

**Act amending the merchant shipping act and various other acts**

(Enhanced navigational safety requirements in arctic waters, improving seafarers' legal status in case of piracy, adjustment of the ship registration provisions, implementation of the Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea, implementation of the amendment Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea and abolition of the Divers' Council)

We MARGRETHE THE SECOND, by the grace of God Queen of Denmark hereby witness:  
Folketinget (the Danish Parliament) has adopted  
and We with Our consent hereby enact the following act:

**Section 1**

In the merchant shipping act (*søloven*), cf. consolidated act no. 856 of 1 July 2010, as amended by inter alia act no. 599 of 24 June 2005, section 13 of act no. 1563 of 20 December 2006 and section 1 of act no. 249 of 21 March 2012 and most recently by section 1 of act no. 1384 of 23 December 2012, the following amendments shall be made:

1. *Section 1(2)* shall be as follows:

"(2) To be considered Danish an owner shall be:

- 1) a Danish national,
- 2) a Danish state institution or municipality,
- 3) another legal personality established pursuant to Danish law or registered as a Danish company, foundation or association in this country.

2. *Section 5(2) and (6)* shall be repealed.

Subsequently, subsections 3-5 shall become subsections 2-4.

3. In *section 17*, the following shall be inserted as a new subsection after subsection 4:

"(5) A ship registered pursuant to section 1 shall be deleted upon the owner's written request if the ship is requested to be registered in a foreign register and if the ship is administered, controlled and directed effectively from Denmark, cf. however section 20(3). A ship registered pursuant to section 1 may also be deleted upon the owner's written request if the ship is registered in another country that is a member of the European Union or covered by the agreement on the European Economic Area and is operated from there or has any other actual affiliation with the relevant country, cf. however section 20(3)."

Subsequently, subsection 5 shall become subsection 6.

4. In *section 26(2)*, "*section 5(2)-(6)*" shall be amended to section "5(2)-(4)".

5. In *section 103(2)*, "*paras a, e, f and g*" shall be amended to "*paras (i) and (iii)*".

6. In *section 138, the second clause*, "*sections 266 and 267*" shall be amended to "*section 271*".

7. In section 161(4), the third clause, "sections 274-285, 287-289" shall be amended to "sections 257, 260, 267, 272-275, 277, 278 280-284".

8. After part 10, the following shall be inserted:

“Part 11

*Regarding liability for damage in connection with the carriage of hazardous and noxious substances by sea under the regulations of the HNS Convention*

**211.-(1)** The owner of a ship shall, irrespective of who is at fault, be liable for any HNS damage, caused during the carriage of HNS substances as cargo, and which has been caused by the hazardous or noxious properties of the HNS substance. If HNS damage is caused by a number of incidents having the same origin, the liability shall attach to the owner at the time of the first of such incidents.

**(2)** HNS damage shall mean damage resulting in

- 1) loss of life or personal injury on board or outside the ship carrying HNS substances,
- 2) loss of or damage to property outside the ship carrying HNS substances,
- 3) loss or damage by contamination of the environment, provided that compensation for impairment of the environment, other than loss of profit from such impairment, shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken, and
- 4) costs, damage or loss caused by reasonable preventive measures undertaken to avoid or limit HNS damage after the incident which causes pollution damage or causes serious and immediate risk of HNS damage has taken place.

**(3)** The regulations of this part shall not apply to

- 1) such pollution damage as described in section 191(2),
- 2) pollution damage caused by a radioactive material of class 7 either in the International Maritime Dangerous Goods Code (the IMDG Code) or in the International Maritime Solid Bulk Cargoes Code (IMSBC),
- 3) claims pursuant to contracts on carriage of goods and passengers, or
- 4) the extent that they are incompatible with the legislation on compensation for employees or social security schemes, which applies.

**(4)** If it is not possible in a reasonable way to separate damage caused by HNS substances and damage caused in other ways, the total damage shall be considered to be caused by HNS substances. This shall not apply to the extent that there is pollution damage as mentioned in section 191 or damage caused by radioactive material as mentioned in subsection (3)(i) and (ii).

**212.-(1)** In this part HNS substances shall mean

- 1) oils carried in bulk listed in regulation I of Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78),
- 2) noxious liquid substances carried in bulk referred to in regulation 1.10 of annex II to the International Convention on Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) and those substances and mixtures provisionally

- categorized as falling in category X, Y or Z in accordance with regulation 6.3 of the said annex II;
- 3) dangerous liquid substances carried in bulk listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk and the dangerous products for which the preliminary suitable conditions for the carriage have been stipulated in accordance with paragraph 1.1.6 of the Code,
  - 4) dangerous substances and pollutants, materials and articles in packaged form covered by the International Maritime Dangerous Goods Code (the IMDG Code),
  - 5) liquefied gases as listed in chapter 19 of the International Code for the Construction and Equipment of Ships carrying Liquefied Gases in Bulk (the IGC Code) and the products for which preliminary suitable conditions for the carriage have been stipulated in accordance with paragraph 1.1.6 of the Code,
  - 6) liquid substances carried in bulk with a flashpoint not exceeding 60° C (measured by a closed cup test),
  - 7) solid bulk materials possessing chemical hazards covered by the International Maritime Solid Bulk Cargoes Code (IMSBC) to the extent that these substances are also subject to the provisions of the International Maritime Dangerous Goods Code (IMDG) when carried in packaged form, and
  - 8) residues from the previous carriage in bulk of substances referred to in paras. (i)-(iii) and (v)-(vii).

(2) The codes and conventions mentioned in subsection (1) and section 211(3)(ii), except the IMDG Code from 1996, shall apply with subsequent amendments when these are adopted by the relevant organs in the United Nations' International Maritime Organization (IMO), and have entered into force.

(3) In this part ship shall mean any floating craft constructed or adapted for sea carriage.

(4) In this part owner shall mean, for registered ships, the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. If a ship is owned by a state and operated by a company which in that state is registered as the ship's operator, that company shall be considered as the owner of the ship.

(5) In this part carriage by sea shall mean the period from the time when the HNS substances enter any part of the ship's equipment, on loading, to the time they cease to be present in any part of the ship's equipment, on discharge. If no ship's equipment is used, the period begins and ends respectively when the HNS substances cross the ship's rail.

(6) The HNS Convention shall mean the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of 2010. The HNS Fund shall mean the International Hazardous and Noxious Substances Fund established pursuant to the HNS Convention.

(7) In this part State Party shall mean a state which has acceded to the HNS Convention.

(8) HNS cargo in bulk shall mean any hazardous and noxious substance mentioned in subsection 1(i)-(iii) and (v)-(viii).

**(9)** HNS cargo in packaged form shall mean any hazardous and noxious substance mentioned in subsection 1(iv).

- 213.-(1)** The owner shall not be liable if he proves that the damage
- 1) resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character,
  - 2) was wholly caused by an act or omission done with intent to cause damage by a third party,
  - 3) was wholly caused by the negligence or other wrongful act of any public authority for the maintenance of lights or other navigational aids, or
  - 4) resulted wholly from the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped when the failure either
    - a) has caused the damage, wholly or partly, or
    - b) has led the owner not to obtain insurance in accordance with section 219, provided that neither the owner nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances carried.

**(2)** If the owner proves that the damage resulted from an intentional act by the person who suffered the damage or from the negligence of that person, the owner may be exonerated wholly or partially from his liability.

**214.-(1)** No claim for compensation according to section 211 for HNS damage shall be made otherwise than in accordance with this part.

- (2)** No claim for HNS damage may be made against
- 1) crewmembers, persons engaged for serving the owner or other persons for whom they vouch,
  - 2) the pilot or any other person, who performs services for the ship,
  - 3) the ship's owner or manager, where this is not the owner of the ship, any charterer, shipper, consignor, owner or consignee of the cargo,
  - 4) any person performing salvage operations with the consent of the owner or master or on the instructions of a competent public authority,
  - 5) any person taking preventive measures to avoid or limit HNS damage, or
  - 6) employees or others for whom the persons mentioned in paras. (ii)-(v) vouch,
- unless the damage resulted from their intentional act or gross negligence.

**(3)** Notwithstanding the regulation in subsection (2)(iii), liability to pay compensation may be made valid against persons who are guilty of negligence pursuant to section 213(1)(iv) to the extent that the owner is exonerated from liability.

**(4)** There shall be no right of recourse for HNS damage against any person mentioned in subsection (2)(i), (ii), (iv), (v) or (vi) unless the damage resulted from such person's intentional act or gross negligence and with the knowledge that such damage would probably result. Regarding recourse in general, ordinary legal rules shall apply.

**215.-(1)** The owner shall be entitled to limit his liability under section 211 if the damage is caused by HNS cargo in bulk to 10 million SDR for a ship with a tonnage of no more than 2,000 units of tonnage. For a ship with a tonnage in excess thereof, this amount shall be raised by 1,500 SDR for

each unit of tonnage from 2,001 to 50,000 units of tonnage and by an additional 360 SDR for each unit of tonnage exceeding 50,000 units of tonnage. The aggregate amount of compensation shall not, in any event, exceed 100 million SDR, cf. however, subsection 4. The owner shall have unlimited liability for interest and legal expenses.

(2) The owner shall be entitled to limit the responsibility pursuant to section 211 to 11.5 million SDR for a ship whose tonnage does not exceed 2,000 tonnage entities if the damage is caused by packaged HNS cargo or where the damage is caused by both HNS cargo in bulk and packaged HNS cargo or where it is not possible to establish which HNS cargo has caused the damage. For a ship with a greater tonnage, this amount shall be increased by 1,725 SDR for every tonnage entity from 2,001 to 50,000 tonnage entities and by an additional 414 SDR for every tonnage entity above 50,000 tonnage entities. The total compensation amount shall in no case exceed 115 million SDR, cf. however subsection 4. As regards interest and costs, the owner shall be liable without limitation.

(3) The limits of liability mentioned shall apply for all liability in respect of any one incident or in respect of a number of occurrences with the same origin.

(4) Liability may not be limited if the HNS damage resulted from the intentional act or gross negligence of the owner and with the knowledge that such damage would probably result.

(5) The Minister for Business and Growth may change the limits of liability in subsections 1 and 2 in accordance with decisions taken pursuant to article 47 of the HNS Convention.

**216.-(1)** If HNS damage has resulted from an incident involving two or more ships, each of which is carrying HNS substances, each owner shall be liable for the damage under the regulations in sections 211-213. The owners shall be jointly and severally liable for all such damage which is not reasonably separable.

(2) Owners shall be entitled to the limits of liability applicable to each of them under section 215.

(3) Regarding recourse between the owners in general, ordinary legal rules shall apply.

**217.-(1)** If the owner wishes to limit his liability in accordance with section 215, the owner may constitute a limitation fund with a court or other competent authority with which the action for compensation according to section 211 is brought or may be brought. In Denmark this shall take place by the Copenhagen Maritime and Commercial Court.

(2) The fund shall be distributed proportionally between all claims arising from the same incident or series of occurrences having the same origin. When distributing the fund, claims in respect of death or personal injury shall have priority over other claims. This priority shall not apply to the part of the aggregate of such claims exceeding two-thirds of the total amount of compensation, cf. section 215. Section 176(3) and (4) shall apply correspondingly.

(3) Claims in respect of expenses reasonably incurred or sacrifices reasonably made by the owner voluntarily to prevent or minimise HNS damage shall rank equally with other claims in the distribution of the fund.

(4) The more detailed regulations on the constitution and distribution, etc. of the fund appear in part 12.

(5) If, in accordance with the HNS Convention, the owner has constituted a limitation fund in a foreign State Party, this shall have the same effect for the right of the owner to limitation of liability as constitution of a fund with the Copenhagen Maritime and Commercial Court.

**218.-(1)** If the owner is entitled to limit his liability under section 215, and if the owner has constituted a fund in accordance with section 217(1), the ship may not be arrested or seized, and no person may exercise any other rights against the ship or any other property belonging to the owner for claims against the fund. If the ship or any other property belonging to the owner has been arrested for such a claim, or if the owner has furnished security to avoid arrest, the arrest shall be lifted and the security released.

(2) The provision in section 1 shall apply correspondingly when the owner in accordance with the HNS Convention has constituted a limitation fund in a foreign State Party, provided the claimant has access to the court or other authority administering the fund and the fund is actually available in respect of his claim.

**219.-(1)** The owner of a Danish ship carrying HNS substances as cargo shall have approved insurance or other guarantee to cover the liability mentioned in section 211 and within the limit of liability stated in section 215. A certificate attesting that such insurance or guarantee is in force shall be issued. The ship may not be used without a valid certificate.

(2) The provision in subsection (1) shall apply correspondingly to ships which are not domiciled in the Realm and which enter or leave a Danish port or other place of loading or discharge in Denmark or on the Danish continental shelf provided such ships are carrying HNS substances. Ships registered in a State Party shall have the certificate stipulated in the Convention which states that the insurance or security is in force.

(3) With the exceptions consequent upon section 228, the provisions of subsections 1 and 2 shall also apply to ships owned by the Danish state or another state, as such ships, instead of being furnished with the insurance or guarantee mentioned above, may be furnished with a certificate issued by the appropriate authority stating that the ship is owned by the state and that the ship's liability is covered within the limits prescribed by section 215.

(4) The Minister for Business and Growth, in accordance with the HNS Convention, shall lay down more detailed regulations on insurance and guarantees, including on the requirements to be met by the insurance contract or the guarantee in order to be approved as well as on the certificate, its form, content, issue and validity. The Minister for Business and Growth may leave the issue of certificates to others, including private persons.

(5) The Minister for Business and Growth may issue certificates for ships, the owners of which are registered in Denmark, but bareboat registered in the register of a foreign country.

