

3rd February 2013

Client Alert

The New Saudi Arabian Carriage of Goods by Sea Rules

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On 4th April 2013 new rules governing the carriage of goods by sea will enter into force in Saudi Arabia.

The Carriage of Goods by Sea Rules were issued by the Minister of Transport's Resolution No. 1/12 of 19th Muharram 1434 Hejra corresponding to 3rd December 2012 Gregorian. The rules govern the licensing of carriers, the issuance of bills of lading and rights and obligations arising thereunder, compensation, limits of liability, freight, and rights of disposal.

Our comments below are not a comprehensive review of the Rules, and merely highlight some issues which arise under them. Readers are advised to review our translation of the Rules set out below. Our comments are not intended to be legal advice, and should not be relied on as a substitute for legal advice.

Bills of Lading

Article 48 of the Rules provides that electronic bills of lading may be used. This ties in with the Electronic Transactions Regulation of 2007, which makes e-documents binding under Saudi Arabian law.

Article 17 of the Rules sets out a long list of particulars which must be stated in a bill of lading, of which the following are mandatory:

- *the general nature of the goods, the marks necessary to distinguish them, and their characteristics, and an express statement must be made if the goods are dangerous;*
- *the number of containers or packages or pieces or the total weight of the packages and the number of head of livestock or the total weight, or the quantity of the goods carried;*
- *the name and address of the shipper;*
- *the name and address of the consignee;*

- *the place and date of issue of the bill;*
- *the signature of the carrier or person authorised by him;*
- *the name of the insurance company and the number and date of the insurance contract.*

Article 17 (4) provides that omission of particulars other than those which are mandatory shall not affect the legal nature or validity of a bill of lading. It seems to follow that a bill of lading which does not contain the mandatory particulars may be invalid.

While most of the items listed in Article 17 are what one would expect to be stated in a bill of lading, the requirement to name an insurer and number and date of an insurance contract is unusual. This requirement is connected to Article 15 of the Rules, which provides that a carrier "*must link the contract of carriage to a valid policy of insurance to cover all his financial obligations provided for in these Rules*". Presumably, a valid entry with a P&I Club should be sufficient in this context, but Saudi Arabian carriers should confirm this with the Ministry of Transport.

Liabilities

The liabilities regime under the Rules is not based on an international convention such as the Hague Rules or the Hague-Visby Rules. Article 25 of the Rules provides that a carrier shall not be liable for loss of or damage to goods, or delay in their delivery, if this is due to one of the following causes:

- *default on the part of the shipper or consignee or any of their agents or representatives;*
- *force majeure or emergency circumstance;*
- *inherent or latent defect in the goods;*
- *a shortage in volume or weight occurring during carriage for reasons referable to the nature of the goods being carried such as evaporation, drying or ripening;*
- *an extraneous cause outside the control of the carrier resulting in his being prevented from performing the contract of carriage.*

All of the above defences have already been applied by the Board of Grievances in past cases before the court, and their effectiveness is, therefore, tested in Saudi Arabia. Article 27 (1) expressly acknowledges trade allowances for bulk cargo shortages, and provides that the carrier is only liable if such shortages exceed "*the proportion laid down under the general rules, conditions and specifications customarily used in the carriage of such goods*".

Article 28 of the Rules provides that the carrier is liable for the acts of his servants, agents, contractors, subcontractors and the like. Accordingly, there is no equivalent under Saudi Arabian law to the Hague Rules or Hague-Visby Rules defence of act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or the management of the ship. Moreover, because Article 26 of the Rules provides that the carrier is liable for the goods until these are delivered to the consignee, there is a risk that carriers will be liable for stevedore damage unless it can be demonstrated that they were engaged by the receiver.

Article 25 (5) provides that goods which have not been delivered within 90 days from the agreed date of delivery shall be treated as having been lost, with the carrier being liability for their loss. It is likely that this situation will arise only where a date of delivery is stated in a bill of lading, which is provided for in Article 17 (1) (l) of the Rules.

Limitation of Liability

Article 38 of the Rules permits the limitation of liability in accordance with terms agreed by the parties. This is in line with the past practice of the Board of Grievances, which has upheld package limitation provisions in bills of lading.

Absent an express agreement on limitation of liability, Article 34 of the Rules provides that compensation for loss of or damage to goods shall be on the basis of their value at the time and place of actual or expected delivery. In most instances, this will be on the basis of the invoiced value plus the cost of freight and insurance. Where this is not possible, the value shall be based on the market price or, if there is no market price, on the basis of an expert assessment.

While Article 34 makes sense, Article 35 contains an apparently contradictory statement that, if the value of the goods is not specified by the consignee and noted in the bill of lading, compensation for loss of or damage to goods shall not exceed "*the amount provided for in the relevant international agreements*". Since Saudi Arabia is not a member to an international convention on the carriage of goods by sea, there are no rules of direct relevance in this context, and Article 35 can be ignored for the time being. However, it is likely to cause some confusion.

Under Article 36 damages for delay may not exceed "*two and a half times the value of the freight payable on those parts of the goods delayed, and provided that such liability shall not exceed the value of the freight for the whole of the goods under the contract of carriage*". Article 37 provides that indirect damages must be limited to the value of the freight. To date Saudi Arabian courts have not awarded damages for loss of market or indirect financial losses, and there is, therefore, no need to impose the limitations imposed by Articles 36 and 37. However, it is possible that these new rules may give rise to claims on the basis that they create liquidated damages.

Cargo Liens

Article 43 of the Rules gives the carrier the right to detain goods in respect of freight, storage charges, demurrage and any other compensation due to under the contract of carriage. To date, cargo liens at Saudi Arabian ports were exercised by requesting the port management not to deliver goods subject to a lien to the receiver. It remains to be seen whether, in practice, a carrier can retain goods which are subject to a lien.

Time Bars

Article 46 provides that cargo claims become time barred after 365 days from the date on which the cargo was or should have been delivered, or the date on which they were lost.

