

# **FREIGHT FORWARDERS LIABILITY**

**BY**

**ALGHANIM GROUP OF SHIPPING & TRANSPORT  
KUWAIT**

TEL : 2421701

FAX : 2428678

WEB SITE : [www.alghanimgroup.com](http://www.alghanimgroup.com)

# WHAT IS FREIGHT FORWARDING?

- “Freight Forwarding and Logistics Services” means services of any kind relating to the carriage (performed by single mode or multi-modal transport means), consolidation, storage, handling, packing or distribution of goods as well as ancillary and advisory services in connection therewith, including but not limited to Customs and fiscal matters, declaring the goods for official purposes, procuring insurance of the goods and collecting or procuring payment or documents relating to the goods. Freight Forwarding Services also include logistical services with modern information and communication technology in connection with the carriage, handling or storage of the goods, and the de facto total supply chain management. These services can be tailored to meet the flexible application of the services provided.”

# AGENT & PRINCIPAL CONCEPT

- A forwarder is the agent of its customer and procures carriage on its behalf.
- A forwarder cannot be an agent if it:
  - Issues a bill of lading in its own name
  - Carries goods on its own vehicle
  - Warehouses goods in its own warehouse

# CONTRACTUAL RISK

Cargo loss and damage

Liability under a contract, which may be governed by international convention, national law or approved trading conditions, standard terms & conditions and individual user contracts as stated in the policy

## STANDARDS TRADING CONDITIONS

### Legal precedence

- International conventions
- National legislation
- Nationally approved conditions
- Company adopted terms & conditions
- Supplementary agreements

# WHAT IS LOGISTICS?

“The planning , implementing,  
managing and monitoring the cost  
effective movement of product from  
point of origin to point of use.”

Or

“The management and control of  
inventory in motion and at rest”

# INTRODUCTION

- **The CMR Convention**
- **The UAE Code of Commercial Practice (Land)**
- **The UAE Maritime Code**
- **The Hague Visby Rules**
- **The Amended Warsaw Convention**
- **The UAE Code of Commercial Practice (Air)**

# CMR CONVENTION

## (A) Scope of application – Articles 1 & 2

Contracts for the carriage of goods by road between two different countries of which one is a contracting country

# CMR CONVENTION

## (B) Carriers' liability for the third parties – Article 3

Carrier is liable for acts and omissions of agents and servants acting within the scope of their employment

# CMR CONVENTION

## (C) Liability of the carrier – Articles 17 & 18

### (1) Article 17

(i) Liable for total/partial loss and damage and for delay unless caused by wrongful act or neglect of claimant, inherent vice or unpreventable circumstances/consequences

# CMR CONVENTION

- (c) Liability of the carrier – Articles 17 & 18
  - (ii) Not Liable if
    - (a) use of open unsheeted vehicles which has been agreed
    - (b) lack of defective packing
    - (c) loading, handling etc by sender/consignee
    - (d) nature of goods
    - (e) insufficiency/inadequacy of marks or numbers
    - (f) livestock

# CMR CONVENTION

(c) Liability of the carrier – Articles 17 & 18

(2) Article 18

- (i) Burden of proof under Article 17 on carrier
- (ii) Rebut table presumption if carrier can attribute incident to one of the (a) – (e) risks
- (iii) Use of special vehicles – liable for choice, maintenance and compliance with special instructions
- (iv) Livestock – carrier must show normal measures taken and special instructions followed

# CMR CONVENTION

## (c) Liability of the carrier

Successive carriers – Article 36

Claims can be brought against:

- **First or**
- **Last or**
- **Carrier in possession at time of event**

# CMR CONVENTION

## (D) Compensation

- (a) Value of goods at place and time accepted for carriage
- (b) Commodity exchange or current market price
- (c) Limit : 8.33 SDRs per kilo
- (d) Plus customs, duties, other charges
- (e) Delay : maximum payable = carriage charges
- (f) Declaration of special interest in delivery/value

Interest @ 5% p.a. from written claim

# CMR CONVENTION

## (E) Time Limits

- (a) Notice of loss
  - (i) Time of delivery
  - (ii) Within 7 days from delivery if damage not apparent
  - (iii) Delay – 21 days
  
- (b) Proceedings
  - One year; or three years if willful misconduct

Written claim shall suspend time limit

# CMR CONVENTION

## (F) Jurisdiction – Article 31

(a) Defendants' residence, principle place of business or branch/agency through which contract made

(b) Place goods taken by carrier or designated for delivery

# CARRIAGE BY ROAD UAE

## (A) Application of Commercial Code

Article 273: except sea carriage,  
provisions apply to all other transport

# CARRIAGE BY ROAD UAE

## (B) Liability for third parties

Article 278 – liable for acts of subordinates

Article 318 – successive carriage – first carrier liable to consignor/consignee

- indemnities between carriers

# CARRIAGE BY ROAD UAE

## (C) Liability of the carrier

Carrier not liable for damage if:

- (a) deviation for assisting sick/injured
- (b) incorrect or inadequate details
- (c) defective packing
- (d) shippers' request for particular type of transport
- (e) unloading by consignee or someone else
- (f) inherent vice
- (g) can prove force majeure, intrinsic defect in object, fault of consignor/consignee

# CARRIAGE BY ROAD UAE

## (D) Compensation

Limit must not be “superficial” and subject to court’s review in event of dispute.

No right to limit if fraud or gross fault.

