Convention.

**8. Time for bringing proceedings** – (1) No action against a carrier's servant or agent which arises out of damage to which the Convention relates shall, if the servant or agent was acting within the scope of his or her employment, be brought after more than 2 years, reckoned from the date of arrival at the destination or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) Article 29 of the Convention shall not be read as applying to any proceedings for contributions between tortfeasors, but no action shall be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which Article 29 applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

(3) Subsections (1) and (2) and Article 29 have effect as if references in those provisions to an action included references to an arbitration; and section 27(2) and (3) of the Limitation Act 1975 (which determine the time at which an arbitration is deemed to have commenced) applies for the purposes of this subsection.

**9. Contributory negligence** – For the purposes of Article 21 of the Convention, the Contributory Negligence Act 1964 is the Act under which a Court may exonerate the carrier wholly or partly from his or her liability.

**10. Power to exclude aircraft in use for military purposes** –

(1) The Head of State, acting on the advice of Cabinet, may by Order direct that this section applies or ceases to apply to Samoa or any other State specified in the Order.

(2) The Convention does not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole

capacity of the aircraft has been reserved by or on behalf of those authorities.

**11. Actions against High Contracting Parties** – A High Contracting Party to the Convention who has not availed himself or herself of the provisions of the Additional Protocol at the end of the Convention as set out in Schedule 1is, for the purposes of any action brought in a Court in Samoa under Article 28 of the Convention to enforce a claim in respect of carriage undertaken by him or her, deemed to have submitted to the jurisdiction of that Court, and accordingly rules of Court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this section authorises the issue of execution against the property of any High Contracting Party.

**12. Application to carriage by air not governed by Convention** – (1) The Head of State, acting on the advice of Cabinet, may by Order apply the Convention, together with any of the provisions of this Act, to carriage by air, not being carriage by air to which the Convention applies, of such descriptions as may be specified in the Order, subject to such exceptions, adaptations, and modifications, if any, as may be so specified.

(2) An Order under this section may be made to apply to Samoa, New Zealand, the Cook Islands, Tokelau and any other country or to any part or parts thereof.

(3) An Order under this section may contain such transitional or other consequential provisions as appear to the Head of State, acting on the advice of Cabinet, to be expedient, and may confer any functions under the Order on a Minister in Samoa or any official or other authority in any of the other territories referred to in subsection (2) including a power to grant exemptions from any requirements inferred by the Order.

**13. Transitional provisions** – (1) This Act does not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of this Act.

(2) Where, by reason of the fact that any State is not a High Contracting Party to the Convention, the Convention is not applicable to any carriage by air, the law applicable to that carriage by air shall be the law which would have been applicable

if section 14 of this Act were not in force and the Carriage by Air Act 1940 (NZ) had continued in force.

(3) For the purposes of this section, the Head of State, acting on the advice of Cabinet, may by order certify who are the High Contracting Parties to the Convention set out in Schedule 1 to the Carriage by Air Act 1940 (NZ).

(4) For the purposes of this section a State shall be a High Contracting Party to the Convention on and from the date specified in an order under section 5 as the date on and from which the State is a High Contracting Party.

**14. Repeal and savings –** (1) The enactments specified in Schedule 2 cease to have effect as part of the law of Samoa.

(2) Sections 19, 20 and 21 of the Acts Interpretation Act 1974 apply to the enactments specified in Schedule 2 as if they had been repealed by this Act.

#### **SCHEDULE 1** **(Sections 2, 4(2), 5(1), 11 and 13(3))**

#### **THE WARSAW CONVENTION WITH THE AMENDMENTS MADE IN IT BY THE HAGUE PROTOCOL**

(Words in square brackets in both texts are words substituted for or added to the original Warsaw Convention by Chapter 1 of the Hague Protocol. Chapters II and III of The Hague Protocol (which affects the Warsaw Convention) are printed at the end of each text under the heading “Additional Provisions of The Hague Protocol affecting the Warsaw Convention”).

#### **PART I** **THE ENGLISH TEXT 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 transhipment, are situated either within the territories of 2 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 2 points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
3. 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 has been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

## **Article 2**

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. This Convention shall not apply to carriage of mail and postal packages.

## **CHAPTER II DOCUMENTS OF CARRIAGE**

### **SECTION 1 - PASSENGER TICKET**

## **Article 3**

1. In respect of the carriage of passengers a ticket shall be delivered containing:
  - (a) an indication of the places of departure and destination;
  - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
  - (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.
2. The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1) (c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

## **SECTION 2 - BAGGAGE CHECK**

### **Article 4**

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

### **SECTION 3 - AIR WAYBILL**

#### **Article 5**

- 1. Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an “air waybill”; every consignor has the right to require the carrier to accept this document.
- 2. The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be nonetheless governed by the rules of this Convention.

