

(2) The rules contained in the Schedule shall be supplementary to, and form part of the rules contained in the First Schedule to the Carriage by Air Act, 1934 (XX of 1934), or, as the case may be, in the First Schedule to the Carriage by Air (International Convention) Act, 1966 (IX of 1966), and shall have effect accordingly.

(3) The ¹[Government] may, by notification in the *official Gazette*, certify who are the Contracting States for the purposes of the Convention and in respect of what territories they are Contracting States; and any such notification shall be conclusive evidence of the matters specified therein.

THE SCHEDULE

(See section 2)

RULES

1. In these rules,-

- (a) "Warsaw Convention" means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12th October, 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) "contracting carrier" means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) "actual carrier" means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention. Such authority is presumed in the absence of proof to the contrary.

¹ The word "Government" was substituted for the words "Central Government" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

2. If an actual carrier performs the whole or part of carriage, which, according to the agreement referred to in Article 1, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in these rules, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

3. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.

4. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

5. Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

6. In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under these rules to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

7. In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under these rules, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

8. In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the Court seized of the case.

9. Any action for damages contemplated in rule 8 must be brought at the option of the plaintiff, either before a Court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention or before the Court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

10. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under these rules or to fix a lower limit than that which is applicable according to these rules shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of these rules.

11. In respect of the carriage performed by the actual carrier, rule 10 shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

12. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe these rules, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in one of the jurisdictions referred to in rule 9.

13. Except as provided in rule 8, nothing in these rules shall affect the rights and obligations of the two carriers between themselves.