Limitation agreement must be in writing and be “prominent”

In absence of limit : value at date and time of arrival

If value stated in waybill, rebuttable presumption that is the true value

# CARRIAGE BY ROAD UAE

## (E) Time Limits

### (a) Notice

If visible defect, on delivery or right to claim lost.

If not visible, notice within 72 hours or right to claim lost

If fraud or gross fault, notice provisions do not apply

### (b) Proceedings

Domestic carriage : 6 months

International carriage : 12 months

If fraud or gross fault, time limit doesn't apply

# CARRIAGE BY SEA HAGUE VISBY RULES

## (A) Scope of Application

- (i) Bills of lading issued in a Contracting State
- (ii) Carriage from a port in a Contracting State
- (iii) Contract provides that Rules to apply

# CARRIAGE BY SEA HAGUE VISBY RULES

## (B) Period of coverage

From time of loading to time of discharge

# CARRIAGE BY SEA HAGUE VISBY RULES

## (C) Cargoes covered

All cargoes except:

(a) live animals

(b) cargo on deck and stated to be on deck

# CARRIAGE BY SEA HAGUE VISBY RULES

## (D) Obligations of the carrier

Seaworthiness – obligation on owner to exercise due diligence

“If the defect existed, the question to be put is: would a prudent owner have required that it should be made good before sending his ship to sea had he known of it?”

# CARRIAGE BY SEA HAGUE VISBY RULES

## (D) Obligations of the carrier

Properly man, equip and supply plus cargo worthiness

# CARRIAGE BY SEA HAGUE VISBY RULES

## (E) Exceptions clause

Exceptions in Article IV Rule 2 will not be available to carrier if loss caused by un-seaworthiness or other breach of Article III Rule 1 unless carrier can prove exercise of due diligence

# CARRIAGE BY SEA HAGUE VISBY RULES

## (F) Limitation

### (i) Package limit

10,000 poincare gold francs per  
package/unit or 30 such francs per kilo

OR

666.67 SDRs/2 SDRs, respectively if SDR  
protocol to apply

# CARRIAGE BY SEA HAGUE VISBY RULES

## (F) Limitation

(ii) Time limit

(a) Notice

At time of removal or, if damage not  
apparent, within 3 days

If no notice, prima facie clean delivery

# CARRIAGE BY SEA UAE

(A) Scope of application of Maritime Code

If court has jurisdiction, Code applied

# CARRIAGE BY SEA UAE

## (B) Liability for third parties

Carrier liable for acts/omissions of servants/agents

# CARRIAGE BY SEA UAE

## (C) Liability of carrier

- (i) Seaworthiness
- (ii) Defences
- (iii) Containers
- (iv) Through bills of lading

# CARRIAGE BY SEA UAE

## (D) Compensation

Limitation: AED10,000 per package or unit  
AED 30 per kilo  
whichever is the higher

Number of packages, if stated on B/L to be in  
container = package

No limit if nature and value of goods set out in  
B/L

# CARRIAGE BY SEA UAE

## (E) Time Limits

### (a) Notice

Before or during delivery failing which rebuttable presumption of clean delivery

If damage not apparent : within 3 days of delivery

### (b) Proceedings

One year for damages action

Priority claims : also one year for cargo claims, but 6 months for other claims

# CARRIAGE BY SEA UAE

## (F) Jurisdiction

Article 21 Civil Code Procedure

Article 122 Maritime Code

**CARRIAGE BY AIR  
AMENDED WARSAW & MONTREAL  
CONVENTION**

**(A) Scope of Application**

**“International Carriage” as defined**

# CARRIAGE BY AIR AMENDED WARSAW & MONTREAL CONVENTION

## (B) Successive Carriage

Consignor right –v- first carrier

Consignee right –v- last carrier

Both have right –v- actual carrier

# CARRIAGE BY AIR AMENDED WARSAW & MONTREAL CONVENTION

## (c) Liability of Carrier

Almost strict liability

Limited defenses: Inherent vice, quality,  
defect

- : defective packaging
- : war / armed conflict
- : act of public authority

# CARRIAGE BY AIR AMENDED WARSAW & MONTREAL CONVENTION

## (D) Compensation / Limits of Liability

MP4 : 17 SDR's – for cargo:  
unbreakable

Amended Warsaw: 17 SDRs but  
possible to rely on Art 25 and “break”  
limit in certain circumstances

# CARRIAGE BY AIR AMENDED WARSAW & MONTREAL CONVENTION

## (E) Time Limits

### Notices

Damage: 14 days

Delay: 21 days

Litigation: 2 years

# CARRIAGE BY AIR UAE

## (A) Scope of Application

Carriage to which international agreements of the State do not apply.

Applies during “carriage by air” as defined.

# CARRIAGE BY AIR UAE

## (B) Liability for acts of Third Parties

Presumed, given the wording of the Code.

Successive carriers:

Each liable for stage performed by him.

Contracting carrier liable for whole carriage.

# CARRIAGE BY AIR UAE

(C) Liability of carrier

Almost strict

Limited defences: Claimant's own negligence

# CARRIAGE BY AIR UAE

(D) Compensation / Limits of liability

AED150/kg unless "special statement"

Possibility of "breaking" limit

"... intention or heedlessly while aware  
damage could ensue"

# CARRIAGE BY AIR UAE

## (E) Time Limits for Notices and Litigation

Notice of damage: 14 days

Delay: 21 days

Litigation: 2 years