(6) The Minister for Business and Growth may lay down more detailed regulations on the use of electronic registers in connection with the certificates referred to in this provision.

(7) The Minister for Business and Growth may lay down more detailed regulations on fees for issuing certificates.

**220.-(1)** If a ship is not furnished with the insurance or guarantee or the certificate required by section 219, the Danish Maritime Authority or other authorities duly authorised by the Minister for Business and Growth may refuse the ship access to, or refuse exit from a Danish port or other place of loading and discharge in Denmark or on the Danish continental shelf or order that the ship be unloaded or towed.

**221.-(1)** Any claim for compensation for HNS damage may be brought directly against the insurer, including the person providing a guarantee for the owner's liability to pay compensation. The insurer may avail himself of the provisions on limits of liability under section 215, even in the event the owner is not entitled to limitation of liability. The insurer may further avail himself of the provisions on exemption from liability which the owner himself would have been entitled to invoke. The insurer may not, however, avail himself of defences against claimants which the insurer would be entitled to invoke against the owner except for the defence that the damage resulted from the wilful misconduct of the owner himself.

(2) The insurer may constitute a limitation fund pursuant to section 217 with the same legal effect as if it had been constituted by the owner himself. Such a fund may be constituted notwithstanding that the owner has no right to limit liability, but in such circumstances the constitution of the fund shall not limit the rights of the claimant against the owner.

**222.-(1)** Where the claimant has been unable to obtain full compensation under sections 211-217 and 221, such person shall be entitled to compensation according to the regulations on compensation from the HNS Fund in the HNS Convention. The regulations on the HNS Fund in chapter III of the HNS Convention and annex II shall apply in the Realm.

(2) The provisions of section 214 restricting access to recourse against the persons mentioned shall apply correspondingly to claims for recourse against the HNS Fund.

(3) If the aggregate amount of compensation mentioned in article 14(15) of the HNS Convention is raised according to the procedure of article 47 of the Convention, the Minister for Business and Growth may lay down rules on the new aggregate amount of compensation.

**223.-(1)** Anyone who annually receives more than 20,000 tons HNS substances carried by ship as cargo shall pay contributions to the HNS Fund according to the regulations of articles 16-20 of the HNS Convention. However, contributions for liquefied natural gas of light hydrocarbons with methane as the main constituent (LNG) shall be paid by the receiver unless it is agreed and the relevant authority has been informed that the person who immediately prior to the discharge held title to the substance shall be obliged to pay contribution, notwithstanding the quantity of LNG. If the title holder does not pay the contributions in full or partly, the receiver shall pay these. The obligation to pay contributions for anyone receiving heavy oil covered by section 191(4) shall however take effect for these substances when such person has received more than 150,000 tons annually.

(2) The receiver shall mean the person who physically receives contributing cargo in Danish ports or terminals. If the person who physically receives the cargo acts as an agent for another who is subject to the jurisdiction of any State Party, then the principal shall be deemed to be the receiver if the agent discloses the principal to the HNS Fund.

(3) Cargo in transit which is transferred directly, or through a port or place of discharge, from one ship to another, either wholly or in part, in the course of the carriage from the port or terminal of original loading to the final destination shall not be considered as contributing cargo. Such cargo shall be considered as received at the final destination.

(4) Recipients in Denmark shall be obliged to submit data on the quantity received. If the enterprise is operated in company form, it shall be the responsibility of the members of the board of management, or those who may rank alongside the board of management, to ensure that the obligation to submit is fulfilled. If the obligation to submit communication is not fulfilled by the due date, the Minister for Business and Growth may, on the basis of an estimate, determine and report the assumed imported quantities.

(5) The Minister for Business and Growth shall appoint the public authority which may carry out direct supervision of the data from the undertakings on HNS imports. Regarding inspection and supervision of HNS substances, this authority shall have the right to, without a court order, carry out supervision of imports of contributing HNS substances received by Danish undertakings, including access to undertakings importing these substances, and to the financial statements of the undertakings, records or the like documenting the import.

**224.-(1)** Actions against the owner or the owner's insurer regarding liability for HNS damage may only be brought before a Danish court provided

- 1) the HNS damage was caused in Danish territory, including territorial sea, or if damage due to contamination of the environment, cf. section 211(2)(iii), has arisen in the Danish exclusive economic zone or if damage was caused by measures to avert or minimise such damage notwithstanding where such measures have been taken,
- 2) an incident has caused HNS damage exclusively outside the territory, including the territorial sea, of any state and such damage is neither pollution damage of a nature referred to in section 211(2)(iii) nor is due to measures taken to avert or minimise such pollution damage. In this case actions may only be brought before a Danish court if
  - a) the ship is registered in Denmark or, if unregistered, it is entitled to fly the Danish flag,
  - b) the owner has habitual residence or principal place of business in Denmark, or
  - c) a limitation fund has been constituted in Denmark pursuant to section 217.

(2) When a Danish court is competent under subsection 1(i), it may judge any claim for liability for the HNS damage as a result of an incident or a series of occurrences having the same origin, notwithstanding where such damage arose.

(3) Actions for HNS damage according to the regulations of this part may not otherwise be brought in Denmark.



(4) Claims in respect of distribution and payments by a limitation fund mentioned in section 217 may not be brought before Danish courts if the fund has been constituted in another State Party.

(5) When a Danish court is competent under subsection 1, the action shall be brought before the Copenhagen Maritime and Commercial Court.

**225.-(1)** Actions for compensation against the HNS Fund may only be brought before a Danish court in the circumstances mentioned in section 224(1) if actions in respect of the same HNS damage against the owner or the insurer have not already been brought in another State Party.

(2) Notwithstanding the provision in subsection 1, actions against the HNS Fund may be brought before a Danish court in the circumstances mentioned in section 224(1)(i), provided the ship carrying the HNS substances which caused the damage has not been identified, if actions in respect of the same HNS damage against the HNS Fund have not already been brought in another State Party.

(3) Actions against the HNS Fund may not otherwise be brought in Denmark.

(4) Actions against the HNS Fund shall in Denmark be brought before the Copenhagen Maritime and Commercial Court.

(5) The HNS Fund shall have the right to be, or be brought in as, a party to any legal actions for compensation against the owner or the insurer according to this part.

(6) When an action has been brought against the owner or the owner's insurer, each party shall be entitled to notify the HNS Fund of the proceedings. The judgement shall become binding on the Fund, in the sense that any facts and findings in the judgment may not be disputed by the Fund when the judgement is enforceable, if notice has been made promptly so that the Fund could effectively represent its interests.

**226.-(1)** Enforceable judgement against the owner of the ship or his insurer issued in a State Party shall be binding and may be enforced in the Realm when the judgement is issued by a court which is competent under article 38 of the HNS Convention.

(2) The same shall apply to judgements issued against the HNS Fund in a State Party by a court competent under article 39(i), (ii) and (iv) of the HNS Convention.

**227.-(1)** The provisions in this part shall apply correspondingly to

- 1) HNS damage caused in the Realm, including territorial sea, or in another State Party,
- 2) damage caused by contamination of the environment, cf. section 211(2)(iii), in the Danish exclusive economic zone or in the exclusive economic zone or any other area stipulated in accordance with international law in another State Party,
- 3) HNS damage other than damage due to contamination of the environment, cf. section 211(2)(iii), caused outside a state's territory, including territorial sea, if such damage was caused by goods carried as cargo in a ship registered in the Realm or in another State Party, or in case of an unregistered ship, a ship entitled to fly the flag of a State Party, and
- 4) measures taken to avert or minimise HNS damage as mentioned in paras. (i)-(iii), notwithstanding where said measures have been taken.

**228.-(1)** This part shall not apply to warships or any other ship owned or operated by a state which at the time the HNS damage occurs is used exclusively for state, non-commercial purposes. However, sections 211-215 shall apply in cases where, in the Realm or in the Danish exclusive economic zone, HNS damage is caused by HNS substances as mentioned in section 212(1) or where measures are undertaken to avert or limit such damage notwithstanding where said measures were undertaken.

**(2)** Furthermore, the provisions mentioned in subsection 1 shall apply to Danish state-owned ships if HNS damage other than damage caused by contamination of the environment, cf. section 211(2)(iii), exclusively arose outside the territory, including the territorial sea, of any state, or if preventive measures are undertaken to avert or minimise HNS damage in such area notwithstanding where said measures were undertaken.

**229.-(1)** The provisions of this part shall not apply if this would violate Denmark's convention obligations to states which are not State Parties to the HNS Convention."

**9.** *Part 13* shall be as follows:

"Part 13  
*Regarding carriage of goods wholly or partly by sea*  
*Definitions*

**251.** In this part

- 1) "Contract of carriage" means a contract in which a carrier, against the payment of freight, undertakes to carry goods from one place to another. The contract shall provide for carriage by sea and may provide for carriage by other modes of transport in addition to the sea carriage.
- 2) "Volume contract" means a contract of carriage that provides for the carriage of a specified quantity of goods in a series of shipments during an agreed period of time. The specification of the quantity may include a minimum, a maximum or a certain range.
- 3) "Liner transportation" means a transportation service that is offered to the public through publication or similar means and includes transportation by ships operating on a regular schedule between specified ports in accordance with publicly available timetables of sailing dates.
- 4) "Non-liner transportation" means any transportation that is not covered by para (iii).
- 5) "Carrier" means a person that enters into a contract of carriage with a shipper.
- 6) "Performing party" means a person other than the carrier that performs or undertakes to perform any of the carrier's obligations under a contract of carriage with respect to the receipt, loading, handling, stowage, carriage or storage, care, unloading or delivery of the goods, to the extent that such person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control. "Performing party" does not include any person that is retained, directly or indirectly, by a shipper, by a documentary shipper, by the controlling party or by the consignee instead of by the carrier.
- 7) "Maritime performing party" means a performing party to the extent that it performs or undertakes to perform any of the carrier's obligations during the period between the arrival of the goods at the port of loading of a ship and their departure from the port of discharge of a ship.

An inland carrier is a maritime performing party only if it performs or undertakes to perform its services exclusively within a port area.

- 8) “Shipper” means a person that enters into a contract of carriage with a carrier.
- 9) “Documentary shipper” means a person that, without being the persons that has entered into a contract of carriage with a carrier, that accepts to be named as “shipper” in the transport document or electronic transport record.
- 10) “Holder” means:
  - (a) A person that is in possession of a negotiable transport document if the document is an order document and the person is identified in it as the shipper or the consignee, or the document is duly endorsed to the holder;
  - (b) a person that is in possession of a negotiable transport that is an order document, is a blank endorsed order document or bearer document; or
  - (c) a person to which a negotiable electronic transport record has been issued or transferred in accordance with section 298(1).
- 11) “Consignee” means a person entitled to delivery of the goods under a contract of carriage or a transport document or electronic transport record.
- 12) “Right of control” of the goods means the right under the contract of carriage to give the carrier instructions in respect of the goods in accordance with sections 318-320d.
- 13) “Controlling party” means the person that pursuant to section 319 is entitled to exercise the right of control.
- 14) “Transport document” means a document issued under a contract of carriage by the carrier that:
  - (a) evidences or contains a contract of carriage; and
  - (b) evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage.
- 15) “Negotiable transport document” means a transport document that indicates, by wording such as “to order” or “negotiable” or other appropriate wording recognized as having the same effect by the law applicable to the document, that the goods have been consigned to the order of the shipper, to the order of the consignee, or to bearer, and is not explicitly stated as being “non-negotiable” or “not negotiable”.
- 16) “Non-negotiable transport document” means a transport document that is not a negotiable transport document.
- 17) “Electronic communication” means information generated, sent, received or stored by electronic, optical, digital or similar means with the result that the information communicated is accessible so as to be usable for subsequent reference.
- 18) “Electronic transport record” means information in one or more messages issued by electronic communication under a contract of carriage by a carrier, including information logically associated with the electronic transport record by attachments or otherwise linked to the electronic transport record contemporaneously with or subsequent to its issue by the carrier, so as to become part of the electronic transport record, that:
  - (a) evidences or contains a contract of carriage; and
  - (b) evidences the carrier’s or a performing party’s receipt of goods under a contract of carriage.
- 19) “Negotiable electronic transport record” means an electronic transport record that indicates, by wording such as “to order”, or “negotiable”, or other appropriate wording recognized as having the same effect by the law applicable to the record, that the goods have been consigned to the order of the shipper or to the order of the consignee, and is not explicitly stated as being “non-negotiable” or “not negotiable”; and the use of which meets the requirements of section 299(1).

- 20) “Non-negotiable electronic transport record” means an electronic transport record that is not a negotiable electronic transport record.
- 21) The “issuance” of a negotiable electronic transport record means the issuance of the record in accordance with procedures that ensure that the record is subject to exclusive control from its creation until it ceases to have any effect or validity.
- 22) The “transfer” of a negotiable electronic transport record means the transfer of exclusive control over the record.
- 23) “Contract particulars” means any information relating to the contract of carriage or to the goods (including terms, notations, signatures and endorsements) that is in a transport document or an electronic transport record.
- 24) “Goods” means the wares, merchandise, and articles of every kind whatsoever that a carrier undertakes to carry under a contract of carriage and includes the packing and any equipment and container not supplied by or on behalf of the carrier.
- 25) “Ship” means any vessel used to carry goods by sea.
- 26) “Container” means any type of container, transportable tank or flat, swapbody, or any similar unit load used to consolidate goods, and any equipment ancillary to such unit load.
- 27) “Vehicle” means a road or railroad cargo vehicle.
- 28) “Freight” means the remuneration payable to the carrier for the carriage of goods under a contract of carriage.
- 29) “Domicile” means a place where a company or other legal person or association of natural or legal persons has its statutory seat or place of incorporation or central registered office, whichever is applicable, central administration or principal place of business, and the habitual residence of a natural person.
- 30) “Competent court” means a court in a Contracting State that, according to the rules on the internal allocation of jurisdiction among the courts of that State, may exercise jurisdiction over the dispute.
- 31) The "Convention" shall mean the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea of 11 December 2008.
- 32) "Contracting State" shall mean a State bound by the Convention.
- 33) A "single document" means a non-negotiable transport document that indicates that it must be surrendered in order to obtain delivery of the goods.

