

## ANNEX I

## PROVISIONS OF THE ATHENS CONVENTION RELATING TO THE CARRIAGE OF PASSENGERS AND THEIR LUGGAGE BY SEA RELEVANT FOR THE APPLICATION OF THIS REGULATION (Consolidated text of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention)

*Article 1***Definitions**

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) 'carrier' means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by that person or by a performing carrier;
- (b) 'performing carrier' means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage; and
- (c) 'carrier who actually performs the whole or a part of the carriage' means the performing carrier, or, in so far as the carrier actually performs the carriage, the carrier;
2. 'contract of carriage' means a contract made by or on behalf of a carrier for the carriage by sea of a passenger or of a passenger and his luggage, as the case may be;
3. 'ship' means only a seagoing vessel, excluding an air-cushion vehicle;
4. 'passenger' means any person carried in a ship:
  - (a) under a contract of carriage; or
  - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. 'luggage' means any article or vehicle carried by the carrier under a contract of carriage, excluding:
  - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
  - (b) live animals;
6. 'cabin luggage' means luggage which the passenger has in his cabin or is otherwise in his possession, custody or control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;
7. 'loss of or damage to luggage' includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
8. 'carriage' covers the following periods:

- (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to the ship or vice-versa, if the cost of such transport is included in the fare or if the vessel used for this purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
  - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
  - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent on shore or on board until the time of its re-delivery by the carrier or his servant or agent;
9. ‘international carriage’ means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State;
10. ‘Organisation’ means the International Maritime Organisation;
11. ‘Secretary-General’ means the Secretary-General of the Organisation.

#### *Article Ibis*

#### **Annex**

The Annex to this Convention shall constitute an integral part of the Convention.

#### *Article 2*

#### **Application**

1 [...] <sup>(1)</sup>

2 Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

#### *Article 3*

#### **Liability of the carrier**

1 For the loss suffered as a result of the death of or personal injury to a passenger caused by a shipping incident, the carrier shall be liable to the extent that such loss in respect of that

passenger on each distinct occasion does not exceed 250 000 units of account, unless the carrier proves that the incident:

2 For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

3 For the loss suffered as a result of the loss of or damage to cabin luggage, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The fault or neglect of the carrier shall be presumed for loss caused by a shipping incident.

4 For the loss suffered as a result of the loss of or damage to luggage other than cabin luggage, the carrier shall be liable unless the carrier proves that the incident which caused the loss occurred without the fault or neglect of the carrier.

5 For the purposes of this Article:

6 The liability of the carrier under this Article only relates to loss arising from incidents that occurred in the course of the carriage. The burden of proving that the incident which caused the loss occurred in the course of the carriage, and the extent of the loss, shall lie with the claimant.

7 Nothing in this Convention shall prejudice any right of recourse of the carrier against any third party, or the defence of contributory negligence under Article 6 of this Convention. Nothing in this Article shall prejudice any right of limitation under Articles 7 or 8 of this Convention.

8 Presumptions of fault or neglect of a party or the allocation of the burden of proof to a party shall not prevent evidence in favour of that party from being considered.

#### *Article 4*

#### **Performing carrier**

1 If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2 The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3 Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4 Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

5 Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

### *Article 4bis*

#### **Compulsory insurance**

1 When passengers are carried on board a ship registered in a State Party that is licensed to carry more than twelve passengers, and this Convention applies, any carrier who actually performs the whole or a part of the carriage shall maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover liability under this Convention in respect of the death of and personal injury to passengers. The limit of the compulsory insurance or other financial security shall not be less than 250 000 units of account per passenger on each distinct occasion.

2 A certificate attesting that insurance or other financial security is in force in accordance with the provisions of this Convention shall be issued to each ship after the appropriate authority of a State Party has determined that the requirements of paragraph 1 have been complied with. With respect to a ship registered in a State Party, such certificate shall be issued or certified by the appropriate authority of the State of the ship's registry; with respect to a ship not registered in a State Party it may be issued or certified by the appropriate authority of any State Party. This certificate shall be in the form of the model set out in the annex to this Convention and shall contain the following particulars:

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4 The certificate shall be in the official language or languages of the issuing State. If the language used is not English, French or Spanish, the text shall include a translation into one of these languages, and, where the State so decides, the official language of the State may be omitted.

5 The certificate shall be carried on board the ship, and a copy shall be deposited with the authorities who keep the record of the ship's registry or, if the ship is not registered in a State Party, with the authority of the State issuing or certifying the certificate.

6 An insurance or other financial security shall not satisfy the requirements of this Article if it can cease, for reasons other than the expiry of the period of validity of the insurance or security specified in the certificate, before three months have elapsed from the date on which notice of its termination is given to the authorities referred to in paragraph 5, unless the certificate has been surrendered to these authorities or a new certificate has been issued within the said period. The foregoing provisions shall similarly apply to any modification which results in the insurance or other financial security no longer satisfying the requirements of this Article.