#### **Article 6**

- 1. The air waybill shall be made out by the consignor in 3 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

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the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

3. The carrier shall sign prior to the loading of the cargo on board the aircraft.
4. The signature of the carrier may be stamped; that of the consignor may be printed or stamped.
5. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

**Article 7**

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

**Article 8**

The air waybill shall contain:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the consignor to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to cargo.

**Article 9**

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

### **Article 10**

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.
2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

### **Article 11**

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

### **Article 12**

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the aerodrome of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air waybill, or by requiring it to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

### **Article 13**

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

### **Article 14**

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

### **Article 15**

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

**Article 16**

1. The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

**CHAPTER III  
LIABILITY OF THE CARRIER****Article 17**

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

**Article 18**

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

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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 transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

**Article 19**

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

**Article 20**

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

**Article 21**

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

**Article 22**

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

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

- (b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.
  4. The limits prescribed in this Article shall not prevent the Court from awarding, in accordance with its own law, in addition, the whole or part of the Court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding Court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of 6 months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
  5. The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of 651/2 milligrammes of gold of millesimal fineness 900. These sums may be converted into national currencies in round figures. Conversion of the sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgment.

**Article 23**

1. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.
2. Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

**Article 24**

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

**Article 25**

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

**Article 25A**

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

2. The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
3. The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

**Article 26**

1. Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within 7 days from the date of receipt in the case of baggage, and 14 days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within 21 days from the date on which the baggage or cargo have been placed at his disposal.
3. Every complaint must be made in writing upon the document of carriage or by separate notice in writing dispatched within the times aforesaid.
4. Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

**Article 27**

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

**Article 28**

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

2. Questions of procedure shall be governed by the law of the Court seized of the case.

### **Article 29**

1. The right to damages shall be extinguished if an action is not brought within 2 years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
2. The method of calculating the period of limitation shall be determined by the law of the Court seized of the case.

### **Article 30**

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article I, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
2. In the case of carriage of this nature the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

## **CHAPTER IV**

### **PROVISIONS RELATING TO COMBINED CARRIAGE**

### **Article 31**

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

## **CHAPTER V GENERAL AND FINAL PROVISIONS**

### **Article 32**

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

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

### **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 5 of the High Contracting Parties it shall come into force as between them on the 90th day after the deposit of the 5th 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 90th 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 90th 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 6 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, separately or for all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

### **Article 40A**

1. In Article 37, paragraph 2, and Article 40, paragraph 1, the expression High Contracting Party shall mean State. In all other cases, the expression High Contracting Party shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.
2. For the purposes of the Convention the word territory means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

### **Article 41**

Any High Contracting Party shall be entitled not earlier than 2 years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

### **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.

Additional Provisions of the Hague  
Protocol Affecting the Warsaw Convention

### **CHAPTER II** **SCOPE OF APPLICATION OF THECONVENTION AS** **AMENDED**

#### **Article XVIII**

The Convention as amended by this Protocol shall apply to international carriage as defined in Article I of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of 2 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 I, 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 30 signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the 90th day after the deposit of the 30th instrument of ratification. It shall come into force for each State ratifying thereafter on the 90th 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.

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***Carriage By Air Act 1964***

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 90th 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 6 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 anyone 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 90th 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 authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

### Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organisation or of the United Nations and to the International Civil Aviation Organisation:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;
- (c) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XXV and the date thereof; and
- (f) of the receipt of any notification made under Article XXVI and the date thereof.

**IN WITNESS WHEREOF** the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

Done at the Hague on the 28th day of the month of September of the year 1955, in 3 authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified

copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organisation or of the United Nations, and to the International Civil Aviation Organisation.

## SCHEDULE 2 (Section 14)

### ENACTMENTS CEASING TO HAVE EFFECT

- 1940 - No.15: The Carriage by Air Act 1940 (New Zealand) (1957 Reprint, Vol.1, p.743).
  - 1950 - No.54: The Crown Proceedings Act 1950 (New Zealand) So much of Schedule 1 as relates to the Carriage by Air Act 1940 (New Zealand) (1957 Reprint, Vol.3 p.542).
  - 1961 - No.76: The Carriage by Air Amendment Act 1961 (New Zealand).
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### REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 – 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
  - (i) “Every” changed to “a”
  - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
  - (iii) “notwithstanding” changed to “despite”
  - (iv) “pursuant to” changed to “under”
  - (v) Numbers in words changed to figures
  - (vi) “hereby” and “from time to time” removed
  - (vii) All relevant empowering provisions for Schedule 1 inserted.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by  
the Ministry of Works, Transport and Infrastructure.*