*Scope of application*

**252.-(1)** The provisions of this part shall apply to:

- 1) Contracts of sea carriage between Danish ports.
- 2) Contracts of carriage in which the place of receipt and the place of delivery are in different States, and the port of loading of a sea carriage and the port of discharge of the same sea carriage are in different States, if, according to the contract of carriage, any one of the following places is located in a Contracting State:
  - (a) The place of receipt;
  - (b) The port of loading;
  - (c) The place of delivery; or
  - (d) The port of discharge.

**(253)-1** The provisions of this part shall not apply to charter parties and other contracts for the use of a ship in liner transportation or of any space thereon.

**(2)** The provisions of this part shall not apply to contracts of carriage in non-liner transportation, except when a transport document or an electronic transport record is issued or there is no charter party or other contract between the parties for the use of a ship or of any space thereon.

**(3)** This part shall not apply to contracts for the carriage of passengers and their luggage.

**(254)-1** Notwithstanding section 253, the provisions of this part shall apply as between the carrier and the consignee, controlling party or holder that is not an original party to the charter party or other contract of carriage excluded from the application of this part.

### *Derogation*

**(255)-1** Unless otherwise provided in this part, any term in a contract of carriage is void to the extent that it:

- 1) directly or indirectly excludes or limits the obligations of the carrier or a maritime performing party under this part;
- 2) directly or indirectly excludes or limits the liability of the carrier or a maritime performing party for breach of an obligation under this part;
- 3) assigns a benefit of insurance of the goods in favour of the carrier or a person referred to in section 275;
- 4) directly or indirectly excludes, limits or increases the obligations under this part of the shipper, consignee, controlling party, holder or documentary shipper; or
- 5) directly or indirectly excludes, limits or increases the liability of the shipper, consignee, controlling party, holder or documentary shipper for breach of any of its obligations under this part.

**(2)** The provisions of subsection 1 shall not apply to sections 271, 286, 295, 296, 317 and 320g.

**(3)** If the contract of carriage is subject to the Convention legislation, cf. section 301, the transport document shall contain a statement on this and that any provision which derogates from such provisions shall be void to the extent that it directly or indirectly excludes, limits or increases the obligations of the shipper, consignee, controlling party, holder or maritime performing party for breach of an obligation under this part.

**(256)-1** Notwithstanding section 255, as between the carrier and the shipper, a volume contract to which the provisions of this part apply may provide for greater or lesser rights, obligations and liabilities than those imposed by this part.

**(2)** A derogation pursuant to subsection 1 is binding only when:

- 1) The volume contract contains a prominent statement that it derogates from the provisions of this part;
- 2) The volume contract is individually negotiated or prominently specifies the sections of the volume contract containing the derogations;
- 3) The shipper is given an opportunity and notice of the opportunity to conclude a contract of carriage on terms and conditions that comply with the provisions of this part without any derogation under this section; and
- 4) The derogation is neither incorporated by reference from another document nor included in a contract of adhesion that is not subject to negotiation.

(3) A carrier's public schedule of prices and services, transport document, electronic transport record or similar document is not a volume contract pursuant to subsection 1, but a volume contract may incorporate such documents by reference as terms of the contract.

(4) The provisions of subsection 1 does not apply to rights and obligations provided in section 266(i) and (ii), sections 289 and 292 or to liability arising from the breach thereof, nor does it apply to any liability arising from an act or omission referred to in section 284.

(5) The terms of the volume contract that derogate from this part, if the volume contract satisfies the requirements of subsection 2, apply between the carrier and any person other than the shipper provided that:

- 1) Such person received information that prominently states that the volume contract derogates from this part and gave its express consent to be bound by such derogations; and
- 2) Such consent is not solely set forth in a carrier's public schedule of prices and services, transport document or electronic transport record.

(6) The party claiming the benefit of the derogation bears the burden of proof that the conditions for derogation have been fulfilled.

(7) A derogation as mentioned in subsection 2 and information as mentioned in subsection 5 shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**257.-(1)** Notwithstanding sections 255 and 256, the contract of carriage may exclude or limit the obligations or the liability of both the carrier and a maritime performing party if:

- 1) The goods are live animals, but any such exclusion or limitation will not be effective if the claimant proves that the loss of or damage to the goods, or delay in delivery, resulted from an act or omission
  - a) committed by the carrier or by a person referred to in section 275, done with the intent to cause such loss of or damage to the goods or such loss due to delay; or
  - b) done recklessly and with knowledge that such loss or damage or such loss due to delay would probably result; or
- 2) The character or condition of the goods or the circumstances and terms and conditions under which the carriage is to be performed are such as reasonably to justify a special agreement, provided that such contract of carriage is not related to ordinary commercial shipments made in the ordinary course of trade and that no negotiable transport document or negotiable electronic transport record is issued for the carriage of the goods.

#### *Connection with international conventions*

**258.-(1)** The provisions of this part shall not affect the application of international conventions that regulate the liability of the carrier for loss of or damage to the goods if the relevant convention regulates:

- 1) The carriage of goods by air to the extent that such convention according to its provisions applies to any part of the contract of carriage;
- 2) the carriage of goods by road to the extent that such convention according to its provisions applies to the carriage of goods that remain loaded on a road cargo vehicle carried on board a ship;

- 3) the carriage of goods by rail to the extent that such convention according to its provisions applies to carriage of goods by sea as a supplement to the carriage by rail; or
- 4) the carriage of goods by inland waterways to the extent that such convention according to its provisions applies to a carriage of goods without trans-shipment both by inland waterways and sea.

**259.-(1)** The provisions of this part shall not affect the application of any international convention or national law regulating the global limitation of liability of vessel owners.

**260.-(1)** The provisions of this part shall not affect the application of terms in the contract of carriage or provisions of national law regarding the adjustment of general average.

**(2)** The provisions of sections 257, 267, 273-278 and 280-284 shall also apply to the right of the consignee to refuse to pay contribution in general average and to the duty of the carrier to refund contributions in general average or reward for salvage which the consignee has paid.

**261.-(1)** No liability arises under this part for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage under the below conventions, as amended:

- 1) The Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocols of 16 November 1982 and 12 February 2004 (the Paris Convention);
- 2) the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 as amended by the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 21 September 1988 and as amended by the Protocol to Amend the 1963 Vienna Convention on Civil Liability for Nuclear Damage of 12 September 1997 (the Vienna Convention); and
- 3) the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997 (the Supplementary Compensation Convention) and any future convention in respect of the liability of the operator of a nuclear installation for damage caused by a nuclear incident.

**(2)** No liability arises under this part for damage caused by a nuclear incident if the operator of a nuclear installation is liable for such damage under national law applicable to the liability for such damage, provided that such law is in all respects as favourable to persons that may suffer damage as either the Paris or Vienna Conventions or the Convention on Supplementary Compensation for Nuclear Damage.

#### *Obligations of the carrier*

**262.-(1)** The carrier shall, subject to the provisions of this part and in accordance with the terms of the contract of carriage, carry the goods to the place of destination and deliver them to the consignee.

**263.-(1)** The carrier shall during the period of its responsibility as defined in sections 273 and 285 properly and carefully receive, load, handle, stow, carry, keep, care for, unload and deliver the goods.

**(2)** Notwithstanding subsection 1, and without prejudice to sections 262, 264, 266-269, 273-285 and 287-294, the carrier and the shipper may agree that the loading, handling, stowing or

unloading of the goods is to be performed by the shipper, the documentary shipper or the consignee. Such an agreement shall be referred to in the contract particulars.

**264.-(1)** The carrier shall respond to requests from the shipper to provide information and instructions required for the proper handling and carriage of the goods if the information is in the carrier's possession or the instructions are within the carrier's reasonable ability to provide and they are not otherwise reasonably available to the shipper.

**265.-(1)** The carrier shall make reasonable efforts to investigate whether the goods are packed so that they cannot be damaged or cause injury or damage to persons or property. If the goods are delivered in a container or on a vehicle, the carrier shall not be obliged to inspect this internally unless he has reason to believe that it is inadequately packed.

**(2)** Any inadequacies discovered by the carrier shall be reported by the carrier to the controlling party. The carrier shall not be obliged to carry the goods unless, using reasonable means, he can make them suitable for carriage.

**266.-(1)** The carrier is bound before, at the beginning of, and during the voyage by sea to exercise due diligence to:

- 1) Make and keep the ship seaworthy;
- 2) Properly crew, equip and supply the ship and keep the ship so crewed, equipped and supplied throughout the voyage; and
- 3) Make and keep the holds and all other parts of the ship in which the goods are carried, and any containers supplied by the carrier in or upon which the goods are carried, fit and safe for their reception, carriage and preservation.

**267.-(1)** Goods may be carried on the deck of a ship only if:

- 1) Such carriage is required by law;
- 2) They are carried in or on containers or vehicles that are fit for deck carriage, and the decks are specially fitted to carry such containers or vehicles; or
- 3) The carriage on deck is in accordance with the contract of carriage, or the customs, usages or practices of the trade in question.

**(2)** The provisions of this part relating to the liability of the carrier apply to the loss of, damage to or delay in the delivery of goods carried on deck pursuant to subsection 1, but the carrier is not liable for loss of or damage to such goods, or delay in their delivery, caused by the special risks involved in their carriage on deck when the goods are carried in accordance with subsection 1(i) or (iii).

**(3)** If the goods have been carried on deck in cases other than those permitted pursuant to subsection 1, the carrier is liable for loss of or damage to the goods or delay in their delivery that is exclusively caused by their carriage on deck, and is not entitled to the defences provided for in section 274.

**(4)** The carrier is not entitled to invoke subsection 1(iii) against a third party that has acquired a negotiable transport document or a negotiable electronic transport record in good faith, unless the contract particulars state that the goods may be carried on deck.

**(5)** If the carrier and shipper expressly agreed that the goods would be carried under deck, the carrier is not entitled to the benefit of the limitation of liability for any loss of, damage to or delay in the delivery of the goods to the extent that such loss, damage, or delay resulted from their carriage on deck.



**268.-(1)** Notwithstanding sections 262 and 263, the carrier or a performing party may decline to receive or to load, and may take such other measures as are reasonable, including unloading, destroying, or rendering goods harmless, if the goods are, or reasonably appear likely to become during the carrier's period of responsibility, an actual danger to persons, property or the environment.

**269.-(1)** Notwithstanding sections 262, 263 and 266, the carrier or a performing party may sacrifice goods at sea when the sacrifice is reasonably made for the common safety or for the purpose of preserving from peril human life or other property involved in the common adventure.

**270.-(1)** If the goods are lost or damaged or delayed, the carrier shall notify the person appointed by the shipper as soon as possible. If such notification cannot be given, the controlling party, or in the event that this person is not known, the shipper shall be notified. The same shall apply if the carrier is not able to complete the carriage as expected.

**271.-(1)** If it becomes necessary to take special measures to preserve or carry the goods or in any other way safeguard the interests of the shipper, the carrier shall obtain instructions from said shipper.

**(2)** If time constraints or other conditions do not allow for such instructions to be obtained, or if these are not received in time, the carrier may make the necessary commitments on behalf of the shipper and represent said shipper in matters regarding the goods. Commitments which are not necessary shall, however, be binding on the shipper if the third party acted in good faith.

**(3)** Notification of what has occurred shall be given pursuant to section 270.

**(4)** The cargo owner shall be liable for the commitments made by the carrier and for the disbursements the carrier has incurred in connection with the goods, cf. subsections 1-3.

#### *Liability and limitation of liability of the carrier*

**272.-(1)** Any provision of this part that may provide a defence for, or limit the liability of, the carrier applies in any judicial or arbitral proceeding that is instituted in respect of loss of, damage to, or delay in delivery of goods covered by a contract of carriage or for the breach of any other obligation under this part against:

- 1) The carrier or a maritime performing party;
- 2) The master, crew or any other person that performs services on board the ship; or
- 3) Employees of the carrier or a maritime performing party.

**(2)** Any provision of this part that may provide a defence for the shipper or the documentary shipper applies in any judicial or arbitral proceeding that is instituted against the shipper, the documentary shipper, or their subcontractors, agents or employees.

**(3)** Subsections 1 and 2 shall apply irrespective of whether the case concerns liability founded in contract or not.

**273.-(1)** The period of responsibility of the carrier for the goods begins when the carrier or a performing party receives the goods for carriage and ends when the goods are delivered.

**(2)** If the law or regulations of

- 1) the place of receipt require the goods to be handed over to an authority or other third party from which the carrier may collect them, the period of responsibility of the carrier begins when the carrier collects the goods from the authority or other third party; or

- 2) of the place of delivery require the carrier to hand over the goods to an authority or other third party from which the consignee may collect them, the period of responsibility of the carrier ends when the carrier hands the goods over to the authority or other third party.

(3) For the purpose of determining the carrier's period of responsibility, the parties may agree on the time and location of receipt and delivery of the goods. However, such a provision in a contract of carriage is void to the extent that it provides that:

- 1) The time of receipt of the goods is subsequent to the beginning of their initial loading under the contract of carriage; or
- 2) The time of delivery of the goods is prior to the completion of their final unloading under the contract of carriage.

