



LAWS OF KENYA



## **CARRIAGE BY AIR ACT**

No. 2 of 1993

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**NO. 2 OF 1993**

**CARRIAGE BY AIR ACT**

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**NO. 2 OF 1993****CARRIAGE BY AIR ACT**

[Date of assent: 25 May, 1993.]

[Date of commencement: 1st July, 1993.]

**An Act of Parliament to give effect to the Convention concerning international carriage by air, known as “the Warsaw Convention as amended by the Hague Protocol, 1955,” to enable the rules contained in that Convention to be applied, with or without modifications, in other cases and, in particular, to non-international carriage by air; and for connected purposes**

WHEREAS, under and by virtue of certain applied laws being Orders-in-Council of the United Kingdom styled respectively as the Carriage of Goods by Air (Colonies, Protectorates and Mandated Territories) Order, 1934 and the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order, 1953 and 1955, certain provisions of the Carriage by Air Act, 1932 of the United Kingdom were extended and made applicable to Kenya;

AND WHEREAS, by virtue of section 4 of the Kenya Independence Order in Council, 1963 and section 14 of the Constitution of Kenya (Amendment) Act, 1964 those provisions were continued in force and made to have effect as part of the Laws of Kenya;

AND WHEREAS it is deemed to be expedient to make provision for the direct application to Kenya of the rules contained in the Convention for the unification of certain rules relating to international carriage by air signed at Warsaw on the 12th October, 1929, and as amended by a Protocol signed at the Hague on the 28th September, 1955:

NOW, THEREFORE, BE IT ENACTED by the Parliament of Kenya as follows—

[L.N. 718/1963, Act No. 28 of 1964, L.N. 161/1993.]

**1. Short title**

This Act may be cited as the Carriage by Air Act, 1993.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**the Convention**” means the Convention set out in the First Schedule being a Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on the 12th October, 1929 as amended by a Protocol opened for signature at the Hague on the 28th September, 1955 and any other Convention which may from time to time amend or replace the said Convention and is ratified or acceded to by the Government of Kenya;

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

“the former Act “ means the Carriage by Air Act, 1932, of the United Kingdom;

“Minister” means the Minister for the time being responsible for air transport;

“the Orders-in Council” mean’s the Carriage of Goods by Air (Colonies, Protectorates and Mandated Territories) Order, 1934 and the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) Order, 1953 as amended by the Carriage by Air (Non-International Carriage) (Colonies, Protectorates and Trust Territories) (Amendment) Order, 1955.

[22 and 23 Geo 5.]

### **3. Convention to have force of law**

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

### **4. Designation of High Contracting Parties**

(1) The Minister may, by notice in the *Gazette*, from time to time certify who are the High Contracting Parties to the Convention, in respect of what territories they are respectively parties and to what extent they have availed themselves of the provisions of the additional Protocol to the Convention at the end of the Convention as set out in the First Schedule.

(2) A notice under this section shall, except in so far as it has been superseded by a subsequent notice, be conclusive evidence of the matters so far certified.

(3) Any liability imposed by Article 17 of the Convention on a carrier in respect of the death of a passenger shall be in substitution for any liability of the carrier in respect of the death of that passenger either under any written law or at common law, and the provisions set out in the Second Schedule shall have effect with respect to the persons by and for whose benefit the liability so imposed is enforceable and with respect to the manner in which it may be enforced.

### **5. Fatal accidents**

References in section 3 of the Fatal Accidents Act (Cap. 32) to a wrongful act, neglect or default shall include references to any occurrence which gives rise to a liability under Article 17 of the Convention.

### **6. Limitation of liability**

(1) The limitations on liability in Article 22 of the Convention shall apply whatever the nature of the proceedings by which liability may be enforced and, in particular—

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

- (b) the limitation for each passenger referred to in paragraph (1) of Article 22 shall apply to the aggregate liability of the carrier in all proceedings which may be brought against him under the law of Kenya, together with any proceedings brought against him outside Kenya.

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

(3) Notwithstanding subsection (2), a court before which proceedings are brought to enforce a liability which is limited by Article 22 of the Convention shall, where the liability is, or may be, partly enforceable in other proceedings in Kenya or elsewhere, have jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court, or to make any part of its award conditional on the result of any other proceedings.

(4) The Minister for the time being responsible for finance may from time to time, by order published in the *Gazette* specify the respective amounts which for the purposes of Article 22 of the Convention, and in particular paragraph (5) of that Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

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

## **7. Time for bringing proceedings**

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

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

(3) Subsections (1) and (2) and the provisions of Article 29 of the Convention shall have effect as if references in those provisions to an action include reference to an arbitration; and subsections (3) and (4) of section 34 of the Limitation of Actions Act (Cap. 22) shall apply for the purposes of this subsection.