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Unofficial Translation

Carriage of Goods by Sea Rules, Ministerial Resolution No. 01/12 of 19th Muharram 1434 Hejra corresponding to 3rd December 2012 Gregorian

Umm Al Qura
Friday 22nd afar 1434 Hejra
4th January 2013
Year 90 Issue 4443

Ministerial Resolution No. 01/12 of 19th Muharram 1434 Hejra corresponding to 3rd December 2012 Gregorian

APPROVAL FOR IMPLEMENTATION OF THE IMPLEMENTING RULES FOR THE BUSINESS OF CARRIAGE OF GOODS BY SEA

The Minister of Transport

Pursuant to the powers vested in him by law

And upon consideration of the Public Road Transport Regulation in the Kingdom of Saudi Arabia, passed under Royal Decree No. M/25 of 21st Jumada Thani 1397 Hejra [corresponding to 8th June 1977]

And pursuant to the provisions of Article 20 of the Public Road Transport Regulation conferring upon the Minister of Transport power to regulate the transport sector in the Kingdom - with the exception of carriage by air - and supervision thereof and coordination between the various modes

And pursuant to the provisions of Article 21 of the said Regulation conferring upon the Minister of Transport power to issue regulatory and implementing rules to the said Regulation

Resolves as follows

- I: To approve the implementation of the Implementing Rules for the business of carriers of goods by sea in the wording attached to this Resolution.
- II: This Resolution and the Rules shall be published in the Official Gazette, and shall come into force ninety days from the date of publication thereof [4th April 2013].
- III: These Rules repeal any earlier directives or resolutions relating to such business which conflict with any such provisions.
- IV: The Deputy Minister of Transport for Transport Affairs shall take the necessary measures to implement the provisions thereof.

Minister of Transport

Jabbara bin Id Al Suwaysiry

IMPLEMENTING RULES

CHAPTER ONE INTRODUCTORY PROVISIONS

Article 1: Scope of application

1. The provisions of these Rules shall apply to the business of carriage of goods by sea by a carrier between ports of the Kingdom, or between such ports and another country or countries.
2. The provisions of these Rules shall not apply if they are inconsistent with a multilateral or bilateral international agreement to which the Kingdom has acceded.

Article 2: Definitions

The following expressions shall have the meaning set out against each of them:

1. The Ministry: the Ministry of Transport.
2. The Minister: the Minister of Transport.
3. Department: Every public Department for roads and transport in any region of the Kingdom.
4. Business/Activity is: The transport of goods between the ports of the Kingdom or between such ports and another country or countries by sea under a single contract of carriage and a single bill of lading under the responsibility of a carrier, from the point of his taking delivery of the goods from the shipper until delivery thereof to the consignee.
5. Licence: The document issued by the Department permitting the enterprise to carry on the business in accordance with the provisions of these Rules.
6. Carrier of goods by sea (intermediary for the carriage of goods by sea/carrier/enterprise): The enterprise licensed to carry on the business, which enters into a contract of carriage of goods by sea with a shipper in its own name or through another person on its behalf acting in his capacity as principal and bearing responsibility for the performance of the subject matter of the contract.
7. The license city: The cities, regions and centres in which the establishment is licensed to carry on the business.
8. Head office: The seat of the enterprise from which it carries on its business and supervises the activity of its branches.
9. Branch: A seat for the carrying on of the business, operating under the supervision of the head office.
10. Periodic register: Statistical data on the business for each three months in accordance with the form approved by the Ministry.
11. Inspector: The person entrusted by the Department to monitor compliance by carriers with the provisions of these Rules.
12. Inspection record: The document made by the inspector, containing breaches of the provisions of these Rules.
13. Contract of carriage of goods by sea (contract of carriage) : The contract made between the shipper and the carrier or the representative of either of them, containing the obligations and conditions under which the carrier will carry goods of the shipper to the consignee or vice versa in consideration of freight.
14. Bill of lading: A document issued under a contract of carriage, which is deemed to be proof of receipt by the carrier of the goods the subject matter of the carriage in the condition set

out therein for delivery to the consignee in the same condition; it may be in hard copy or electronic form. It is of two kinds:

- (i) a negotiable bill of lading, which will be to the order of a particular person or to bearer;
 - (ii) a non-negotiable bill lading, made out in the name of a single consignee.
15. Shipper (consignor): The person in possession of the goods, who enters into a contract of carriage in his own name - or a person acting on his behalf or his representative - with the carrier for the carriage of those goods between the ports of the Kingdom, or between such ports and another country or countries.
 16. Consignee: The person who has the right by himself or by deputation of another to take delivery of the goods from the carrier or his representative.
 17. Implementing party: Any person to whom the carrier entrusts the implementation of any of the responsibilities in the contract of carriage, including handling, loading, discharge and storage of the goods until delivery to the consignee.
 18. Goods: The commodities and things of any kind which the carrier undertakes to carry under the contract of carriage, unless it is prohibited and not permitted to import them or export them in the country of the shipper or the country of the consignee, which are grouped or packaged in the form of packages or pallets or boxes or in containers or any similar means used in the grouping and packing of goods, as well as liquid and gaseous materials and dry bulk materials that are not packaged, and goods shall also include vehicles, equipment and live animals.
 19. Delivery: Delivery of the goods to the consignee or placing them at his disposal or that of any other person in possession of the bill of lading who is authorised by the consignee to take delivery of them.
 20. Electronic communication: An exchange of information by the transmission of part or all of marks, signs, writing, images, data or information from one place to another by or through digital systems such as computers or photo or electronic scanners or any other digital means.
 21. Standard specifications: The specifications and standards issued by the Saudi Specifications, Standards and Quality Authority.
 22. Dangerous materials: Any solid, liquid or gaseous material having dangerous properties that could, by its chemical, physical or biological characteristics, be harmful to the health of human beings or other forms of life or property, or could have a harmful impact on the environment.
 23. A policy of insurance: A document arising out of the contract of carriage containing the information and data necessary to cover the risks to the goods during carriage from the time of receipt thereof by the carrier from the shipper until the time of delivery thereof to the consignee, whereby by the insurer is obliged to pay to the assured financial compensation for total or partial loss or damage to the goods carried by reason of the occurrence of a casualty.

CHAPTER TWO LICENSING REQUIREMENTS

Part One Licence

Article 3: Registration of the establishment

1. The activity will be carried out by Saudi enterprises having Saudi capital, after the obtaining of a license.
2. Non-Saudi investors may obtain licenses to carry on such business in accordance with the provisions of these Rules as provided for in another regulation or in bilateral, regional or international agreements to which the kingdom has acceded.