**274.-(1)** The carrier is liable for loss of or damage to the goods, as well as for delay in delivery, if the claimant proves that the loss, damage, or delay, or the event or circumstance that caused or contributed to it took place during the period of the carrier's responsibility as defined in section 273.

(2) The carrier is relieved of all or part of its liability pursuant to subsection 1 if it proves that the cause or one of the causes of the loss, damage, or delay is not attributable to its fault or to the fault of any person referred to in section 275.

(3) The carrier is also relieved of all or part of its liability pursuant to subsection 1 if, alternatively to proving the absence of fault as provided in subsection 2, it proves that one or more of the following events or circumstances caused or contributed to the loss, damage, or delay:

- 1) Act of God;
- 2) Perils, dangers, and accidents of the sea or other navigable waters;
- 3) War, hostilities, armed conflict, piracy, terrorism, riots, and civil commotions;
- 4) Quarantine restrictions; interference by or impediments created by governments, public authorities, rulers, or people including detention, arrest, or seizure not attributable to the carrier or any person referred to in section 275;
- 5) Strikes, lockouts, stoppages, or restraints of labour;
- 6) Fire on the ship;
- 7) Latent defects not discoverable by due diligence;
- 8) Act or omission of the shipper, the documentary shipper, the controlling party, or any other person for whose acts the shipper or the documentary shipper is liable pursuant to sections 293 and 294;
- 9) Loading, handling, stowing, or unloading of the goods performed pursuant to an agreement in accordance with section 263(2), unless the carrier or a performing party performs such activity on behalf of the shipper, the documentary shipper or the consignee;
- 10) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- 11) Insufficiency or defective condition of packing or marking not performed by or on behalf of the carrier;
- 12) Saving or attempting to save life at sea;
- 13) Reasonable measures to save or attempt to save property at sea;
- 14) Reasonable measures to avoid or attempt to avoid damage to the environment; or
- 15) Acts of the carrier in pursuance of the powers conferred by sections 268 and 269.

(4) Notwithstanding subsection 3, the carrier is liable for all or part of the loss, damage, or delay:

- 1) If the claimant proves that the fault of the carrier or of a person referred to in section 275 caused or contributed to the event or circumstance on which the carrier relies; or

- 2) If the claimant proves that an event or circumstance not listed in subsection 3 contributed to the loss, damage, or delay, and the carrier cannot prove that this event or circumstance is not attributable to its fault or to the fault of any person referred to in section 275.

(5) The carrier is also liable, notwithstanding subsection 3, for all or part of the loss, damage, or delay if:

- 1) The claimant proves that the loss, damage, or delay was or was probably caused by or contributed to by
  - a) the unseaworthiness of the ship;
  - b) the improper crewing, equipping, and supplying of the ship; or
  - c) the fact that the holds or other parts of the ship in which the goods are carried, or any containers supplied by the carrier in or upon which the goods are carried, were not fit and safe for reception, carriage, and preservation of the goods; and
- 2) The carrier is unable to prove either that:
  - a) none of the events or circumstances referred to in subsection 5(i) caused the loss, damage, or delay; or
  - b) it complied with its obligation to exercise due diligence pursuant to section 266.

(6) When the carrier is relieved of part of its liability pursuant to this provision, the carrier is liable only for that part of the loss, damage or delay that is attributable to the event or circumstance for which it is liable.

**275.-(1)** The carrier is liable for the breach of its obligations under this part related to loss, damage or delay caused by the acts or omissions of:

- 1) Any performing party;
- 2) The master or crew of the ship;
- 3) Employees of the carrier or a performing party; or
- 4) Any other person that performs or undertakes to perform any of the carrier's obligations under the contract of carriage, to the extent that the person acts, either directly or indirectly, at the carrier's request or under the carrier's supervision or control.

**276.-(1)** A maritime performing party is subject to the obligations and liabilities imposed on the carrier under this part and is entitled to the carrier's defences and limits of liability as provided for in this part if:

- 1) The maritime performing party received the goods for carriage in a Contracting State, or delivered them in a Contracting State, or performed its activities with respect to the goods in a port in a Contracting State; and
- 2) The occurrence that caused the loss, damage or delay took place: (i) during the period between the arrival of the goods at the port of loading of the ship and their departure from the port of discharge from the ship; (ii) while the maritime performing party had custody of the goods; or (iii) at any other time to the extent that it was participating in the performance of any of the activities contemplated by the contract of carriage.

(2) If the carrier agrees to assume obligations other than those imposed on the carrier under this part, or agrees that the limits of its liability are higher than the limits specified under this part, a maritime performing party is not bound by this agreement unless it expressly agrees to accept such obligations or such higher limits. The consent of the maritime performing party shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**(3)** A maritime performing party is liable for the breach of its obligations under this part caused by the acts or omissions of any person to which it has entrusted the performance of any of the carrier's obligations under the contract of carriage under the conditions set out in subsection 1.

**(4)** Nothing in this part imposes liability on the master or crew of the ship or on an employee of the carrier or of a maritime performing party.

**277.-(1)** If the carrier and one or more maritime performing parties are liable for the loss of, damage to, or delay in delivery of the goods, their liability is joint and several but only up to the limits provided for under this part.

**(2).** Without prejudice to section 284, the aggregate liability of all such persons mentioned in subsection 1 shall not exceed the overall limits of liability under this part.

**278.-(1)** Delay in delivery occurs when the goods are not delivered at the place of destination provided for in the contract of carriage within the time agreed.

**279.-(1)** When pursuant to applicable law a deviation constitutes a breach of the carrier's obligations, such deviation of itself shall not deprive the carrier or a maritime performing party of any defence or limitation of this part, except to the extent provided in section 284.

**280.-(1)** The compensation payable by the carrier for loss of or damage to the goods is calculated by reference to the value of such goods at the place and time of delivery established in accordance with section 308. The compensation payable cannot exceed the limits of liability mentioned in section 282.

**(2)** The value of the goods is fixed according to the commodity exchange price or, if there is no such price, according to their market price or, if there is no commodity exchange price or market price, by reference to the normal value of the goods of the same kind and quality at the place of delivery.

**(3)** The carrier is not liable for payment of any compensation beyond what is provided for in subsections 1-2 except when the carrier and the shipper have agreed to calculate compensation in a different manner within the limits of sections 255-257.

**281.-(1)** The carrier is presumed, in absence of proof to the contrary, to have delivered the goods according to their description in the contract particulars unless notice of loss of or damage to the goods, indicating the general nature of such loss or damage, was given to the carrier or the performing party that delivered the goods before or at the time of the delivery, or, if the loss or damage is not apparent, within seven working days at the place of delivery after the delivery of the goods.

**(2)** Failure to provide the notice referred to in subsection 1 to the carrier or the performing party shall not affect the right to claim compensation for loss of or damage to the goods under this part, nor shall it affect the allocation of the burden of proof set out in section 274.

**(3)** Written notice pursuant to subsection 1 is not required in respect of loss or damage that is ascertained in a joint inspection of the goods by the person to which they have been delivered and the carrier or the maritime performing party against which liability is being asserted.

**(4)** No compensation in respect of delay is payable unless notice of loss due to delay was given to the carrier within twenty-one consecutive days of delivery of the goods.

**(5)** When the notice referred to in this provision is given to the performing party that delivered the goods, it has the same effect as if that notice was given to the carrier, and notice given to the carrier has the same effect as a notice given to a maritime performing party.

(6) In the case of any actual or apprehended loss or damage, the parties to the dispute shall give all reasonable facilities to each other for inspecting and tallying the goods and shall provide access to records and documents relevant to the carriage of the goods.

(7) The notices mentioned in subsections 1, 2 and 4 shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**282.-(1)** Subject to sections 283 and 284(1), the carrier's liability for breaches of its obligations under this part is limited to 875 SDR per package or other shipping unit, or 3 SDR per kilogram of the gross weight of the goods that are the subject of the claim or dispute, whichever amount is the higher, except when the value of the goods has been declared by the shipper and included in the contract particulars, or when a higher amount than the amount of limitation of liability mentioned has been agreed upon between the carrier and the shipper.

(2) When goods are carried in or on a container, pallet or similar article of transport used to consolidate goods, or in or on a vehicle, the packages or shipping units enumerated in the contract particulars as packed in or on such article of transport or vehicle are deemed packages or shipping units. If not so enumerated, the goods in or on such article of transport or vehicle are deemed one shipping unit. In cases where the article of transport itself has been lost or damaged, that article of transport, if not owned or otherwise supplied by the carrier, shall be considered one separate shipping unit.

(3) The contract mentioned in subsection 1 shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**283.-(1)** Subject to section 284(2), compensation for loss of or damage to the goods due to delay shall be calculated in accordance with section 280. Liability for other economic loss due to delay is limited to an amount equivalent to two and one-half times the freight payable on the goods delayed. The total amount payable pursuant to this provision and section 282(1) shall not exceed the limit that would be established pursuant to section 282(1) in respect of the total loss of the goods concerned.

**284.-(1)** Neither the carrier nor any of the persons referred to in section 275 is entitled to the benefit of the limitation of liability as provided in section 282, or as provided in the contract of carriage, if the claimant proves that the loss resulting from the breach of the carrier's obligation under this part was attributable to a personal act or omission of the person claiming a right to limit done with the intent to cause such loss or recklessly and with knowledge that such loss would probably result.

(2) Neither the carrier nor any of the persons mentioned in section 275 is entitled to the benefit of the limitation of liability as provided in section 283 if the claimant proves that the delay in delivery resulted from a personal act or omission of the person claiming a right to limit done with the intent to cause the loss due to delay or recklessly and with knowledge that such loss would probably result.

**285.-(1)** The duty of the carrier to perform the carriage shall not cease if the ship which carries or is to carry the goods is lost or is declared irreparable.

(2) If the ship is prevented from entering the port of discharge and discharging the goods, or if this is not possible without undue delay, the carrier may choose an alternative reasonable port of discharge instead.

(3) When the contract of carriage is terminated because of acts of war, etc., sections 358 and 360 shall apply correspondingly.

(4) If part of the carriage is performed after the contract of carriage is terminated or lapses, or if for some other reason the goods are discharged in a port other than the port agreed, the carrier may demand distance freight pursuant to section 341.

#### *Multimodal transport*

**286.-(1)** When loss of or damage to goods, or an event or circumstance causing a delay in their delivery, occurs during the carrier's period of responsibility but solely before their loading onto the ship or solely after their discharge from the ship, the provisions of this part do not prevail over those provisions of another international instrument that, at the time of such loss, damage or event or circumstance causing delay:

- 1) Pursuant to the provisions of such international instrument would have applied to all or any of the carrier's activities if the shipper had made a separate and direct contract with the carrier in respect of the particular stage of carriage where the loss of, or damage to goods, or an event or circumstance causing delay in their delivery occurred;
- 2) Specifically provide for the carrier's liability, limitation of liability, or time for suit; and
- 3) Cannot be departed from by contract either at all or to the detriment of the shipper under that instrument.

#### *Obligations and liability of the shipper*

**287.-(1)** 1. Unless otherwise agreed in the contract of carriage, the shipper shall deliver the goods ready for carriage. In any event, the shipper shall deliver the goods in such condition that they will withstand the intended carriage, including their loading, handling, stowing, lashing and securing, and unloading, and that they will not cause harm to persons or property.

(2) The shipper shall properly and carefully perform any obligation assumed under an agreement made pursuant to section 263(2).

(3) When a container is packed or a vehicle is loaded by the shipper, the shipper shall properly and carefully stow, lash and secure the contents in or on the container or vehicle, and in such a way that they will not cause harm to persons or property.

**288.-(1)** The shipper shall respond to requests from the carrier to provide information and instructions required for the proper handling and carriage of the goods if the information is in the shipper's possession or the instructions are within the shipper's reasonable ability to provide and they are not otherwise reasonably available to the carrier.

**289.-(1)** The shipper shall provide to the carrier in a timely manner such information, instructions and documents relating to the goods that are not otherwise reasonably available to the carrier, and that are reasonably necessary:

- 1) For the proper handling and carriage of the goods, including precautions to be taken by the carrier or a performing party; and

2) For the carrier to comply with law, regulations or other requirements of public authorities in connection with the intended carriage, provided that the carrier notifies the shipper in a timely manner of the information, instructions and documents it requires.

(2) Nothing in this provision affects any specific obligation to provide certain information, instructions and documents related to the goods pursuant to law, regulations or other requirements of public authorities in connection with the intended carriage.

**290.-(1)** The shipper is liable for loss or damage sustained by the carrier if the carrier proves that such loss or damage was caused by a breach of the shipper's obligations under this part.

(2) Except in respect of loss or damage caused by a breach by the shipper of its obligations pursuant to sections 291 and 292, the shipper is relieved of all or part of its liability if the cause or one of the causes of the loss or damage is not attributable to its fault or to the fault of any person referred to in section 294.

(3) When the shipper is relieved of part of its liability pursuant to this provision, the shipper is liable only for that part of the loss or damage that is attributable to its fault or to the fault of any person referred to in section 294.

**291.-(1)** The shipper shall provide to the carrier, in a timely manner, accurate information required for the compilation of the contract particulars and the issuance of the transport documents or electronic transport records, including the particulars referred to in section 301(1); as well as:

- 1) the name of the party to be identified as the shipper in the contract particulars;
- 2) the name of the consignee, if any; and
- 3) the name of the person to whose order the transport document or electronic transport record is to be issued, if any.

(2) The shipper is deemed to have guaranteed the accuracy at the time of receipt by the carrier of the information that is provided according to subsection 1. The shipper shall indemnify the carrier against loss or damage resulting from the inaccuracy of such information.