7 The State of the ship's registry shall, subject to the provisions of this Article, determine the conditions of issue and validity of the certificate.

8 Nothing in this Convention shall be construed as preventing a State Party from relying on information obtained from other States or the Organisation or other international organisations relating to the financial standing of providers of insurance or other financial security for the purposes of this Convention. In such cases, the State Party relying on such information is not relieved of its responsibility as a State issuing the certificate.

9 Certificates issued or certified under the authority of a State Party shall be accepted by other States Parties for the purposes of this Convention and shall be regarded by other States Parties as having the same force as certificates issued or certified by them, even if issued or certified in respect of a ship not registered in a State Party. A State Party may at any time request consultation with the issuing or certifying State should it believe that the insurer or guarantor

named in the insurance certificate is not financially capable of meeting the obligations imposed by this Convention.

10 Any claim for compensation covered by insurance or other financial security pursuant to this Article may be brought directly against the insurer or other person providing financial security. In such case, the amount set out in paragraph 1 applies as the limit of liability of the insurer or other person providing financial security, even if the carrier or the performing carrier is not entitled to limitation of liability. The defendant may further invoke the defences (other than the bankruptcy or winding up) which the carrier referred to in paragraph 1 would have been entitled to invoke in accordance with this Convention. Furthermore, the defendant may invoke the defence that the damage resulted from the wilful misconduct of the assured, but the defendant shall not invoke any other defence which the defendant might have been entitled to invoke in proceedings brought by the assured against the defendant. The defendant shall in any event have the right to require the carrier and the performing carrier to be joined in the proceedings.

11 Any sums provided by insurance or by other financial security maintained in accordance with paragraph 1 shall be available exclusively for the satisfaction of claims under this Convention, and any payments made of such sums shall discharge any liability arising under this Convention to the extent of the amounts paid.

12 A State Party shall not permit a ship under its flag to which this Article applies to operate at any time unless a certificate has been issued under paragraphs 2 or 15.

13 Subject to the provisions of this Article, each State Party shall ensure, under its national law, that insurance or other financial security, to the extent specified in paragraph 1, is in force in respect of any ship that is licensed to carry more than twelve passengers, wherever registered, entering or leaving a port in its territory in so far as this Convention applies.

14 Notwithstanding the provisions of paragraph 5, a State Party may notify the Secretary-General that, for the purposes of paragraph 13, ships are not required to carry on board or to produce the certificate required by paragraph 2 when entering or leaving ports in its territory, provided that the State Party which issues the certificate has notified the Secretary-General that it maintains records in an electronic format, accessible to all States Parties, attesting the existence of the certificate and enabling States Parties to discharge their obligations under paragraph 13.

15 If insurance or other financial security is not maintained in respect of a ship owned by a State Party, the provisions of this Article relating thereto shall not be applicable to such ship, but the ship shall carry a certificate issued by the appropriate authorities of the State of the ship's registry, stating that the ship is owned by that State and that the liability is covered within the amount prescribed in accordance with paragraph 1. Such a certificate shall follow as closely as possible the model prescribed by paragraph 2.

### *Article 5*

#### **Valuables**

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables have been deposited with the carrier for the agreed purpose of safe-keeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

## *Article 6*

### **Contributory fault**

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the Court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

## *Article 7*

### **Limit of liability for death and personal injury**

1 The liability of the carrier for the death of or personal injury to a passenger under Article 3 shall in no case exceed 400 000 units of account per passenger on each distinct occasion. Where, in accordance with the law of the court seized of the case, damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2 A State Party may regulate by specific provisions of national law the limit of liability prescribed in paragraph 1, provided that the national limit of liability, if any, is not lower than that prescribed in paragraph 1. A State Party, which makes use of the option provided for in this paragraph, shall inform the Secretary-General of the limit of liability adopted or of the fact that there is none.

## *Article 8*

### **Limit of liability for loss of or damage to luggage and vehicles**

1 The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 2 250 units of account per passenger, per carriage.

2 The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 12 700 units of account per vehicle, per carriage.

3 The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 shall in no case exceed 3 375 units of account per passenger, per carriage.

4 The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 330 units of account in the case of damage to a vehicle and not exceeding 149 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

## *Article 9*

### **Unit of Account and conversion**

1 The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Article 3(1),

Article 4*bis*(1), Article 7(1) and Article 8 shall be converted into the national currency of the State of the court seized of the case on the basis of the value of that currency by reference to the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions. The value of the national currency, in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by that State Party.

2 Nevertheless, a State which is not a member of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of ratification, acceptance, approval of or accession to this Convention or at any time thereafter, declare that the Unit of Account referred to in paragraph 1 shall be equal to 15 gold francs. The gold franc referred to in this paragraph corresponds to sixty-five and a half milligrams of gold of millesimal fineness nine hundred. The conversion of the gold franc into the national currency shall be made according to the law of the State concerned.