Article 4: Pre-qualifications for licensing

Enterprises applying for a licence must satisfy the following conditions:

1. an application submitted by them for a licence in accordance with the approved form;
2. a copy of the current commercial register;
3. a copy of the contract of incorporation of the enterprise (for companies).

Article 5: The seat of the business

Subject to the conditions and specifications for centres for the carrying on of the business, approved by city secretariats, municipalities, the General Ports Authority and the traffic departments, the carrying on of the business shall be through a centre having the following elements, and a breach of any of them will result in the suspension of the licence:

1. an office for the administration of the work of the business, containing all the necessary equipment;
2. sufficient parking spaces for vehicles to load and offload goods;
3. sufficient and suitable warehouses for the kind of goods received by the enterprise from shippers that require to be stored until the commencement of the operation of carriage or until delivery thereof to the consignee.

Article 6: Issue of the license

The license will be issued in the approved form after payment of the prescribed fees, and the activity will be added to the commercial register, and it will be:

1. in the name of the enterprise and restricted to it;
2. for a period of three years.

Part Two Carrying on of the activity

Article 7: Correspondence

All correspondence and forms relating to the business shall be on letterhead stating clearly the name of the enterprise, the type of activity, the licence number and the address of the enterprise; it must be in Arabic, and another language may be used alongside it.

Article 8: Obligations of the establishment

The carrier shall observe the following:

1. a register must be kept for the recording of the daily movement of the business and shall contain the required particulars;
2. verification must be made of the type of goods to be transported and that they are not prohibited;
3. verification must be made of the name of the owner of the goods, and of his identity and address.

Article 9: Branches

The enterprise may open branches in the city in which it is licensed or other cities, subject to the prior consent of the Department, and provided that the Branch satisfies the conditions set out in Article 5 of these Rules.

Article 10: Change of the seat of the business

Subject to the provisions of Article 5 of these Rules, the enterprise must obtain the prior consent of the Department when changing the seat of the carrying on of the activity.

Article 11: Change in the legal type of the enterprise

The prior consent of the Department must be obtained to maintain the validity of the licences if the enterprise wishes to make a change in its legal type, and if a change occurs without the knowledge of the Department, it shall be open to the Department either to allow the licence to continue, or to revoke it.

**Part Three
Validity of the licence**

Article 12: Renewal of licence

- (a) The licence shall be deemed to terminate upon the expiry of the duration thereof, and it shall be permissible to renew it upon application by the enterprise in accordance with the approved form, for a similar period or periods in accordance with transport requirements or as dictated by the public interest.
- (b) Subject to the conditions set out in Articles 5 and 6, the licence will be renewed after the following has been complied with:
 - (i) the payment of any fines and financial penalties due in respect of breaches by the enterprise of the provisions of these Rules;
 - (ii) [submission of] a copy of the current zakat and income tax certificate.
- (c) The application for renewal shall be submitted in either of the following circumstances:
 - (i) within the period of 90 days before the expiry date thereof;
 - (ii) after the expiry date thereof and before the expiration of one year from that date, and the enterprise must not carry out the activity until it is renewed.

Article 13: Assignment of licence

The enterprise may assign the licence to a third party subject to the following:

1. the prior consent of the Department to the assignment;

2. the assignee satisfying all the conditions that must be satisfied for a licensee to carry on the activity;
3. payment of fines arising out of transportation¹ breaches before transfer of the licence.
4. The enterprise shall remain liable for the business and the workers in it and for the performance of its obligations towards third parties until the transfer of the assigned licence is completed, and upon transfer of the licence to the assignee enterprise the pre-existing obligations of the assigning enterprise shall remain in place in the absence of an agreement to the contrary.
5. The existing equipment must satisfy the conditions of these Rules, and the relevant directives.
6. The licence must be in force at the time the application to assign is submitted.
7. All procedures for the transfer of equipment relating to the activity from the enterprise assigning the licence to the assignee enterprise must be completed within a maximum period of two months from the date of consent by the Department.

Article 14: Cancellation of licence

- (a) The licence shall be cancelled in the following cases:
 1. expiry or cancellation of the validity of the enterprise's trade licence;
 2. on the application of the licensee enterprise;
 3. death of the owner if it is a sole proprietorship;
 4. if the enterprise becomes bankrupt or applies for a declaration of bankruptcy or if it is proved that the owner thereof is insolvent or an order has been made placing it under custodianship, or if it has been dissolved or liquidated;
 5. the expiration of a period of one year from the expiry of the license without it being renewed;
 6. assignment of the license without the consent of the Department;
 7. the decision of the Minister on the basis of the dictates of public interest;
 8. any disposition that transfers ownership of the enterprise or part thereof without the consent of the Department.
- (b) Subject to the provisions of Article 15, the Department may, in the event of the death of the owner of a sole proprietorship, or upon his being completely medically incapacitated, extend the validity of the licence for a period not exceeding three months in order to enable the establishment to fulfil its obligations.

¹ Translator's note: there is an ambiguity here, as the Arabic word *naql* means both carriage/transport(ation) and transfer.

CHAPTER THREE
RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE CONTRACT OF CARRIAGE

Part One
The bill of lading

Article 15: Insurance policy

The carrier must link the contract of carriage to a valid policy of insurance to cover all his financial obligations provided for in these Rules.

Article 16: The issue of the bill of lading

1. Upon the making of the contract of carriage and the goods being transferred to the liability of the carrier, he must issue a negotiable or non-negotiable bill of lading at the shipper's option and deliver it to him.
2. The bill of lading must be signed by the carrier or any person authorised by him.
3. Any consignee whose name is mentioned in a negotiable or non-negotiable bill of lading or any person having the right of disposal of the goods into whose possession the goods passes, shall have all of the rights and the full liability in respect of the goods.
4. Pursuant to subsection 3, there must be no cause limiting or affecting the right of the carrier to claim his financial rights against the shipper or limiting the liability of the shipper or the consignee or person having a right of disposal over the goods to satisfy such rights.
5. If a negotiable bill of lading is issued:
 - (a) it will be transferable by endorsement if it has been issued to order;
 - (b) it will be transferable without endorsement if it has been issued to the bearer;
 - (c) reference must be made to the number of originals of the bill of lading, and each one must be individually numbered if it has been issued in more than one copy;
 - (d) each copy must bear other words "copy - non-negotiable" if any copies of the bill of lading have been issued.
6. If a non-negotiable bill of lading has been issued it must specify the name of the consignee.