**292.-(1)** When goods by their nature or character are, or reasonably appear likely to become, a danger to persons, property or the environment, the shipper shall inform the carrier of the dangerous nature or character of the goods in a timely manner before they are delivered to the carrier or a performing party. If the shipper fails to do so and the carrier or performing party does not otherwise have knowledge of their dangerous nature or character, the shipper is liable to the carrier for loss or damage resulting from such failure to inform.

(2) The shipper shall mark dangerous goods as mentioned in subsection 1 in accordance with any law, regulations or other requirements of public authorities that apply during any stage of the intended carriage of the goods. If the shipper fails to do so, it is liable to the carrier for loss or damage resulting from such failure.

**293.-(1)** A documentary shipper is subject to the obligations and liabilities imposed on the shipper pursuant to sections 287-292 and 294 and 320c, and is entitled to the shipper's rights and defences provided by sections 287-292, 294 and 504.

(2) Subsection 1 shall not affect the obligations, liabilities, rights or defences of the shipper.

**294.-(1)** The shipper is liable for the breach of its obligations under this part related to loss or damages caused by the acts or omissions of any person, including employees, agents and subcontractors, to which it has entrusted the performance of any of its obligations, but the shipper is not liable

for acts or omissions of the carrier or a performing party acting on behalf of the carrier, to which the shipper has entrusted the performance of its obligations.

**295.-(1)** If the shipper withdraws from the contract of carriage before commencement of the carriage, the carrier may demand compensation for the loss of freight and other damage.

**(2)** If the goods are not delivered at the right time, the carrier may terminate the contract of carriage if the delay constitutes a substantial breach of contract. If the carrier wishes to terminate the contract, he shall notify this without undue delay on request from the shipper and no later than on receipt of the goods for carriage. If the carrier fails to do this, the right to terminate the contract shall lapse. If the contract is terminated, the carrier may demand compensation for the loss of freight and other damage.

**(3)** If the shipper or consignee demands that the carriage be interrupted and the goods be delivered to another place than the place of destination, the carrier may demand compensation for loss of freight and other damage. Interruption of the carriage may not be demanded if this will cause substantial damage or nuisance for the carrier or other shippers.

**(4)** The regulations in section 352(2)-(4) shall apply correspondingly.

**296.-(1)** Unless otherwise agreed, current freight at the time of delivery shall be paid. Payment of freight may be demanded when the goods are received.

**(2)** For goods which no longer exist at the conclusion of the carriage, freight may not be demanded unless the goods have been lost through their own characteristics, inadequate packing or error or negligence on the part of the shipper, or the carrier has sold them at the expense of the owner or has discharged them, rendered them innocuous or destroyed them pursuant to section 268.

**(3)** Freight paid in advance shall be refunded if, pursuant to subsection 2, the carrier has no right to demand freight.

#### *Electronic transport record*

**297.-(1)** Subject to the requirements set out in this part, anything that is to be in or on a transport document under this part may be recorded in an electronic transport record, provided the issuance and subsequent use of an electronic transport record is with the consent of the carrier and the shipper.

**(2)** Subject to the requirements set out in this part, the issuance, exclusive control, or transfer of an electronic transport record has the same effect as the issuance, possession, or transfer of a transport document.

**298.-(1)** The use of a negotiable electronic transport record shall be subject to procedures that provide for:

- 1) The method for the issuance and the transfer of that record to an intended holder;
- 2) An assurance that the negotiable electronic transport record retains its integrity;
- 3) The manner in which the holder is able to demonstrate that it is the holder; and
- 4) The manner of providing confirmation that delivery to the holder has been effected, or that, pursuant to section 299(2) or section 312(1)(i)(b) and (ii), the electronic transport record has ceased to have any effect or validity.

**(2)** The procedures in subsection 1 shall be referred to in the contract particulars and be readily ascertainable.



**299.-(1)** If a negotiable transport document has been issued and the carrier and the holder agree to replace that document by a negotiable electronic transport record:

- 1) The holder shall surrender the negotiable transport document, or all of them if more than one has been issued, to the carrier;
- 2) The carrier shall issue to the holder a negotiable electronic transport record that includes a statement that it replaces the negotiable transport document; and
- 3) The negotiable transport document ceases thereafter to have any effect or validity.

**(2)** If a negotiable electronic transport record has been issued and the carrier and the holder agree to replace that electronic transport record by a negotiable transport document:

- 1) The carrier shall issue to the holder, in place of the electronic transport record, a negotiable transport document that includes a statement that it replaces the negotiable electronic transport record; and
- 2) The negotiable electronic transport record ceases thereafter to have any effect or validity.

#### *Transport record and electronic transport record*

**300.-(1)** Unless the shipper and the carrier have agreed not to use a transport document or an electronic transport record, or it is the custom, usage or practice of the trade not to use one, upon delivery of the goods for carriage to the carrier or performing party, the shipper or, if the shipper consents, the documentary shipper, is entitled to obtain from the carrier, at the shipper's option:

- 1) A non-negotiable transport document or, subject to section 297(1), a non-negotiable electronic transport record; or
- 2) An appropriate negotiable transport document or, subject to section 297(1), a negotiable electronic transport record, unless the shipper and the carrier have agreed not to use a negotiable transport document or negotiable electronic transport record, or it is the custom, usage or practice of the trade not to use one.

**301.-(1)** The contract particulars in the transport document or electronic transport record referred to in section 300 shall include the following information, as furnished by the shipper:

- 1) A description of the goods as appropriate for the transport;
- 2) The leading marks necessary for identification of the goods;
- 3) The number of packages or pieces, or the quantity of goods; and
- 4) The weight of the goods, if furnished by the shipper.

**(2)** The information mentioned in paragraphs (ii)-(iv) shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**(3)** The contract particulars in the transport document or electronic transport record referred to in section 300 shall also include:

- 1) A statement of the apparent order and condition of the goods at the time the carrier or a performing party receives them for carriage, cf. subsection 5;
- 2) The name and address of the carrier;
- 3) The date on which the carrier or a performing party received the goods, or on which the goods were loaded on board the ship, or on which the transport document or electronic transport record was issued; and
- 4) If the transport document is negotiable, the number of originals of the negotiable transport document, when more than one original is issued.

(4) The contract particulars in the transport document or electronic transport record referred to in section 300 shall further include:

- 1) The name and address of the consignee, if named by the shipper;
- 2) The name of a ship, if specified in the contract of carriage;
- 3) The place of receipt and, if known to the carrier, the place of delivery; and
- 4) The port of loading and the port of discharge, if specified in the contract of carriage.

(5) For the purposes of this provision, the phrase “apparent order and condition of the goods” in subsection 3(i) refers to the order and condition of the goods based on:

- 1) A reasonable external inspection of the goods as packaged at the time the shipper delivers them to the carrier or a performing party; and
- 2) Any additional inspection that the carrier or a performing party actually performs before issuing the transport document or electronic transport record.

**302.-(1)** If a carrier is identified by name in the contract particulars, any other information in the transport document or electronic transport record relating to the identity of the carrier shall have no effect to the extent that it is inconsistent with that identification.

(2) If no person is identified in the contract particulars as the carrier as required pursuant to section 301(2)(ii), but the contract particulars indicate that the goods have been loaded on board a named ship, the registered owner of that ship is presumed to be the carrier, unless it proves that the ship was under a bareboat charter at the time of the carriage and it identifies this bareboat charterer and indicates its address, in which case this bareboat charterer is presumed to be the carrier. Alternatively, the registered owner may rebut the presumption of being the carrier by identifying the carrier and indicating its address. The bareboat charterer may rebut any presumption of being the carrier in the same manner.

(3) Nothing in this article prevents the claimant from proving that any person other than a person identified in the contract particulars or pursuant to subsection 2 is the carrier.

**303.-(1)** A transport document shall be signed by the carrier or a person acting on its behalf.

(2) An electronic transport record shall include the electronic signature of the carrier or a person acting on its behalf. Such electronic signature shall identify the signatory in relation to the electronic transport record and indicate the carrier’s authorization of the electronic transport record.

**304.-(1)** The absence or inaccuracy of one or more of the contract particulars referred to in section 301(1)-(3) does not of itself affect the legal character or validity of the transport document or of the electronic transport record.

(2) If the contract particulars include the date but fail to indicate its significance, the date is deemed to be:

- 1) The date on which all of the goods indicated in the transport document or electronic transport record were loaded on board the ship, if the contract particulars indicate that the goods have been loaded on board a ship; or
- 2) The date on which the carrier or a performing party received the goods, if the contract particulars do not indicate that the goods have been loaded on board a ship.

(3) If the contract particulars fail to state the apparent order and condition of the goods at the time the carrier or a performing party receives them, the contract particulars are deemed to have stated that the goods were in apparent good order and condition at the time the carrier or a performing party received them.

**305.-(1)** The carrier shall qualify the information referred to in section 301(1) to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper if:

- 1) The carrier has actual knowledge that any material statement in the transport document or electronic transport record is false or misleading; or
- 2) The carrier has reasonable grounds to believe that a material statement in the transport document or electronic transport record is false or misleading.

**(2)** Without prejudice to subsection 1, the carrier may qualify the information referred to in section 301(1) in the circumstances and in the manner set out in subsections 3 and 4 to indicate that the carrier does not assume responsibility for the accuracy of the information furnished by the shipper.

**(3)** When the goods are not delivered for carriage to the carrier or a performing party in a closed container or vehicle, or when they are delivered in a closed container or vehicle and the carrier or a performing party actually inspects them, the carrier may qualify the information referred to in section 301(1), if:

- 1) The carrier had no physically practicable or commercially reasonable means of checking the information furnished by the shipper, in which case it may indicate which information it was unable to check; or
- 2) The carrier has reasonable grounds to believe the information furnished by the shipper to be inaccurate, in which case it may include a clause providing what it reasonably considers accurate information.

**(4)** When the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, the carrier may qualify the information referred to in section 301(1)(i)-(iii), if:

- 1) The goods inside the container or vehicle have not actually been inspected by the carrier or a performing party; and
- 2) Neither the carrier nor a performing party otherwise has actual knowledge of its contents before issuing the transport document or the electronic transport record.

**(5)** The carrier may also qualify the information referred to in section 301(1)(iv) when the goods are delivered for carriage to the carrier or a performing party in a closed container or vehicle, if:

- 1) Neither the carrier nor a performing party weighed the container or vehicle, and the shipper and the carrier had not agreed prior to the shipment that the container or vehicle would be weighed and the weight would be included in the contract particulars; or
- 2) There was no physically practicable or commercially reasonable means of checking the weight of the container or vehicle.

**(6)** Such a qualification as mentioned in subsection 5 shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**306.-(1)** Except to the extent that the contract particulars have been qualified in the circumstances and in the manner set out in section 305:

- 1) A transport document or an electronic transport record is prima facie evidence of the carrier's receipt of the goods as stated in the contract particulars;
- 2) Proof to the contrary pursuant to paragraph (i) in respect of any contract particulars shall not be admissible, when such contract particulars are included in:
  - a) A negotiable transport document or a negotiable electronic transport record that is transferred to a third party acting in good faith; or

- b) A single document that is transferred to the consignee acting in good faith.
- 3) Proof to the contrary by the carrier pursuant to paragraph (i) shall not be admissible against a consignee that in good faith has acted in reliance on any of the following contract particulars included in a non-negotiable transport document or a non-negotiable electronic transport record:
  - a) The contract particulars referred to in section 301(1), when such contract particulars are furnished by the carrier;
  - b) The number, type and identifying numbers of the containers, but not the identifying numbers of the container seals; and
  - c) The contract particulars referred to in section 301(3).

**307.-(1)** If a third party suffers loss by taking up a transport document or an electronic transport record in reliance on the particulars contained therein being correct, the carrier shall be liable provided he knew, or should have realised that the transport particulars were misleading for the third party. The right to limitation of liability pursuant to this part shall lapse if the carrier has not done everything possible to prevent loss due to the misleading particulars.

**(2)** If the goods do not correspond to the particulars hereof in the transport document or the electronic transport record, at the demand of the consignee the carrier shall divulge whether the shipper has issued a statement indemnifying the carrier for incorrect or incomplete particulars (letter of indemnity). In such event, the carrier shall inform the consignee of the contents of such a statement.

#### *Delivery of the goods*

**308.-(1)** When the goods have arrived at their destination, the consignee that demands delivery of the goods under the contract of carriage shall accept delivery of the goods at the time or within the time period and at the location agreed in the contract of carriage or, failing such agreement, at the time and location at which, having regard to the terms of the contract, the customs, usages or practices of the trade and the circumstances of the carriage, delivery could reasonably be expected.

**309.-(1)** On request of the carrier or the performing party that delivers the goods, the consignee shall acknowledge receipt of the goods from the carrier or the performing party in the manner that is customary at the place of delivery. The carrier may refuse delivery if the consignee refuses to acknowledge such receipt. Acknowledgement of receipt of the goods shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the shipper and of the consignee.

**310.-(1)** When neither a negotiable transport document nor a negotiable electronic transport record has been issued:

- 1) The carrier shall deliver the goods to the consignee at the time and location referred to in section 308. The carrier may refuse delivery if the person claiming to be the consignee does not properly identify itself as the consignee on the request of the carrier;
- 2) If the name and address of the consignee are not referred to in the contract particulars, the controlling party shall prior to or upon the arrival of the goods at the place of destination advise the carrier of such name and address.
- 3) If the goods are not deliverable because

- a) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in section 308, claim delivery of the goods from the carrier after their arrival at the place of destination,
  - b) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee, or
  - c) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions,
- the carrier may, without prejudice to section 315(1), so advise the controlling party and request instructions in respect of the delivery of the goods.
- 4) If, after reasonable effort as stipulated in paragraph (iii), the carrier is unable to locate the controlling party, the carrier may so advise the shipper and request instructions in respect of the delivery of the goods. If, after reasonable effort, the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods.
  - 5) The carrier that delivers the goods upon instruction of the controlling party, the shipper or the documentary shipper pursuant to paragraph (iii) or (iv) is discharged from its obligations to deliver the goods under the contract of carriage.