## **8. Contributory negligence**

For the purposes of Article 21 of the Convention section 4 of the Law Reform Act (Cap. 26) shall be provisions of the law of Kenya under which a court may exonerate the carrier wholly or partly from his liability.

**9. Power to exclude aircraft in the use for military purposes, etc.**

(1) The Minister may from time to time by order published in the *Gazette* direct that this section shall apply or shall cease to apply, to Kenya or any other State specified in the order.

(2) The Convention shall not apply to the carriage of persons, cargo and baggage for the military authorities of a State to which this section applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by or on behalf of those authorities.

**10. Actions against High Contracting Parties**

Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any action brought in a court in Kenya in accordance with the provisions of Article 28 of the Convention to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that court, and accordingly rules of court may provide for the manner in which any such action is to be commenced and carried on; but nothing in this section shall authorize the issue of execution against the property of any High Contracting Party.

**11. Application of convention to Carriage by air not covered by the Convention**

(1) The Minister may, by order in the *Gazette*, apply the First Schedule, together with any other provisions of this Act, to carriage by air, not being carriage by air to which the Convention applies, of such description as may be specified in the order subject to such exceptions, adaptations and modifications (if any), as may be specified.

(2) An order under this section shall not be made unless a draft of the order has been laid before National Assembly and approved by a resolution of the Assembly.

**12. Act to bind Government**

This Act shall bind the Government.

**13. Application of United Kingdom legislation**

(1) The former Act and the Order-in-Council as applied to Kenya shall cease to have the force of law in Kenya from the commencement of this Act.

(2) The former Act and the Orders-in-Council shall, notwithstanding subsection (1), continue to apply to any agreement made or contract entered into before the commencement of this Act.

(3) All proceedings which immediately before the commencement of this Act are pending before the court shall not be affected by the provisions of subsection (1) and may be continued and concluded accordingly.

## FIRST SCHEDULE

[Sections 22 and 4(1).]

CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING  
TO INTERNATIONAL CARRIAGE BY AIR AS AMENDED BY THE HAGUE  
PROTOCOL OF 1955

## CHAPTER I – SCOPE—DEFINITIONS

*Article 1*

(1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

(2) For the purposes of this Convention, the expression “**international carriage**” means any Carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another state, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another state is not international carriage for the purposes of this Convention.

(3) Carriage to be performed by several successive air earners is deemed, for the purposes of this Convention to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.

*Article 2*

(1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.

(2) This Convention does not apply to carriage of mail and postal packages.

## CHAPTER II – DOCUMENTS OF CARRIAGE

## SECTION I – PASSENGER TICKET

*Article 3*

(1) In respect of the carriage of passengers, a ticket shall be delivered containing—

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
- (c) a notice to the effect that, if the passenger’s journey involves an ultimate destination or stop in a country other than the country of

departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or personal injury and in respect of loss of or damage to baggage.

(2) The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1)(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

## SECTION 2 – BAGGAGE CHECK

### Article 4

(1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph (1), shall contain—

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

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

## SECTION 3 – AIR WAYBILL

### Article 5

(1) Every carrier of cargo has the right to require the consignor to make out and hand over to him a document called an “air waybill”; every consignor has the right to require the carrier to accept this document.

(2) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage which shall, subject to the provisions of Article 9, be none the less governed by the rules of this Convention.

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*Article 6*

(1) The air waybill shall be made out by the consignor in three original parts and be handed over with the cargo.

(2) The first part shall be marked "for the carrier", and shall be signed by the consignor. The second part shall be marked "for the consignee"; it shall be signed by the consignor and by the carrier and shall accompany the cargo. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.

(3) The carrier shall sign prior to the loading of the cargo on board the aircraft.

(4) The signature of the carrier may be stamped; that of the consignor may be printed or stamped.

(5) If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

*Article 7*

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

*Article 8*

The air waybill shall contain—

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

*Article 9*

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

*Article 10*

(1) The consignor is responsible for the correctness of the particulars and statements relating to the cargo which he inserts in the air waybill.

(2) The consignor shall indemnify the carrier against all damage suffered by him, or any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor.

*Article 11*

(1) The air waybill is *prima facie* evidence of the conclusion of the contract, of the receipt of the cargo and of the conditions of carriage.

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

*Article 12*

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

(2) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(3) If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill.

(4) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the waybill or the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

*Article 13*

(1) Except in the circumstances set out in the preceding Article, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to hand over to him the air waybill and to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage set out in the air waybill.

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

(3) If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

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*Article 14*

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

*Article 15*

(1) Articles 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(2) The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill.

(3) Nothing in this Convention prevents the issue of a negotiable air waybill.

*Article 16*

(1) The consignor must furnish such information and attach to the air waybill such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his servants or agents.