Article 17: Particulars in the bill of lading

1. A bill of lading must contain the following particulars:
 - (a) the general nature of the goods, the marks necessary to distinguish them, and their characteristics, and an express statement must be made if the goods are dangerous;
 - (b) the number of containers or packages or pieces or the total weight of the packages and the number of head of livestock or the total weight, or the quantity of the goods carried;
 - (c) the apparent condition of the goods;
 - (d) the name and address of the shipper;
 - (e) the name and address of the consignee;
 - (f) the name of the carrier and the centre for the conduct of his business;
 - (g) the value of the goods;
 - (h) a statement of whether the freight has been paid by the consignee or the shipper;
 - (i) the total freight if it has been agreed by both parties;
 - (j) the place and date at which the goods came under the liability of the carrier or the performing party;

- (k) the place of delivery of the goods;
 - (l) the date or period for delivery of the goods at the place of delivery if both parties have agreed such date;
 - (m) a statement of the type of bill;
 - (n) the place and date of issue of the bill;
 - (o) the signature of the carrier or person authorised by him ;
 - (p) the intended itinerary, the carrying company, and the places of transshipment to another ship if the matter so requires and if it is known at the time of issue of the bill;
 - (q) a declaration that the bill has been issued in accordance with the provisions of these Rules;
 - (r) the name of the insurance company and the number and date of the insurance contract;
 - (s) the number of the bill of lading and the number of original copies;
 - (t) any reservation by the carrier or the shipper, if any, with a statement of the reason.
2. The carrier shall issue such a bill on the basis of the particulars supplied by the shipper with regard to the details of the goods to be carried and the conditions of the contract between the shipper and the carrier.
 3. The bill of lading must contain at least the particulars set out in paragraphs 1(a), (b) (d), (e), (n), (o) and (r) of this Article.
 4. The omission of one or more items of the particulars of the bill of lading, with the exception of those referred to in subsection 3, or any inaccuracy therein, shall not affect the legal nature or validity of the bill.

Article 18: Reservations in the bill of lading

1. If the carrier notices that the particulars of the goods as stated in the bill of lading do not represent the true particulars of the actual goods that have come under his liability and he has no reasonable and practically applicable means enabling him to verify his doubt, the carrier or person authorised by him must add a reservation to the bill specifying the inaccuracy and the cause of the doubt.
2. The signature of the carrier on the bill without a reservation by him or the addition of any remark will be regarded as a declaration by him as to the correctness of all of the contents of the bill of lading in respect of the goods.

Article 19: The probative effect of a bill of lading

1. Subject to the provisions of Article 18, a bill of lading shall be regarded as evidence that the liability for the goods has been transferred to the carrier in accordance with the type, quantity, number and weight, and the burden of proof shall lie on him who asserts the contrary.
2. The carrier shall not have the right to challenge the probative effect of the bill of lading if the bill is negotiable and has been transferred by the consignee to a third party if the consignee and the third party have made an agreement on the basis of the specifications of the goods stated in the bill of lading.

Article 20: The issue of other documents

- (a) The issue of a bill of lading shall not preclude the issue of other documents were needed, whether those relate to the carriage or to any other services coming within the operation of carriage of goods by sea in accordance with the laws, regulations and directives, or in accordance with international agreements.
- (b) The issue of other documents shall not affect the legal nature of the bill of lading.

Part Two
Rights and obligations of the shipper

Article 21: Liability of the shipper to the carrier

- 1. The shipper shall be liable to the carrier for the following:
 - (a) the accuracy and sufficiency of the particulars and information are set out in paragraphs 1 (a), (b), (c), (d) and (e) of Article 17 of these Rules;
 - (b) Loss sustained by the carrier arising out of any inaccuracy or insufficiency in the particulars and information relating to the goods shipped;
 - (c) non-delivery of the goods to the carrier at the time and place agreed;
 - (d) any damage sustained by the carrier if it is proved that the damage arose out of the acts or dispositions of any person charged with the performance of any responsibility under these Rules including his subcontractors, servants and agents, and any other persons working directly or indirectly at his request or under his supervision or control, as if such acts or dispositions had been his own;
 - (e) loss and damage incurred by the carrier as a result of non-completion of the documents necessary to perform the contract of carriage or their non-conformity with the facts or inaccuracy or deficiency in the particulars presented in them;
 - (f) notifying the carrier if the carriage requires the making of special arrangements before the delivery of the goods to him, in sufficient time in accordance with the conditions agreed.
- 2. The shipper may request that at his [shipper's] expense the carrier verify the gross weight or quantity of the goods, or the containers or packages, and provided that the results of such verification shall be recorded in the bill of lading.

Article 22: Liability of the shipper in the case of goods containing dangerous materials

- 1. The shipper shall be obliged to pack and place marks or affix labels clearly on goods containing dangerous materials, indicating the danger thereof in accordance with the regulations, rules and directives, and in accordance with the rules in prevailing international conventions.
- 2. Upon delivery by the shipper of goods containing dangerous materials to the carrier or to any person acting on his behalf, the shipper must notify him in writing of the nature of those goods and the precautions that must be taken in the carriage thereof in accordance with the regulations, rules and directives, and in accordance with the rules in prevailing international conventions.
- 3. The shipper shall be liable to the carrier or the person acting on his behalf for any loss arising out of the carriage of such goods if the shipper does not notify him in writing of the nature of the danger of the goods being carried.

Part Three
Rights and obligations of the carrier

Article 23: Requirements to the carriage of goods containing dangerous materials

A carrier who carries dangerous goods must obtain the necessary permit for the carriage thereof from the competent authorities and must abide by all of the regulations, rules and directives issued by the competent authorities relating to the carriage and handling of dangerous materials, and in particular the Regulation for the Import and Management of Chemical Materials, as well as the standard specifications, and the Guide for the Handling of Dangerous Materials Incidents.