**311.-(1)** When a single document has been issued:

- 1) The carrier shall deliver the goods at the time and location referred to in section 308 to the consignee upon the consignee properly identifying itself on the request of the carrier and surrender of the single document. The carrier may refuse delivery if the person claiming to be the consignee fails to properly identify itself on the request of the carrier, and shall refuse delivery if the single document is not surrendered. If more than one original of the single document has been issued, the surrender of one original will suffice and the other originals cease to have any effect or validity.
- 2) If the goods are not deliverable because
  - a) the consignee, after having received a notice of arrival, does not, at the time or within the time period referred to in section 308, claim delivery of the goods from the carrier after their arrival at the place of destination,
  - b) the carrier refuses delivery because the person claiming to be the consignee does not properly identify itself as the consignee or does not surrender the document, or
  - c) the carrier is, after reasonable effort, unable to locate the consignee in order to request delivery instructions,
 the carrier may, without prejudice to section 315(1), so advise the shipper and request instructions in respect of the delivery of the goods.
- 3) If, after reasonable effort as stipulated in paragraph (ii), the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods.
- 4) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper pursuant to paragraph (ii) or (iii) is discharged from its obligation to deliver the goods under the contract of carriage, irrespective of whether the single document has been surrendered to it.

**312.-(1)** When a negotiable transport document or a negotiable electronic transport record has been issued:

- 1) The holder of the negotiable transport document or negotiable electronic transport record is entitled to claim delivery of the goods from the carrier after they have arrived at the place of

destination, in which event the carrier shall deliver the goods at the time and location referred to in section 308 to the holder:

- a) Upon surrender of the negotiable transport document and, if the holder is one of the persons referred to in section 251(x)(a), upon the holder properly identifying itself; or
  - b) Upon demonstration by the holder, in accordance with the procedures referred to in section 298(1), that it is the holder of the negotiable electronic transport record;
- 2) If more than one original of the negotiable transport document has been issued, and the number of originals is stated in that document, the surrender of one original will suffice and the other originals cease to have any effect or validity. When a negotiable electronic transport record has been used, such electronic transport record ceases to have any effect or validity upon delivery to the holder in accordance with the procedures required by section 298(1).

(2) The carrier shall refuse delivery if the requirements of subsection 1(i) are not met. If the negotiable transport document or the negotiable electronic transport record expressly states that the goods may be delivered without the surrender of the transport document or the electronic transport record if the goods are not deliverable because

- 1) the holder, after having received a notice of arrival, does not, at the time or within the time period referred to in section 308, claim delivery of the goods from the carrier after their arrival at the place of destination,
- 2) the carrier refuses delivery because the person claiming to be a holder does not properly identify itself as one of the persons referred to in section 251(x)(a), or
- 3) the carrier is, after reasonable effort, unable to locate the holder in order to request delivery instructions,

the carrier may, without prejudice to section 315(1), so advise the shipper and request instructions in respect of the delivery of the goods.

(3) If, after reasonable effort as stipulated in paragraph (ii), the carrier is unable to locate the shipper, the carrier may so advise the documentary shipper and request instructions in respect of the delivery of the goods.

(4) The carrier that delivers the goods upon instruction of the shipper or the documentary shipper in accordance with subsection 2(ii) is discharged from its obligation to deliver the goods under the contract of carriage to the holder, irrespective of whether the negotiable transport document has been surrendered to it, or the person claiming delivery under a negotiable electronic transport record has demonstrated, in accordance with the procedures referred to in section 298(1), that it is the holder.

(5) The person giving instructions under subsection 2(ii) shall indemnify the carrier against loss arising from its being held liable to the holder under subsection 7. The carrier may refuse to follow those instructions if the person fails to provide adequate security as the carrier may reasonably request.

(6) A person that becomes a holder of the negotiable transport document or the negotiable electronic transport record after the carrier has delivered the goods pursuant to subsection 4, but pursuant to contractual or other arrangements made before such delivery acquires rights against the carrier under the contract of carriage, other than the right to claim delivery of the goods.

(7) Notwithstanding subsection 4 or 6, a holder that becomes a holder after such delivery, and that did not have and could not reasonably have had knowledge of such delivery at the time it became a holder, acquires the rights incorporated in the negotiable transport document or negotiable electronic transport record. When the contract particulars state the expected time of arrival of the goods, or indicate how to obtain information as to whether the goods have been delivered, it is presumed that the holder at the time that it became a holder had or could reasonably have had knowledge of the delivery of the goods.

**313.-(1)** In the event that more than one consignee come forward and identify themselves by presenting separate originals of the transport document or the electronic transport record, the carrier shall store the goods in safe custody at the expense of the rightful party pursuant to section 315(2)-(5). This shall be notified without delay to the persons who have come forward.

**314.-(1)** On the cancellation of a lost transport document, the regulations in the legislation regarding cancellation of securities shall apply. Delivery of the goods may be required against security for claims which the holder of the lost transport document may invoke against the carrier when notice has been made available to the public or by special order of the court.

**315.-(1)** Goods shall be deemed to have remained undelivered only if, after their arrival at the place of destination:

- 1) The consignee does not accept delivery of the goods pursuant to sections 308-312 and 316 at the time and location referred to in section 308;
- 2) The controlling party, the holder, the shipper or the documentary shipper cannot be found or does not give the carrier adequate instructions pursuant to sections 310-312;
- 3) The carrier is entitled or required to refuse delivery pursuant to sections 309-312;
- 4) The carrier is not allowed to deliver the goods to the consignee pursuant to the law or regulations of the place at which delivery is requested; or
- 5) The goods are otherwise undeliverable by the carrier.

**(2)** Without prejudice to any other rights that the carrier may have against the shipper, controlling party or consignee, if the goods have remained undelivered, the carrier may, at the risk and expense of the person entitled to the goods, take such action in respect of the goods as circumstances may reasonably require, including:

- 1) To store the goods at any suitable place;
- 2) To unpack the goods if they are packed in containers or vehicles, or to act otherwise in respect of the goods, including by moving them; and
- 3) To cause the goods to be sold or destroyed in accordance with the practices or pursuant to the law or regulations of the place where the goods are located at the time.

**(3)** The carrier may exercise the rights under subsection 2 only after it has given reasonable notice of the intended action to the person stated in the contract particulars as the person, if any, to be notified of the arrival of the goods at the place of destination, and to one of the following persons in the order indicated, if known to the carrier: the consignee, the controlling party or the shipper. The carrier's notice shall be in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**(4)** If the goods are sold pursuant to subsection 2(iii), the carrier shall hold the proceeds of the sale for the benefit of the person entitled to the goods, subject to the deduction of any costs incurred by the carrier and any other amounts that are due to the carrier in connection with the carriage of those goods.

**(5)** The carrier shall not be liable for loss of or damage to goods that occurs during the time that they remain undelivered pursuant to this provision unless the claimant proves that such loss or damage resulted from the failure by the carrier to take steps that would have been reasonable in the circumstances to preserve the goods and that the carrier knew or ought to have known that the loss or damage to the goods would result from its failure to take such steps.

**316.-(1)** Nothing in this part affects a right of the carrier or a performing party that may exist pursuant to the contract of carriage or the applicable law to retain the goods to secure the payment of sums due.

**317.-(1)** If the goods are delivered to the consignee without payment of the claims against the shipper which the consignee should have paid, the shipper shall remain liable unless the delivery causes loss for the shipper and the carrier realised this.

**(2)** The carrier shall not be obliged to sell goods in storage in order to cover claims against the shipper which the consignee should have paid. If the goods are sold without the claims being covered, the shipper shall be liable for the uncovered claims.

#### *Rights of the controlling party*

**318.-(1)** The right of control may be exercised only by the controlling party and is limited to:

- 1) The right to give or modify instructions in respect of the goods that do not constitute a variation of the contract of carriage;
- 2) The right to obtain delivery of the goods at a scheduled port of call or, in respect of inland carriage, any place en route; and
- 3) The right to replace the consignee by any other person, including the controlling party.

**(2)** The right of control exists during the entire period of responsibility of the carrier, as provided in section 273, and ceases when that period expires.

**319.-(1)** Except in the cases referred to in subsections 2-4:

- 1) The shipper is the controlling party unless the shipper, when the contract of carriage is concluded, designates the consignee, the documentary shipper or another person as the controlling party;
- 2) The controlling party is entitled to transfer the right of control to another person. The transfer becomes effective with respect to the carrier upon its notification of the transfer by the transferor, and the transferee becomes the controlling party; and
- 3) The controlling party shall properly identify itself when it exercises the right of control.

**(2)** When a single document has been issued:

- 1) The shipper is the controlling party and may transfer the right of control to the consignee named in the single document by transferring the document to that person without endorsement. If more than one original of the document was issued, all originals shall be transferred in order to effect a transfer of the right of control; and
- 2) In order to exercise its right of control, the controlling party shall produce the document and properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

**(3)** When a negotiable transport document is issued:

- 1) The holder or, if more than one original of the negotiable transport document is issued, the holder of all originals is the controlling party;
- 2) The holder may transfer the right of control by transferring the negotiable transport document to another person in accordance with section 320e. If more than one original of that document was issued, all originals shall be transferred to that person in order to effect a transfer of the right of control; and



3) In order to exercise the right of control, the holder shall produce the negotiable transport document to the carrier, and if the holder is one of the persons referred to in section 251(x)(a), the holder shall properly identify itself. If more than one original of the document was issued, all originals shall be produced, failing which the right of control cannot be exercised.

(4) When a negotiable electronic transport record is issued:

- 1) The holder is the controlling party;
- 2) The holder may transfer the right of control to another person by transferring the negotiable electronic transport record in accordance with the procedures referred to in section 298(1); and
- 3) In order to exercise the right of control, the holder shall demonstrate, in accordance with the procedures referred to in section 298(1), that it is the holder.

(5) The person transferring the right of control pursuant to subsection 1(ii) shall inform the carrier in writing. Electronic communications may be used for these purposes, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

**320.-(1)** Subject to subsections 2 and 3, the carrier shall execute the instructions referred to in section 318 if:

- 1) The person giving such instructions is entitled to exercise the right of control;
- 2) The instructions can reasonably be executed according to their terms at the moment that they reach the carrier; and
- 3) The instructions will not interfere with the normal operations of the carrier, including its delivery practices.

(2) In any event, the controlling party shall reimburse the carrier for any reasonable additional expense that the carrier may incur and shall indemnify the carrier against loss or damage that the carrier may suffer as a result of diligently executing any instruction pursuant to this provision, including compensation that the carrier may become liable to pay for loss of or damage to other goods being carried.

(3) The carrier is entitled to obtain security from the controlling party for the amount of additional expense, loss or damage that the carrier reasonably expects will arise in connection with the execution of an instruction pursuant to this provision. The carrier may refuse to carry out the instructions if no such security is provided.

(4) The carrier's liability for loss of or damage to the goods or for delay in delivery resulting from its failure to comply with the instructions of the controlling party in breach of its obligation pursuant to subsection 1 shall be subject to sections 274-281, and the amount of the compensation payable by the carrier shall be subject to sections 282-284.

**320a.-(1)** Goods that are delivered pursuant to an instruction in accordance with section 320(1), are deemed to be delivered at the place of destination, and the provisions of sections 308-317 relating to such delivery apply to such goods.

**320b.-(1)** The controlling party is the only person that may agree with the carrier to variations to the contract of carriage other than those referred to in section 318(1)(ii) and (iii).

(2) Variations to the contract of carriage, including those referred to in section 318(1)(ii) and (iii), shall be stated in a negotiable transport document or in a single document, or incorporated in a negotiable electronic transport record, or, upon the request of the controlling party, shall be stated in a non-negotiable transport document or incorporated in a non-negotiable electronic transport record. If

so stated or incorporated, such variations shall be signed or supplied with an electronic signature in accordance with section 303.

**320c.-(1)** The controlling party, on request of the carrier or a performing party, shall provide in a timely manner information, instructions or documents relating to the goods not yet provided by the shipper and not otherwise reasonably available to the carrier that the carrier may reasonably need to perform its obligations under the contract of carriage.

**(2)** If the carrier, after reasonable effort, is unable to locate the controlling party or the controlling party is unable to provide adequate information, instructions or documents to the carrier, the shipper shall provide them. If the carrier, after reasonable effort, is unable to locate the shipper, the documentary shipper shall provide such information, instructions or documents.

**320d.-(1)** The parties to the contract of carriage may vary the effect of section 318(1)(ii) and (iii), and subsection 2 and section 320. The parties may also restrict or exclude the transferability of the right of control referred to in section 319(1)(ii).

#### *Transfer of rights and freight and other claims*

**320e.-(1)** When a negotiable transport document is issued, the holder may transfer the rights incorporated in the document by transferring it to another person:

- 1) Duly endorsed either to such other person or in blank, if an order document; or
- 2) Without endorsement, if:
  - a) a bearer document or a blank endorsed document; or
  - b) a document made out to the order of a named person and the transfer is between the first holder and the named person.

**(2)** When a negotiable electronic transport record is issued, its holder may transfer the rights incorporated in it, whether it be made out to order or to the order of a named person, by transferring the electronic transport record in accordance with the procedures referred to in section 298(1).