(2) The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

## CHAPTER III – LIABILITY OF THE CARRIER

*Article 17*

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

*Article 18*

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

(2) The carriage by air within the meaning of the preceding paragraph comprises the period during which the baggage or cargo is in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(3) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

*Carriage by Air*

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*Article 19*

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

*Article 20*

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

*Article 21*

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

*Article 22*

(1) In the carriage of persons the liability of the carrier for each passenger is limited to the sum of two hundred and fifty thousand francs. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form periodical payments the equivalent capital value of the said payments shall not exceed two hundred and fifty thousand francs. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

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

(b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless when the loss, damage or delay of a part of the registered baggage or cargo, of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall be taken into consideration in determining the limit of liability.

(3) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to five thousand francs per passenger.

(4) The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the

sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of occurrence causing the damage, or before the commencement of the action, if that is later.

(5) The sums mentioned in francs in this Article shall be deemed to refer to a currency unit consisting of sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into national currencies in round figures. Conversion of sums into national currencies other than gold shall, in case of judicial proceedings, be made according to the gold value of such currencies at the date of the judgement.

#### *Article 23*

(1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

(2) Paragraph (1) of this Article shall not apply to provisions governing the loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

#### *Article 24*

(1) In the cases covered by Articles 13 and 19 any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention.

(2) In the cases covered by Article 17 the provisions of the preceding paragraph also apply, without prejudice to the questions as to who are the person, who have the right to bring suit and what are their respective rights.

#### *Article 25*

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

#### *Article 25A*

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

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

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

*Article 26*

(1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

(2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.

(3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

*Article 27*

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

*Article 28*

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

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

*Article 29*

(1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

(2) The method of calculating the period of limitation shall be determined by the law of the court seised of the case.

*Article 30*

(1) In the case of carriage to be performed by various successive carriers and falling within the definition set out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and a passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

#### CHAPTER IV – PROVISIONS RELATING TO COMBINED CARRIAGE

##### *Article 31*

(1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.

(2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

#### CHAPTER V – GENERAL AND FINAL PROVISIONS

##### *Article 32*

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

##### *Article 33*

Nothing contained in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage or from making regulations which do not conflict with the provisions of this Convention.

##### *Article 34*

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

##### *Article 35*

The expression "days" when used in this Convention means current days not working days.

*Article 36*

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry of Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

*Article 40A*

(1) In Article 37, paragraph (2) and Article 40, paragraph (1), the expression High Contracting Party shall mean State in all other cases, the expression High Contracting Party shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.

(2) For the purposes of the Convention the word territory means not only the metropolitan territory of a state but also all other territories for the foreign relations of which that State is responsible.

*[Articles 37, 38, 39, 40 and 41 and the concluding words of the Convention are not reproduced. They merely deal with the coming into force of the Convention.]*

## ADDITIONAL PROTOCOL

*(With reference to Article 2)*

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or accession that the first paragraph of Article 2 of this Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory its sovereignty, suzerainty or authority.

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SECOND SCHEDULE

[Section 4(3).]

## PROVISIONS AS TO LIABILITY OF CARRIER IN THE EVENT OF THE DEATH OF A PASSENGER

1. (1) The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

(2) In this paragraph the expression "**member of a family**" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child and grand-child:

Provided that, in deducing any such relationship as aforesaid, any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding paragraph enforceable, but only one action shall be

brought in Kenya in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid as either are domiciled in Kenya or, not being domiciled they express a desire to take the benefit of the action.

3. Subject to paragraph (4) the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the court may direct.

4. The court before which any action is brought may at any stage of the proceedings make any such order as appears to the court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside Kenya in respect of the death of the passenger in question.

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**NO. 2 OF 1993**

**CARRIAGE BY AIR ACT**

SUBSIDIARY LEGISLATION

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**CARRIAGE BY AIR (APPLICATION OF CONVENTION) ORDER, 1993**

[L.N. 162/1993.]

1. This Order may be cited as the Carriage by Air (Application of Convention) Order, 1993.
  2. All provisions of the Act and all provisions of the First Schedule to the Act with the exception of Articles 3, 4, 6, 8, 9, 10 and 28 of the Convention shall apply to all non-international carriage by air in Kenya.
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**CARRIAGE BY AIR (CURRENCY EQUIVALENT) ORDER, 1993**

[L.N. 189/1993.]

1. This Order may be cited as the Carriage by Air (Currency Equivalent) Order, 1993.
  2. The equivalent in Kenya currency of 250,000 gold francs under Article 22 of the Convention and in particular paragraph (5) of that Article is one million, three hundred and six thousand two hundred and eighty-six shillings or twenty thousand U.S. dollars, whichever is the higher.
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