Article 24: Emergency situations during the carriage of goods containing dangerous materials

A carrier may in the case of emergency circumstances and after taking all necessary steps offload goods containing dangerous materials, or may destroy or withdraw them, in accordance with the regulations, rules and directives and in accordance with the rules of prevailing international conventions, and the carrier must notify the shipper or the person having the right of disposal of the goods of what he has done and the reasons for it, without bearing liability for any compensation to the shipper.

Article 25: Liability of the carrier

1. The carrier shall be liable for taking delivery of the goods, and the loading, handling and stowage thereof, and the carriage and discharge thereof, and the safekeeping thereof in a correct manner, and that must be done through means of transport and equipment satisfying all the safety requirements in accordance with international rules, and he must take the necessary care at all of those stages, in the absence of an agreement to the contrary.
2. If the shipper and the carrier agree that the shipper shall load and stow the goods, the shipper must do so in accordance with the rules in force, under the supervision of the carrier.
3. If the goods are transferred into the custody of the shipper, the latter shall be liable for loss arising out of any casualty resulting in any loss or damage to them or delay in delivery thereof pursuant to the provisions of Article 26 of these Rules, unless the carrier proves that he or his servants or agents or any other person authorised by him took sufficient care and took all measures that it was reasonable to require to be taken to avoid the casualty or the consequences thereof.
4. The carrier shall be exempted for liability from losses arising out of a casualty resulting in loss or damage or delay in delivery if it is proved that the delay in delivery of the goods or the loss or damage thereto was attributable to one or more of the following causes:
 - (a) default on the part of the shipper or consignee or any of their agents or representatives;
 - (b) force majeure or emergency circumstance;
 - (c) inherent or latent defect in the goods;
 - (d) a shortage in volume or weight occurring during carriage for reasons referable to the nature of the goods being carried such as evaporation, drying or ripening;
 - (e) an extraneous cause outside the control of the carrier resulting in his being prevented from performing the contract of carriage;

5. Subject to the provisions of Article 43 of these Rules, if the carrier does not deliver the goods within 90 days from the agreed date of delivery, the goods shall be treated as having been lost, and the carrier shall bear the liability for their loss.

Article 26: The period of the carrier's liability

1. The liability of the carrier for the goods under these Rules shall start as from the time he takes delivery thereof or the performing party carries out any of the tasks entrusted to him, and shall terminate upon delivery by him of the goods to the consignee or the person authorised to take delivery thereof.
2. The time and place of delivery of the goods by the carrier or the performing party to the consignee shall be as follows:
 - (a) the time and place agreed in the contract of carriage;
 - (b) the time and place dictated by customs, usages or practices observed in the industry, unless agreed in the contract of carriage;
 - (c) the time and place of unloading or discharge of the goods from the last means of transport on which they have been carried under the contract of carriage in the absence of an agreement or of customs, usages or practices of the industry;
 - (d) at the time and place that the carrier takes delivery of the goods from an authority or independent party if it is stipulated that he should take delivery of the goods from either of such persons.

Article 27: Limits of liability of the carrier for shortage in the goods by reason of the nature thereof

1. Subject to the provisions of paragraph 4(d) of Article 25, the carrier shall be liable for a shortage in the goods, occurring by reason of their nature, in weight or bulk during carriage if such shortage exceeds the proportion laid down under the general rules, conditions and specifications customarily used in the carriage of such goods.
2. If the bill of lading includes different goods divided into different groups or packages and the weight of each of them is set out in the bill, the permitted shortage will be on the basis of the weight of each group or package separately.
3. The carrier will not be liable for shortage in the goods carried in a container or similar prepared by the shipper and sealed with his seal if it is delivered by the carrier to the consignee with the shipper's seal intact.

Article 28: Liability of the carrier for the dispositions and acts of those working under him

The carrier shall be directly liable for all dispositions and acts of those working under him, and any person engaged by the carrier in the performance of the obligations arising out of the contract of carriage including performing parties or subcontractors or contractors of the performing party or his representatives or persons authorised by him or his employees, agents or delegates shall be treated as persons working under him provided that their acts or dispositions were done by reason of the performance of the contract of carriage.

Article 29: Loss of right of the carrier to benefit by the legal limits of liability

The provisions of these Rules will not exempt the carrier from legal liability if it is proved that the loss, damage or delay in the delivery of the goods was by reason of a deliberate act or disposition or carelessness on the part of the carrier or any of those working under him, provided that he knew that it was likely that the damage would occur.

Part Four
Rights and obligations of the consignee

Article 30: Obligation of the consignee to take delivery of the goods

1. The rights and obligations in the contract of carriage and the provisions of these Rules shall be transferred to the consignee upon his coming into possession of the bill of lading.
2. Upon arrival of the goods at destination, the consignee must accept delivery of the goods on the date and at the place agreed, and if he is in breach of that obligation by leaving the goods in the custody of the carrier, the latter shall have the right to dispose of the goods as agent for the consignee in the manner set out in Article 46 of these Rules, without bearing liability for loss or damage to the goods, unless the loss or damage arise out of default or neglect on the part of the carrier.
3. The consignee shall bear all of the costs incurred by the carrier during the period from the date of arrival of the goods as a specified in the contract until the consignee takes delivery of them.

Article 31: Acknowledgment of receipt of goods

1. The consignee shall have the right to inspect the goods before taking delivery of them in order to ascertain that they are in sound condition, and if the carrier refuses to enable him to do so it shall be permissible for him to refuse delivery of the goods.
2. Subject to the provisions of Article 32 of these Rules, the consignee must present an acknowledgment of receipt of the goods from the carrier in the manner generally accepted at the place of delivery.
3. If the consignee takes delivery of the goods from the carrier without reservation or proof of the condition of the goods within 30 days from the date of delivery, his right of recourse against the carrier for partial loss or damage shall lapse, and provided that proof of the condition of the goods during the period referred to shall be by the relevant government body or an expert appointed by the court as an expedited matter.
4. There shall be no right of claim for compensation for delay in delivery, unless written notification has been issued by the shipper or the consignee to the carrier within the 21 days following the day on which the consignee took delivery of the goods or the day on which he became aware that the goods had been delivered.