**320f.-(1)** Without prejudice to section 320c, a holder that is not the shipper and that does not exercise any right under the contract of carriage does not assume any liability under the contract of carriage solely by reason of being a holder.

**(2)** A holder that is not the shipper and that exercises any right under the contract of carriage assumes any liabilities imposed on it under the contract of carriage to the extent that such liabilities are incorporated in or ascertainable from the negotiable transport document or the negotiable electronic transport record.

**(3)** For the purposes of subsections 1 and 2, a holder that is not the shipper does not exercise any right under the contract of carriage solely because:

- 1) It agrees with the carrier, pursuant to section 299, to replace a negotiable transport document by a negotiable electronic transport record or to replace a negotiable electronic transport record by a negotiable transport document; or
- 2) It transfers its rights pursuant to section 320e.

**320g.-(1)** If the goods are delivered in some other way than pursuant to a negotiable transport document or a negotiable electronic transport record, the consignee shall only be liable for freight and

other claims pursuant to the contract of carriage when the consignee has received notice of such claims on delivery, or knew or should have known that the carrier had not received payment.

**320h.-(1)** If the contract particulars contain the statement “freight prepaid” or a statement of a similar nature, the carrier cannot assert against the holder or the consignee the fact that the freight has not been paid. This article does not apply if the holder or the consignee is also the shipper.

#### *Courts and arbitration*

**320i.-(1)** Unless otherwise stipulated in the act on the Brussels I regulation, etc. or the act on the EC Judgments Convention, etc., including orders issued pursuant to these acts, subsections 2-12 shall apply to judicial proceedings pursuant to this part.

**(2)** Unless otherwise stipulated in subsections 3-6 and 12, judicial proceedings on the carriage of goods may be instituted, at the plaintiff's choice, in a competent court situated in one of the following places:

- 1) the domicile of the defendant;
- 2) the place of receipt or delivery in the contract of carriage; or
- 3) the place where the goods are initially loaded on a ship or finally discharged from a ship.

**(3)** In addition to the places mentioned in subsection 2, judicial proceedings against the carrier may be instituted in a competent court designated by the contract of carriage.

**(4)** A shipper may institute judicial proceedings against the maritime performing party only in a competent court situated one of the following places:

- 1) the domicile of the maritime performing party; or
- 2) the port where the goods are received by the maritime performing party, the port where the goods are delivered by the maritime performing party or the port in which the maritime performing party performs its activities with respect to the goods.

**(5)** Subsection 2 shall not apply to judicial proceedings between the carrier and the maritime performing party or between the latter.

**(6)** Except when there is an exclusive choice of court agreement that is binding pursuant to subsection 7, 8 or 11, if a single action is brought against both the carrier and the maritime performing party arising out of a single occurrence, the action may be instituted only in a court designated pursuant to both subsection 2 and 4. If there is no such court, such action may be instituted in a court designated pursuant to subsection 4(ii).

**(7)** An agreement concluded between the parties to a volume contract stipulating that one or more competent courts have exclusive competence to consider the dispute is binding if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either is individually negotiated; or contains a prominent statement that there is an exclusive choice of court agreement and specifies the sections of the volume contract containing this agreement.

**(8)** A person that is not a party to the volume contract is bound by the choice of court mentioned in subsection 7 only if:

- 1) the court is situated in one of the places referred to in subsection 2;
- 2) the agreement is contained in the transport document or electronic transport record; and
- 3) the person to be bound is given timely and adequate notice of the place where legal proceedings may be instituted, and informed that the choice of court is exclusive.

**(9)** If a transport document or an electronic transport record has been completed pursuant to a chartering agreement, and such chartering agreement contains provisions on competent court or

choice of court, without the document expressly stating that these provisions are binding on the holder of the document, the carrier may not invoke the provisions against a holder of document who has acquired it in good faith.

(10) Subsections 2-8 shall not apply if neither the place of receipt nor the place of delivery is situated in Denmark.

(11) Notwithstanding the provisions of subsections 2-8, after a dispute has arisen the parties to the dispute may agree on which competent court is to decide on the dispute.

(12) The provisions of this part shall not prevent institution of preliminary legal proceedings in the Realm to ensure claims, including arrest. If such preliminary legal proceedings are instituted, a Danish court may decide on the material conditions of the case only where:

- 1) the requirements of this provisions are met; or
- 2) this is pursuant to an international convention applicable in Denmark.

**320j.-(1)** Parties may agree that any dispute that may arise relating to the carriage of goods under this part shall be referred to arbitration in accordance with the provisions of this section.

(2) The arbitration proceedings shall, at the option of the person asserting a claim, unless otherwise stipulated in subsections 3-5, 7 and 10, only take place:

- 1) at the domicile of the defendant;
- 2) at the place of receipt agreed in the contract of carriage; or
- 3) where the goods are initially loaded on a ship or finally discharged from a ship.

(3) In addition to the places mentioned in subsection 2, arbitration proceedings against the carrier may be instituted at a place designated in the contract of carriage.

(4) The designation of the place of arbitration in the agreement is binding for disputes between the parties to the agreement if the agreement is contained in a volume contract that clearly states the names and addresses of the parties and either is individually negotiated, or contains a prominent statement that there is an arbitration agreement and specifies the sections of the volume contract containing the arbitration agreement.

(5) When an arbitration agreement has been concluded, a person that is not a party to the volume contract is bound by the designation of the place of arbitration mentioned in subsection 4 only if:

- 1) The place of arbitration is situated in one of the places referred to in subsection 2;
- 2) The agreement is contained in the transport document or electronic transport record;
- 3) The person to be bound is given timely and adequate notice of the place of arbitration; and
- 4) Applicable law permits that person to be bound by the arbitration agreement.

(6) The provisions of subsections 1-5 are deemed to be part of the arbitration agreement. Any term of the arbitration agreement is void to the extent that it is inconsistent with subsections 1-5.

(7) Without prejudice to subsection 8, nothing in this part affects the enforceability of an arbitration agreement in a contract of carriage in non-liner transportation to which this part applies by reason of the application of section 254, or the parties' voluntary incorporation of the convention in a contract of carriage that would not otherwise be subject to the provisions of this part.

(8) Notwithstanding subsection 7, an arbitration agreement in a transport document or electronic transport record to which this part applies by reason of the application of section 254 is subject to the provisions of subsections 1-6 unless such a transport document or electronic transport record identifies the parties to and the date of the charter party or other contract excluded from the application of this part by reason of the application of section 253, and incorporates by specific reference the clause in the charter party or other contract that contains the terms of the arbitration agreement.

(9) Subsections 2-8 shall not apply if neither the agreed place of receipt or place of delivery is situated in Denmark.

(10) Notwithstanding the provisions of sections 320i and subsections 1-6, after a dispute has arisen the parties to the dispute may agree to resolve it by arbitration in any place.

(11) The provisions of this part shall not prevent institution of preliminary legal proceedings in the Realm to ensure claims, including arrest."

10. In *section 322(2)*, "agreement to the detriment of a consignor, voyage charterer or consignee. The same shall apply for the provisions of section 501(1), no. 6, and (2), 1st clause" shall be amended to "agreement, etc. to the detriment of the voyage charterer insofar as not otherwise stipulated in the provisions of part 13 in relation to the consignee or others."

11. *Section 322(3)* shall be as follows:

"(3) This part shall apply unless otherwise stipulated in part 13 or section 504."

12. *Section 325* shall be as follows:

"325.-(1) If the carrier issues a transport document or an electronic transport record, the carrier shall be liable to the extent that it follows from the provisions of part 13.

(2) Provisions of the voyage charter which are not included in the transport document or the electronic transport record may not be invoked against a third party unless the transport document or electronic transport record refers to such provisions.

(3) The provisions on transport documents or on electronic transport records in sections 291, 301-304, 307, 309 and 310-314 shall also apply to transport documents or to electronic transport records as mentioned in subsection 1. If, consequential upon section 254, the transport document or electronic transport record is subject to the regulations in part 13, the liability and rights of the carrier in relation to third parties shall be determined by the provisions of sections 257, 260, 267, 273-278, 280-284, 290 and 291, cf. section 255."

13. In *section 335(3)*, *the first sentence*, "bill of lading" shall be amended to "transport document or electronic transport record".

14. In *section 336(3)*, "section 263" shall be amended to "section 267".

15. In *section 337(2)*, "sections 256-259" shall be amended to "sections 263-265, 268, 289 and 292".

16. *Section 338* shall be as follows:

"338.-(1) When the goods have been loaded, the carrier or the master or any person otherwise authorised by the carrier shall, at request, issue a transport document or an electronic transport record stating that the goods have been loaded provided that the necessary documents and information are available. The provisions on transport documents and electronic transport records of part 13 shall also apply.

(2) The voyage charterer may demand separate transport documents or electronic transport records for each part of the goods, unless this would cause significant nuisance.

(3) The transport document or the electronic transport record shall not change the agreement between the carrier and the voyage charterer. If a transport document or an electronic transport record is issued with other terms than those laid down in the voyage charter, and if this increases the liability of the carrier, the voyage charterer shall indemnify the carrier for this."

17. In *section 339, the second sentence*, "sections 262, 266 and 267" shall be amended to "sections 263, 264 and 271".

18. *Section 345(1)* shall be as follows:

"The consignee shall become liable for the freight and other claims pursuant to sections 320f-320h."

19. In *section 346(3), the second sentence*, "section 272" shall be amended to "section 315".

20. *Section 347(1)* shall be as follows:

"**347.-(1)** The carrier shall be liable pursuant to the regulations in sections 257, 260, 267, 272-275, 277-285 and 288 for losses resulting from goods being lost, damaged or delayed while they are in the charge of the carrier. The regulation in section 276 shall apply correspondingly. As regards the right of the consignee and others to invoke the provisions of part 13, sections 253 and 254 shall also apply."

21. In *section 351*, "sections 275 and 276" shall be amended to "section 274".

22. The *headline* before section 362 shall be as follows:

*"Volume contracts"*

23. In *section 362(1)*, "volume contracts" shall be amended to "volume contracts".

24. In *section 367(1)*, "voyage charters" shall be amended to "carriage of goods wholly or partly by sea".

25. In *section 370(3), the second sentence*, "bill of lading" shall be amended to "a transport document or an electronic transport record".

26. *Section 382* shall be as follows:

"**382.-(1)** The time carrier shall be obliged to issue a transport document or an electronic transport record for the goods loaded for the voyage the ship is to perform, with the terms of carriage that are customary for the trade in question. The provisions on transport documents and electronic transport records of part 13 shall also apply. The transport document or the electronic transport record shall not change the agreement between the time carrier and the time voyage charterer. If the time carrier incurs liability towards the holder of transport document or the electronic transport record in excess of his liability pursuant to the chartering agreement, the time voyage charterer shall indemnify the time carrier.

(2) The carrier shall have no duty to comply with a request from the time voyage charterer to deliver the goods in contravention of the provisions of part 13 if this would be dishonest or contrary to good faith. At all events, the time carrier may demand security for the liability he may incur from such delivery."

27. *Section 383(2)* shall be as follows:

"(2) As regards the right of the consignee and others to invoke the provisions of part 13, sections 253 and 254 shall apply."

**28.** In *section 391(2)*, the *second sentence*, "bill of lading" shall be amended to "a transport document or an electronic transport record".

**29.** In *section 401(3)*, the *third sentence*, "bill of lading or a"" shall be amended to "another".

**30.** In the headline to *part 19*, "and time-limit for bringing proceedings" shall be inserted after "limitation".

**31.** *Section 501(1)(v) and (vi)* shall be as follows:

- "5) for claims for compensation for losses consequential upon goods being delivered without presentation of the transport document, the electronic transport record or the single document if required pursuant to sections 311 and 312 or to an incorrect person, two years from the day on which the goods were delivered or, if the goods are not delivered or if only a part of the goods are delivered, the last day on which they should have been delivered,
- 6) for claims for compensation under section 274 or for incorrect or incomplete particulars in a transport document or an electronic transport record, two years from the day on which the goods were delivered or, if the goods are not delivered or if only a part of the goods are delivered, the last day on which they should have been delivered.

**32.** In *section 501(2)*, the *first sentence* "5 and 6," shall be left out.

**33.** In *section 501(2)*, the following shall be inserted as the *third sentence*:

"For right of recourse arising from claims as mentioned in subsection 1(v) and (vi), the time-limit shall be two years from the day on which the compensation was paid or proceedings were instituted."

**34.** After *section 503*, the following shall be inserted:

**"504.-(1)** The time-limit for instituting legal proceedings as regards claims mentioned in part 13 shall be two years from the day when the goods were delivered or, if the goods are not delivered, or if only a part of the goods are delivered, the last day on which the goods should have been delivered. The day when the time-limit starts shall not be included. The time-limit shall be interrupted if legal proceedings are instituted.

(2) Notwithstanding the expiration of the period set out in subsection 1, one party may rely on its claim as a defence or for the purpose of set-off against a claim asserted by the other party.

(3) The period provided in subsection 1 shall not be subject to suspension or interruption, but the person against which a claim is made may extend that period one or more times by a written declaration to the claimant. Electronic communications may be used for the purpose of meeting the requirement for a written declaration, provided that the use of such means is with the consent of the person by which it is communicated and of the person to which it is communicated.

(4) An action for indemnity by a person held liable may be instituted after the expiration of the period provided in subsection 1 if the indemnity action is instituted within the later of one year commencing from the day when the person instituting the action for indemnity has either settled the claim or been served with process in the action against itself, whichever is earlier.

(5) An action against the bareboat charterer or the person identified as the carrier pursuant to section 302(2) may be instituted after the expiration of the period provided in subsection 1 if the action is instituted within one year commencing from the day when the carrier has been identified, or the registered owner or bareboat charterer has rebutted the presumption that it is the carrier, pursuant to section 302(2).