3 The calculation mentioned in the last sentence of paragraph 1, and the conversion mentioned in paragraph 2 shall be made in such a manner as to express in the national currency of the States Parties, as far as possible, the same real value for the amounts in Article 3(1), Article 4*bis*(1), Article 7(1) and Article 8 as would result from the application of the first three sentences of paragraph 1. States shall communicate to the Secretary-General the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 2, as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

#### *Article 10*

##### **Supplementary provisions on limits of liability**

1 The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.

2 Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

#### *Article 11*

##### **Defences and limits for carriers' servants**

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

## *Article 12*

### **Aggregation of claims**

1 Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.

2 In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing 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 carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

3 In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

## *Article 13*

### **Loss of right to limit liability**

1 The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and Article 10(1), if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2 The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

## *Article 14*

### **Basis for claims**

No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention.

## *Article 15*

### **Notice of loss or damage to luggage**

1 The passenger shall give written notice to the carrier or his agent:

2 If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.



3 The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

#### *Article 16*

##### **Time-bar for actions**

1 Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

2 The limitation period shall be calculated as follows:

3 The law of the Court seized of the case shall govern the grounds for suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of any one of the following periods of time:

4 Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

#### *Article 17*

##### **Competent jurisdiction**

(2)

#### *Article 17bis*

##### **Recognition and enforcement**

(2)

#### *Article 18*

##### **Invalidity of contractual provisions**

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to the passenger's luggage, purporting to relieve any person liable under this Convention of liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in Article 8, paragraph 4, and any such provision purporting to shift the burden of proof which rests on the carrier or performing carrier, or having the effect of restricting the options specified in Article 17, paragraphs 1 or 2, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.

#### *Article 20*

##### **Nuclear damage**

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or any amendment or Protocol thereto which is in force; or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favourable to persons who may suffer damage as either the Paris or the Vienna Conventions or any amendment or Protocol thereto which is in force.

#### *Article 21*

### **Commercial carriage by public authorities**

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contract of carriage within the meaning of Article 1.

[Articles 22 and 23 of the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974]

#### *Article 22*

### **Revision and amendment**

(3)

#### *Article 23*

### **Amendment of limits**

1 Without prejudice to the provisions of Article 22, the special procedure in this Article shall apply solely for the purposes of amending the limits set out in Article 3(1), Article 4*bis*(1), Article 7(1) and Article 8 of the Convention as revised by this Protocol.

2 Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits, including the deductibles, specified in Article 3(1), Article 4*bis*(1), Article 7(1) and Article 8 of the Convention as revised by this Protocol shall be circulated by the Secretary General to all Members of the Organisation and to all States Parties.

3 Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organisation (hereinafter referred to as 'the Legal Committee') for consideration at a date at least six months after the date of its circulation.

4 All States Parties to the Convention as revised by this Protocol, whether or not Members of the Organisation, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.

5 Amendments shall be adopted by a two thirds majority of the States Parties to the Convention as revised by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 4, on condition that at least one half of the States Parties to the Convention as revised by this Protocol shall be present at the time of voting.

6 When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.

7

8 Any amendment adopted in accordance with paragraph 5 shall be notified by the Organisation to all States Parties. The amendment shall be deemed to have been accepted at the end of a period of 18 months after the date of notification, unless within that period not less than one fourth of the States that were States Parties at the time of the adoption of the amendment have communicated to the Secretary General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.

9 An amendment deemed to have been accepted in accordance with paragraph 8 shall enter into force 18 months after its acceptance.

10 All States Parties shall be bound by the amendment, unless they denounce this Protocol in accordance with Article 21, paragraphs 1 and 2 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.

11 When an amendment has been adopted but the 18 month period for its acceptance has not yet expired, a State which becomes a State Party during that period shall be bound by the amendment if it enters into force. A State which becomes a State Party after that period shall be bound by an amendment which has been accepted in accordance with paragraph 8. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

## ANNEX TO ATHENS CONVENTION

### **CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR THE DEATH OF AND PERSONAL INJURY TO PASSENGERS**

Issued in accordance with the provisions of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002

<b>Name of ship</b>	<b>Distinctive number or letters</b>	<b>IMO ship identification number</b>	<b>Port of registry</b>	<b>Name and full address of the principal place of business of the carrier who actually performs the carriage</b>

This is to certify that there is in force in respect of the abovenamed ship a policy of insurance or other financial security satisfying the requirements of Article 4*bis* of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

Type of security ...

Duration of security ...

Name and address of the insurer(s) and/or guarantor(s)

Name ...

Address ...

This certificate is valid until ...

Issued or certified by the Government of ...

(Full designation of the State)

OR

The following text should be used when a State Party avails itself of Article 4*bis*, paragraph 3:

The present certificate is issued under the authority of the Government of ... (full designation of the State) by ... (name of institution or organisation)

At ... On ...

(Place) (Date)

...

(Signature and title of issuing or certifying official)

Explanatory notes:

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the Certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry 'Duration of Security' must stipulate the date on which such security takes effect.
5. The entry 'Address' of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated.

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