Article 32: Delivery in the case of a non-negotiable bill of lading

1. The carrier shall deliver the goods to the consignee at the time and place specified in the contract after the consignee has proved his identity, and he may refuse delivery if the consignee fails to prove his identity, and he may deliver the goods to a party authorised by the consignee provided that he is in possession of the original bill of lading, with proof of his identity.
2. If the name and address of the consignee are not referred to in the particulars of the contract of carriage, the person having the right of disposal over the goods must give written notice of the name and address to the carrier before or at the time of the arrival of the goods at the place of delivery.
3. If it appears that the name or address of the consignee in the contract of carriage and/or the bill of lading are incorrect, the person having the right of disposal of the goods must give

notice to the carrier of the correct particulars before or at the time of arrival of the goods at the place of delivery or as soon as he is notified thereof by the carrier.

4. The liability of the carrier for the goods shall cease after delivery thereof to the consignee under a non-negotiable bill of lading or to any party whose name appears as recipient thereof in the bill of lading.
5. The carrier shall be relieved of his obligations to deliver the goods only if he delivers the goods in accordance with the instructions of the party in possession of the bill of lading.

Article 33: Delivery in the case of a negotiable bill of lading

1. The carrier or person acting on his behalf shall deliver the goods to the person in possession of the negotiable bill of lading at the time and place specified in the contract after the person in possession has presented the negotiable bill of lading.
2. In a case where multiple original copies of a negotiable bill of lading have been issued, the carrier or the person acting on his behalf shall be deemed to have fulfilled their contractual obligations if they deliver the goods to the person in possession of any original copy thereof, endorsed according to the rules in force.
3. If delivery does not have to be made at the place of the consignee, the carrier must notify him of the arrival of the goods and of the time at which he can take delivery of them, and the consignee must take delivery of the goods at the time specified by the carrier, and he shall be liable for the costs and expenses arising out of his failure to take them at the time specified to him. The carrier may, after the expiration of the time for delivery, convey the goods to the place of the consignee in consideration of additional freight.
4. If the value² of the goods is deferred and the shipper has authorised the carrier to receive it upon delivery to the consignee, the provisions governing lawful agency shall apply in respect of the relationship between the shipper and the carrier.

**Part Five
Compensation**

Article 34: Assessment of compensation

Subject to the provisions of Article 26 of these Rules:

- (a) compensation for loss arising out of loss or damage to the goods or delay in delivery shall be on the basis of the value³ of the goods at the time and place at which they should have been delivered to the consignee;
- (b) the value of the goods shall be determined as follows:
 - (i) in accordance with the rate for the commodity on the exchange;
 - (ii) on the basis of the current market price if there is no rate on the exchange;
 - (iii) by reference to the value of similar goods in type, value and origin;
 - (iv) by an expert appointed by the court as an expedited matter if it is impossible to ascertain the current market rate.

² The word used here is *qima*, which is normally means (market) value and not (contractual) price.

³ Here the word *qima* appears to be used in small usual and correct sense of 'value'.

Article 35: Assessment of compensation if the value of the goods is not specified

If the value of the goods is not specified by the consignee and is not noted in the bill of lading, the value of compensation for loss arising out of loss or damage to the goods shall not exceed the amount provided for in the relevant international agreements.

Article 36: Limits of liability of the carrier in the case of delay in delivery of the goods

Without prejudice to other rights in respect of loss or damage, if there is a delay in delivering the goods beyond the specified time for delivery and the carrier is responsible for the delay, the limits of liability must not exceed two and a half times the value of the freight payable on those parts of the goods delayed, and provided that such liability shall not exceed the value of the freight for the whole of the goods under the contract of carriage.

Article 37: Limits of liability of the carrier for indirect damage

If the carrier is liable for damage to part or the whole of the goods or loss or delay in delivery thereof beyond the time specified and this results in indirect damage, the value of the compensation shall not exceed the value of the freight agreed in the contract in respect of the goods lost or damaged, or of which delivery is delayed.

Article 38: Agreement to vary the amount of compensation

The carrier and the shipper may agree in the contract of carriage on the amount of compensation for loss or damage to the goods or delay in delivery thereof in an amount different to that provided for in these Rules.

Article 39: Notification of loss of goods

1. Delivery of the goods to the consignee through the carrier shall be regarded as correct delivery according to the description in the bill of lading unless a written memorandum has been delivered by the consignee to the carrier stating the nature of the loss arising out of apparent loss or damage within one full working day from the time of receipt by the consignee of the goods.
2. In the event that the loss arising out of loss or damage is not apparent, the time for delivery of the written memorandum under subsection (1) of this Article shall be 14 days from the date of receipt of the goods.
3. In the event of ascertained loss or damage, the carrier and the consignee must provide all facilities to one another to verify the nature of the loss and the magnitude of the damage.
4. The carrier must send a written notice to the consignee in respect of loss or damage to the goods within 14 days from the date of actual receipt thereof from the shipper if the loss or damage is by reason of a default or neglect on the part of the shipper.

Article 40: Finding of goods for which compensation has been paid

1. In the event that lost goods are found within six months from the date of payment of the value of compensation for them, the carrier must notify the recipient of the value of the compensation and inform him of the status of the goods and invite him or the person authorised by him to attend to inspect them at the place at which they are on the carriage itinerary or at the place of delivery, and the person who has received the value of the compensation must take the goods and repay the value of the compensation within 10 days from date of receipt of the notification.

2. The right of the recipient of compensation to have recourse against the carrier for failing to notify him that lost goods have been found shall lapse in the event that they are found more than six months after the date of payment of compensation for them.
3. If it is demonstrated to the recipient of the compensation that the carrier has found the lost goods within six months from the date of payment of the value of the compensation for them and he has not notified him of that fact, he may take the necessary legal proceedings to claim that the damage sustained by him arising thereout be made good.
4. The person who has received the value of the compensation must take delivery of goods that have been found and repay the value of the compensation received by him within 10 days from the date of receipt by him of notification from the carrier, failing which his right to recover the goods shall lapse, and the carrier may dispose of them for his own benefit.
5. If the person who has received the value of the compensation, or his representative, attends at the place where the goods are and refuses to take delivery of them without stating the reasons by an official letter to the carrier, the latter shall be entitled to dispose of them for his own benefit.
6. If the person who has received the value of the compensation for the goods wishes to recover the goods, he must repay the value of the compensation after deducting the value of the damage occurring by reason of the delay in delivery of the goods or by reason of damage to any part of them.