(6) Section 501(6) shall also apply to claims mentioned in part 13.

(7) Subsections 1-5 shall not apply to claims pursuant to section 260(2), and sections 271, 286, 295, 296, 307, 317 and 320g.”

## Section 2

In the act on diving operations and diving equipment, etc., cf. consolidated act no. 936 of 20 July 2010, as amended by section 62 of act no. 1231 of 18 December 2012, the following amendment shall be made:

1. *Part 4* shall be repealed.

## Section 3

In the act on safety at sea, cf. consolidated act no. 654 of 15 June 2010, as amended by section 2 of act no. 251 of 30 March 2011, section 2 of act no. 249 of 21 March 2012 and section 59 of act no. 1231 of 18 December 2012 and most recently by section 5 of act no. 1384 of 23 December 2012, the following amendments shall be made:

1. In *section 3*, the following shall be inserted as *subsection 3*:

"*Subsection 3.* The Minister for Business and Growth may lay down regulations on enhanced safety requirements for ships whose voyages in arctic water present a special risk to those on board the ship or to the arctic environment, including regulations on the use of pilots certified to navigate the relevant area."

2. *Section 20a* shall be as follows:

"**Section 20a.** As part of the supervision under this act, the Danish Maritime Authority may also supervise compliance with the act on smoke-free environments on Danish ships (*lov om røgfri miljøer på danske skibe*), the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), the act on the manning of ships (*lov om skibes besætning*), the act on the tonnage measurement of ships (*lov om skibsmåling*), sections 153 and 168, section 169(4) and sections 170, 186, 197, 198, 403(a)-403(c), 440 and 471 of the merchant shipping act (*søloven*) and regulations issued pursuant hereto and EU regulations within the scope of application of the act. The Danish Maritime Authority may order that matters that violate the said acts or regulations issued pursuant hereto shall be rectified immediately or within an established deadline.

*Subsection 2.* Section 16(2), section 17(7) and section 8, sections 19, 22 and 24 and the provisions issued pursuant hereto and section 25 shall also apply to inspection activities under subsection 1.

*Subsection 3.* The Minister for Business and Growth may lay down regulations on the inspection that is carried out under this act and on the consideration of complaints from seafarers etc., in-



cluding that it shall not be stated that an inspection is carried out as a consequence of a complaint. Regulations on the supervision of compliance with the act on smoke-free environments on Danish ships (*lov om røgfri miljøer på danske skibe*) shall be laid down following consultations with the Minister of Health.”

#### Section 4

In the pilotage act, cf. consolidated act no. 567 of 9 June 2006, as amended by section 3 of act no. 478 of 30 May 2012 and section 64 of act no. 1231 of 18 December 2012, the following amendments shall be made:

1. In *section 18*, the following shall be inserted as *subsection 2*:

“*Subsection 2.* The Minister for Business and Growth may lay down provisions stipulating that pilotage can be carried out by pilotage service providers domiciled in a country outside the EU/EEA.

2. After part 13, the following shall be inserted:

"Part 13b

*Pilotage in Greenland waters*

**Section 33b.** Pilotage in Greenland waters as prescribed pursuant to section 3(3) of the act on safety at sea, may be carried out only by a pilot who, in accordance with section 12, is certified to carry out pilotage in the relevant area.

*Subsection 2.* The Minister for Business and Growth may conclude agreements with pilotage service providers stipulating that they shall be obliged to make a pilot available – within a determined notice – to ships covered by the obligation to take a pilot prescribed pursuant to section 3(3) of the act on safety at sea.

*Subsection 3.* The Minister for Business and Growth may lay down provisions stipulating that state-owned pilotage service providers shall be obliged to make a pilot available – within a determined notice – to ships covered by the obligation to take a pilot prescribed pursuant to section 3(3) of the act on safety at sea.

*Subsection 4.* The provisions of sections 8 and 9, section 11(3), sections 12, 14 and 16-18, section 19(3)-(5), section 20(1), sections 24-33a and section 34(1), (4) and (5) shall apply to pilotage activities covered by subsection 1."

3. In *section 40*, the following shall be inserted as *subsection 2*:

"*Subsection 2.* Section 8, section 9, section 11(3), section 12, section 14, sections 16-18, section 19(3)-(5), section 20(1), sections 24-33b and section 34(1), (4) and (5) may by royal decree be put into force for Greenland in full or in part with the amendments deriving from the special Greenland conditions."

#### Section 5

In the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), cf. consolidated act no. 742 of 18 July 2005, as amended by inter alia section 2 of act no. 493 of

12 May 2010, section 3 of act no. 251 of 30 March 2011 and section 3 of act no. 622 of 14 June 2011 and recently by section 65 of act no. 1231 of 18 December 2012, the following amendments shall be made:

1. In *section 5*, "section 19a of this act and" shall be inserted after "agreement, cf. however".

2. In *section 10a*, the following shall be inserted after subsection 1 as a new subsection:

*"Subsection 2.* If a seafarer is taken hostage in connection with piracy, the Danish Maritime Authority may, for as long as the seafarer is kept hostage, provide financial aid to the seafarer's spouse and children below the age of 18 whom the seafarer has a duty to support if they do not have or get any means for their support."

Subsequently, subsections 2 and 3 shall become subsections 3 and 4.

3. In *section 10a(2)*, which shall become subsection 3, "those mentioned in subsections 1 and 2" shall be inserted after "pool of subsidies shall be allocated to".

4. In *section 10a(3)*, which shall become subsection 4, "stipulated in subsection 2" shall be amended to "stipulated in subsection 3".

5. In *section 15(1)*, "section 18d" shall be amended to "18e".

6. The headline before section 18a, shall be as follows:

*"3 a. The seaman's right to leave service in case of danger of war, etc.  
and the shipowner's obligation to take care of the seafarers in case of a risk of piracy"*

7. *Sections 18c and 18d*, with associated headlines, shall be repealed and the following shall be inserted instead:

**"Section 18c.** If a ship enters waters or ports presenting a risk of piracy, the shipowner shall be obliged to take care of the seafarers. The shipowner shall, in accordance with what is considered sound company practice, take measures to prepare the ship and the crew for any attacks, prevent attacks and handle cases where the ship is attacked, including if crewmembers are taken hostage."

*3b. Seafarers' exemption from service, etc. in connection  
with pregnancy and maternity leave*

**Section 18d.** The Minister for Business and Growth shall lay down more detailed regulations on seafarers' exemption from service on board due to pregnancy and maternity leave.

*Subsection 2.* A seafarer who is given notice due to pregnancy or who gives notice pursuant to section 9 shall be entitled to pregnancy/maternity pay. This applies only for as long as she does not have any other work and for a maximum of two months from the date of resignation.

*Subsection 3.* If the seafarer's employment agreement is limited in time, the shipowner's obligation to pay wages pursuant to subsection 2 cannot, however, be extended beyond the date when the employment ceases according to the agreement.

*3c. Seafarers' right to leave for compelling family reasons*

**Section 18e.** A seafarer shall be entitled to leave without pay when compelling family reasons apply in case of illness or accidents making the seafarer's immediate presence urgently necessary in the home (force majeure).

*Subsection 2.* During the leave, the seafarer may, irrespective of the provisions of section 6 on the port of resignation, give notice with the term of notice given in section 5 or section 37."

**8.** After *section 19*, the following shall be inserted before section 20:

**"Section 19a.** It shall not be possible to dismiss seafarers held hostage. The employment shall not terminate though the ship is lost in connection with piracy or the shipowner is no longer able to have it at his disposal.

*Subsection 2.* When released, the hostages shall be entitled to a free journey home with subsistence to their own domicile at the shipowner's expense."

**9.** In *section 35(1)*, "section 18d" shall be amended to "section 18e" and "section 18c(2) and (3)" shall be amended to "section 18d(2) and (3)".

**10.** In *section 37(1)*, "section 19a of this act and" shall be inserted after "agreement, cf. however".

**11.** In *section 47(1)*, "section 19a of this act and" shall be inserted after "agreement, cf. however".

**12.** *Section 49* shall be as follows:

**"Section 49.** The following provisions shall also apply to the master:

- 1) Section 1(2);
- 2) Section 3(3) and (4);
- 3) Section 4(2);
- 4) Section 6;
- 5) Section 7(1), cf. section 39;
- 6) Section 7(2), the third sentence;
- 7) Section 8;
- 8) Sections 8a-8e;
- 9) Section 10(3);
- 10) Section 10a(1) and (2);
- 11) Section 14(1), cf. subsection 3;
- 12) Section 15;
- 13) Section 18a(1) and section 18b;
- 14) Section 18c;
- 15) Section 18d;
- 16) Section 18e;
- 17) Section 19a(2);
- 18) Sections 21, 22 and 24-26;
- 19) Sections 27-30, cf. sections 35, 40 and 41;
- 20) Section 31;
- 21) Sections 32 and 34;
- 22) Section 33, cf. sections 35 and 41;
- 23) Section 55(1) and (2);

- 24) Section 57;
- 25) Section 61; and
- 26) Section 73a."

**13.** *Section 65* shall be as follows:

**"Section 65.** If the shipowner fails to fulfil his obligations in pursuance of section 55 or section 73a or his obligations in pursuance of section 1a to ensure compliance with section 12(2) and (3), section 18a(1)-(4), section 18b(4) and (5), section 27, section 49(xiii) insofar as regards section 18a(1), section 49(xix), as regards section 27, section 49(xxiii) or (xxvi), section 55, section 74b(1) or (3), or section 74c(2), he shall be liable to punishment by fine or imprisonment for a term of up to one year. If the shipowner fails to fulfil his obligations under section 4(1) and (2), section 8a(2), section 8c(1) and (2), section 8e, section 46, section 49(iii) or (xxiv), section 57 or section 64b(1), he shall be liable to punishment by fine.

*Subsection 2.* Anyone who fails to fulfil his obligation in pursuance of section 1a to ensure compliance with section 12(2) and (3), section 18a(1)-(4), section 18b(4) and (5), section 27, section 55, section 74b(1) or (3) or section 74c(2), shall be liable to punishment by fine or imprisonment for a term of up to one year, while anyone who otherwise fails to fulfil his obligations in pursuance of section 1a to ensure compliance with section 4(1) and (2), section 8a(2), section 8c(1) and (2), section 8e, section 32, section 56(1), (2) and (4), section 57, section 60, section 64a(2), section 64b(1), section 74 or similar provisions laid down in pursuance of section 73 shall be liable to punishment by fine. In the same way, anyone who fails to fulfil his obligations in pursuance of section 1a to ensure that the master has a possibility of meeting the obligations resting with him shall be punishable.

*Subsection 3.* Anyone who carries out private recruitment or placement for seafarers in Denmark without a valid certificate or who requires a fee from the seafarers for such services may be liable to punishment by fine.

*Subsection 4.* Companies, etc. (legal entities) are punishable according to the rules in chapter 5 of the penal code.

*Subsection 5.* When imposing liability to punishment under subsection 4, persons hired to perform work on board the ship by others than the shipowner shall also be considered associated with the shipowner. If a Document of Compliance has been issued pursuant to the Code for the Safe Operation of Ships or a certificate pursuant to the Maritime Labour Convention to another organisation or person, the master and the seafarers shall also be considered as being associated with those to whom the document is issued."

## **Section 6**

In act no. 493 of 12 May 2010 amending the act on safety at sea, the seaman's act and various other acts and repealing the act on the engagement of ship's crews (Implementation of the Maritime Labour Convention, modernisation of provisions on inspection, prohibition against navigation under the influence of alcohol in Greenland waters, etc.), as amended by section 4 of act no. 251 of 30 March 2011 and section 4 of act no. 478 of 30 May 2012, the following amendment shall be made:

- 1.** *Section 2(xxvi)* shall be repealed.

## **Section 7**

In act no. 251 of 30 March 2011, amending the merchant shipping act, the act on safety at sea and the seaman's act (obligation to take out insurance against maritime claims, implementation of the work in fishing convention, etc.), as amended by section 3 of act no. 249 of 21 March 2012, the following amendment shall be made:

1. *Section 3(ii)* shall be repealed.

## **Section 8**

The Minister of Business and Growth shall determine the date of the entry into force of the act and may, in this connection, determine that different parts of the act shall enter into force on different dates.

## **Section 9**

In act no. 599 of 24 June 2005 amending the merchant shipping act (liability for pollution damage caused by bunker oil and for damage arising in connection with the carriage by sea of dangerous and hazardous substances), the following amendment shall be made:

1. *Section 1(xxx)* shall be repealed.

## **Section 10**

*Subsection 1.* This act shall enter into force on 1 October 2013, cf. however subsection 2.

*Subsection 2.* The Minister for Business and Growth shall determine the date of the entry into force of section 1(vi)-(xxxiv) and sections 2-9. In this connection, the minister may determine that the provisions mentioned shall enter into force on different dates.

## **Section 11**

Ships which cannot, on 1 October 2013, be considered Danish and which have not changed their owner since 1 October 2013<sup>4</sup> shall not be covered by the reporting obligation stipulated in section 10 of the merchant shipping act.

## **Section 12**

*Subsection 1.* This act shall not apply to the Faroe Islands and to Greenland, cf. however subsections 2 and 3.

*Subsection 2.* Sections 1-9 may by royal decree be put into force wholly or partly for Greenland with the deviations deriving from the special Greenland conditions.

*Subsection 3.* Section 1(vi)-(xxxiv) may by royal decree be put into force wholly or partly for the Faroe Islands with the deviations deriving from the special Faroese conditions.

*Christiansborg Castle, 12 June 2013*  
Margrethe R. / Annette Vilhelmsen