**Part Six
Freight**

Article 41: Entitlement to freight

1. The freight shall be payable upon delivery of the goods to the consignee, unless otherwise agreed.
2. In the event that the freight is due in whole or in part, and the goods suffer loss or damage after it has become due, then, unless otherwise agreed, the freight will remain payable without reference to the cause of the loss or damage to the goods, and payment of freight will not be subject to set off or deduction or discount by reason of any claim that the shipper or consignee may have against the carrier otherwise than under a proven debt.
3. The carrier shall not be entitled to the freight, and he shall not have the right to claim compensation, if the commencement of the operation of carriage is prevented by force majeure, unless otherwise agreed.
4. The carrier will not be entitled to freight for the carriage of goods or freight for part thereof that have been lost or damaged during the carriage by reason of the error or default of him or those working under him, and the shipper or the consignee shall retain the right to claim compensation in accordance with the provisions of these Rules.
5. The carrier shall not be entitled to freight for any excess distance or additional costs if he takes a route longer than the route agreed or the usual route in order to avoid risk to his means of transport or the goods being carried, unless otherwise provided for in the contract of carriage.
6. The carrier shall not be entitled to freight for goods destroyed by reason of force majeure during the operation of carriage.

Article 42: Liability of the shipper and consignee to pay freight

1. The shipper shall be liable to pay the freight and other charges connected with the carriage of the goods in the absence of an agreement to the contrary in the contract of carriage.
2. If a negotiable bill of lading contains the expression 'freight prepaid' or any other similar expression, no person in possession of the bill of lading or the consignee shall be liable for payment of the freight.
3. If the bill of lading contains the expression 'freight to be collected' or any other similar expression, the person in possession of the bill of lading or the consignee or the person exercising the right of disposal over the goods shall be jointly liable with the shipper for payment of the freight.

Article 43: Rights of the carrier if the freight is not paid to him

1. The carrier may detain the goods until payment of the following:
 - (a) freight and storage charges for the goods and penalty for delay⁴ and compensation for detention and all other charges payable;
 - (b) any compensation due to him under the contract of carriage.
2. The period of the detention of the goods referred to in paragraph 1 of this Article shall not be included in the period of delay in delivering the goods.
3. If the freight is not paid within 30 days from notice to the consignee of the arrival of the goods, the shipper may sell the goods under the provisions of Article 45 of these Rules.

**Part Seven
Right of disposal**

Article 44: Right of the shipper and consignee to dispose of the goods

1. The shipper or the consignee may, in accordance with the contract made with the carrier, give instructions to the carrier throughout the period of his responsibility for the goods within the following limits:
 - (a) provided that the instructions do not conflict with the contract of carriage;
 - (b) require that the goods be delivered before arrival at the place of delivery;
 - (c) replace the consignee by any other party, including the party having the right of disposal of the goods;
 - (d) agree with the carrier to vary the contract of carriage.
2. The shipper may issue instructions to the carrier to return the goods to him.
3. In the event that a non-negotiable bill of lading is issued, the following rules shall apply:
 - (a) the shipper shall have the right to dispose of the goods while they are in the custody of the carrier unless he has agreed with the consignee that he should be another party having the right of disposal over the goods, and the shipper shall notify the carrier thereof;
 - (b) the party disposing of the goods may assign the right of disposal to another party, and the person making the assignment shall thereby lose his right of disposal, and the assignor must notify the carrier of such assignment;

⁴ This may mean demurrage, but the ordinary word for 'delay' is used.

- (c) when the party disposing of the goods exercises his right of disposal thereover in accordance with paragraph (1) of this Article, he must give a sufficient statement of his identity;
 - (d) the consignee shall have the right disposal of the goods on arrival thereof at destination and upon his requiring delivery thereof.
4. In the event that a negotiable bill of lading is issued, the following rules shall apply:
- (a) the person in possession of the original copy of the negotiable bill of lading or the person in possession of all of the original copies, in the event that there is more than one original copy, shall be the sole person having the right of disposal of the goods;
 - (b) in the event that one original copy of the bill of lading is issued, the person in possession thereof may assign the right of disposal to another party;
 - (c) in order to assign the right of disposal to a single party despite the existence of more than one original copy of the bill of lading, the persons in possession of them must transfer all the original copies to him;
 - (d) upon transfer of the bill of lading, the transferor shall lose his right of disposal;
 - (e) the person in possession of the bill of lading must, upon exercising his right of disposal of the goods, produce the original negotiable bill of lading to the carrier if so stipulated by the carrier, and in the event that there is more than one original copy, he must produce all the copies with the exception of the copies in fact in the possession of the carrier;
 - (f) the instructions referred to in paragraphs 1(a), (b) and (c) of this Article shall be added to⁵ a negotiable bill of lading.
5. Subject to paragraph 6 of this Article, the carrier shall be obliged to implement the instructions referred to in paragraphs 1 (a), (b) and (c) and paragraph 2 of this Article as follows:
- (a) if they are issued by a person having the right of disposal of the goods;
 - (b) if it is reasonably possible to implement the instructions in accordance with the conditions thereof;
 - (c) if the instructions are not such as to interfere or conflict with the normal operations of the carrier.
6. The carrier may require a bank guarantee from the party having the [right of] disposal of the goods for the amount of any additional expenses or financial obligations that the implementation of those instructions would cause to him, and the bank guarantee may include any costs borne by the carrier by reason of loss or damage to other goods being carried on his means of transport by reason of the implementation of those instructions, and the carrier shall be liable for loss or damage to the goods arising out of failure to comply with those instructions.
7. The goods shall be deemed to be delivered in accordance with paragraph 1(b) of this Article if they are delivered at the place of delivery.
8. If instructions are issued subsequent to the issue of the bill of lading by a person having the right of disposal over the goods or by the competent authorities, and the goods are in the

⁵ Translator's note: There is a slight ambiguity in the expression, the literal translation of which is 'shall be added to...'. This can mean added to, in the sense of physically written in, but it can also mean apply to.

custody of the carrier, and he reasonably requires additional information, notices or documents, the person having the right of disposal of the goods must present such information, notices or documents to the carrier, and if it is impossible for him to provide the carrier with sufficient information, notices or documents, the obligation for so doing shall devolve upon the shipper.

Article 45: Procedures in the event that it is impossible to deliver the goods

1. If the consignee does not take delivery of the goods from the carrier after arrival thereof at the place of delivery, the carrier must give written notice of that fact to the party having the right of disposal of the goods.
2. If it is impossible for the carrier, after making a reasonable efforts, to ascertain the identity of the person having the right of disposal of the goods, he must give notice to the shipper to issue written instructions to him concerning the delivery of the goods.
3. If it is impossible for the carrier to give notice to the shipper, the person in possession of the bill of lading shall thereupon be deemed to be the person having the right of disposal of the goods.
4. If it is impossible for the carrier to give notice to the shipper or the person having the right of disposal of the goods or the party in possession of the bill of lading, or if he has not received instructions from any of them, the right of disposal over the goods shall pass to the carrier as agent of the consignee, and he may be in that event:
 - (a) discharge the goods if they are stuffed in containers, having regard to the circumstances and the nature of the goods;
 - (b) store the goods in a suitable place.
5. If the consignee or person acting on his behalf makes delay in taking the delivery for a period exceeding 14 days from the date he is notified of the arrival of the goods, the carrier may do as follows:
 - (a) dispose of the goods in accordance with the circumstances so requiring;
 - (b) sell the goods in accordance with the customs, practices or usages in force, or as required by the relevant regulations, at the time and place where the goods are;
 - (c) request the relevant authority to take delivery of the goods and to store them in its warehouses;
 - (d) apply to the competent court to ascertain the condition of the goods and to give leave to him to place them under the supervision of a judicial custodian for the account of the shipper and on his responsibility.
6. If the goods are sold under paragraph 5(b) of this Article, the carrier must hand over the proceeds of sale to the party having the right of disposal over the goods, after deducting the costs due thereon.
7. The carrier shall not be permitted to exercise the rights referred to in paragraph 2 of this Article until after sending notice thereof within a reasonable time prior to the arrival of the goods to the consignee or to the party having the right of disposal over the goods.

**Part Eight
Time bar**

Article 46

An action for a claim for any right connected with the contract of carriage shall lapse upon the expiration of 365 days from:

- (a) the time of delivery of the goods in the event that they have suffered total or partial loss or damage;
- (b) the time of delivery of the goods in the event of delivery of delay beyond the time agreed;
- (c) the time at which the goods are deemed to have been lost under Article 25(5) of the Rules.

**Part Nine
General provisions**

Article 47: Assignment of rights

In the case of the issue of a negotiable bill of lading, the person in possession of the bill may assign the rights contained in that bill to another party by any of the following means:

- (a) endorsement according to the rules or in blank;
- (b) without endorsement if it is a bearer bill;
- (c) without endorsement if the bill of lading has been issued to the order of a named party and the assignment is between the person in possession of the bill and the party [sic].

Article 48: Use of electronic bills and communications

The parties to a contract of carriage may agree to use electronic communication in all matters relating to the transactions of the contract of carriage.

Article 49: Conformity of the contract of carriage with the provisions of the Rules

Any agreement contrary to the provisions of these Rules shall be void.

Article 50: Extension of duration of contract if it coincides with a holiday

If the termination date of the duration specified in Articles 26 and 31 of these Rules falls on an official holiday in the Kingdom, the date of termination of the duration shall be deemed to be the first official working day [thereafter].

**CHAPTER FIVE
CONCLUDING PROVISIONS**

Article 51: Special rules for the carriage of dangerous goods

1. Types of dangerous materials shall be restricted to those contained in the Dangerous Materials Guide, or the United Nations definitions.
2. The Dangerous Materials Guide shall apply to the carriage and handling of dangerous materials, and if there are no rules in the Guide relating to the carriage of a material classified as dangerous, international rules shall apply.

Article 52: Follow-up of the activity

The Department shall follow up the activity of the establishment and ascertain compliance with the provisions of these Rules; it may, in the course of so doing, have access to the records relevant to the activity of the establishment, which must make provide to the Department the information and documents required by it or by the authorities concerned.

Article 53: Observance of international agreements

The carrier shall, in carrying goods out of the Kingdom, observe the provisions of bilateral, regional and international agreements made between the Kingdom and other countries relating to carriage by sea.

Article 54: Compliance with other regulations, rules and directives

The provisions of these Rules shall be without prejudice to other obligations of an enterprise under the other regulations, rules and directives in force in the Kingdom.

Article 55: Responsibility for the fulfilment by an enterprise of its obligations towards the parties

- (a) An enterprise shall be liable for the fulfilment of its obligations towards the parties.
- (b) The Ministry shall not be regarded as a general or special successor in the event of the termination of a licence for any reason whatever.
- (c) The Ministry shall not be liable for the debts of an enterprise before, during or after the termination of the licence granted to it.

**CHAPTER SIX
CRIMINAL PROVISIONS**

Article 56: Imposition of penalties

Any person who breaches the provisions of these Rules shall be punishable in accordance with Article 23 of the Public Transport by Road Regulation.

Article 57: Penalty for repetition of breach

- (a) Subject to the penalties and fines laid down in respect of each breach, the Ministry may, by resolution of the Minister or person authorised by him, take the following steps in the event of a repetition by the licensee or those working under him of a breach of the provisions of these Rules:
 - (i) suspension of the licence for a period of three months on the first occasion;
 - (ii) suspension of the licence for a period of six months on the second occasion;
 - (iii) suspension of the licence for a period of one year on the third occasion;
 - (iv) withdrawal of the licence on the fourth occasion.
- (b) In the event that the licence is withdrawn or suspended, no part of the fees shall be refunded.
- (c) In the event of the withdrawal of a licence, the enterprise may not apply for another licence until after the expiration of a period of no less than three years.
- (d) Upon the expiry of the period of a licence during the period of suspension, the licence will be renewed in accordance with the provisions of these Rules upon the application of the enterprise, but without the right to carry on the activity until the end of the period of session.

Article 58: Investigation of breaches and grievances

Ministerial Resolution No. 01/19 dated 7/4/1429 Hejra [corresponding to 13th April 2008] relating to procedures for the investigation of breaches, the enforcement of penalties and payment of fines, and enquiry into grievances, shall apply to any breach of the provisions of these Rules.

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