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## **Book 5 (Maritime Trade) of the Commercial Code**

Commercial Code in the revised version published in the Bundesgesetzblatt (BGBl., Federal  
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(BGBl. I p. 831)

### **Chapter 1 Persons involved in shipping**

#### **Section 476 Ship owner-manager**

The ship owner-manager shall be defined as the owner of a ship who uses it to pursue  
marine navigation as a gainful economic activity.

#### **Section 477 Operator**

- (1) The operator of a ship shall be defined as the party operating a ship owned by another  
party in order to pursue marine navigation as a gainful economic activity.
- (2) In its relationship to third parties, the operator is deemed to be the ship owner-manager.
- (3) Where a third party asserts a claim against a party owning a ship in the latter's presumed  
capacity as ship owner-manager, the party owning the ship may only use the defense that it  
is not itself using the ship to pursue marine navigation as a gainful economic activity and  
instead has designated an operator, provided it immediately informs the claimant of the  
operator's name and address when the claim is first asserted.

#### **Section 478 Ship's company**

A ship's company consists of the master, the officers, the crew as well as all other persons  
involved in operating the ship who have been hired by the ship owner-manager or by its  
operator, or who have been put at the disposal of the ship's owner-manager or operator by a  
third party for the purpose of performing work in the context of the ship's operation, and who  
are subject to the instructions issued by the master.

#### **Section 479 Rights of the master; ship's log**

- (1) The master is authorised to pursue all business and enter into all legal transactions on  
behalf of the ship owner-manager such as are usually entailed by the operation of the ship.  
This authorisation also extends to the conclusion of contracts of carriage and the issuance of  
bills of lading. A third party is not obligated to accept restrictions on this authorisation unless  
it was aware of such restrictions or should have been aware of them.
- (2) Where a logbook is to be kept for the ship, the master must record all accidents occurring  
during the voyage that concern the ship, the cargo it is carrying, or any persons, or that  
might otherwise result in any pecuniary prejudice. The description of each accident must  
also identify the means used to avert pecuniary prejudice or to mitigate it. The parties  
affected by the accident may demand a copy of the entries made in the logbook regarding  
the accident, and may also demand that such copy be certified.

## **Section 480**

### **Responsibility of the ship owner-manager for the ship's company and pilots**

Should a member of the ship's company or a pilot active on board be liable against a third party for the compensation of damages resulting from the pursuit of their activities, the ship owner-manager shall likewise be liable for said damages. However, the ship owner-manager's liability vis-à-vis a cargo interest for any damages resulting from the loss of or physical damage to the goods carried by the ship shall be limited to the extent to which it would have been liable had it been the carrier; section 509 shall apply *mutatis mutandis*.

## **Chapter 2**

### **Transport contracts**

#### **Subchapter 1**

#### **Contracts for the carriage of goods by sea**

##### **Title 1**

##### **Contract for the carriage of general cargo**

###### **Subtitle 1**

###### **General regulations**

### **Section 481**

#### **Primary duties; scope of application**

- (1) By virtue of the contract for the carriage of general cargo, the carrier is under obligation to carry the goods, by sea and by ship, to their destination and there to deliver them to the consignee.
- (2) The shipper is under obligation to pay the agreed freight.
- (3) The provisions of the present Title shall apply whenever the carriage is part of the operations of a commercial enterprise. If the nature or size of the enterprise is such that it does not require a commercial business organisation, and if the company name of the enterprise has not been entered in the Commercial Register in accordance with section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the contract for the carriage of general cargo; however, this shall not apply to the provisions under sections 348 through 350.

### **Section 482**

#### **General information regarding the goods**

- (1) Prior to consignment of the goods to the carrier, the shipper is to provide to the carrier the information on the goods that is required for carriage of same. Specifically, the shipper is to furnish information in text form (a readable statement that is permanently valid without a signature having been applied) regarding the quantity, number, or weight of the goods, as well as the leading marks and the nature of the goods.
- (2) Where a third party named by the shipper consigns the goods to the carrier for carriage, the carrier may demand that such third party provide it with the information set out in the second sentence of paragraph (1).

### **Section 483**

#### **Dangerous goods**

- (1) If dangerous goods are to be carried, the shipper and the third party referred to in section 482 (2) shall inform the carrier, in a timely manner and in text form (a readable statement that is permanently valid without a signature having been applied), of the precise nature of the danger and, if necessary, of the precautionary measures to be taken.
- (2) If the carrier, the ship's master or the ship's agent neither knew of the nature of the danger when taking over the goods, nor at least had been informed of it, then the carrier may unload, store or return dangerous goods or, to the extent necessary, destroy them or render them harmless without thereby becoming liable in damages to the shipper. If the carrier, the ship's master or the ship's agent knew of the nature of the danger when the goods were

received for carriage, or if they had been informed of it, then the carrier may not implement the measures set out in the first sentence hereof without becoming liable in damages to the shipper, unless the dangerous goods were likely to become a danger to the ship or its cargo, and such danger was not due to the carrier's fault or neglect

(3) The carrier may demand compensation from the shipper and the third party referred to in section 482 (2) for expenditures which the carrier had to incur in taking the measures set out in the first sentence of paragraph (2), if the said parties made incorrect or incomplete statements when handing over the goods for carriage.

#### **Section 484** **Packing; leading marks**

Insofar as the goods, given their nature and the type of carriage agreed, require packaging, the shipper shall package them such that they are protected against loss and physical damage and that the carrier suffers no detriment. Where the goods are to be consigned for carriage in or on a container, a pallet, or any other article of transport used to consolidate cargo units, the shipper must properly and carefully stow and secure the goods, also in or on the article of transport, in such a way that they will not cause harm to persons or property. Furthermore, the shipper shall mark the goods insofar as their contractually agreed handling so requires.

#### **Section 485** **Seaworthiness and cargoworthiness**

The carrier must ensure that the ship is in seaworthy condition and properly furnished, equipped, and crewed, and that it has sufficient supplies on board (seaworthiness); the carrier must also ensure that the holds, including the refrigerating and cooling chambers, are fit for the reception, carriage, and preservation of the goods (cargoworthiness).

#### **Section 486** **Handover of the goods for carriage; loading; reloading; discharge**

(1) The shipper must effect the consignment of the goods to the carrier for carriage (handover) within the time contractually agreed therefor. The carrier must issue to the party handing over the goods for carriage a written confirmation of receipt upon the latter's demand. Such confirmation of receipt may also be issued as part of a bill of lading or of a sea waybill.

(2) Unless the circumstances or customary standards require otherwise, the carrier must load the goods on board the ship, stow them there and secure them (loading and stowing), and must also discharge the goods from the ship.

(3) Where the goods are stored in a container, the carrier is authorised to reload the container.

(4) Unless the shipper has granted its consent, the carrier may not load the goods on deck. If a bill of lading is to be issued, then the consent of the *Ablader* (section 513 (2)) shall be required. However, goods may be loaded on deck also without such consent, provided they are placed in or on an article of transport suitable for on-deck carriage, and also provided that the deck has been properly fitted out to carry such an article of transport.

#### **Section 487** **Accompanying documents**

(1) The shipper shall provide to the carrier such documents and such information that may be necessary for official processing prior to delivery of the goods, in particular for customs clearance.

(2) The carrier shall be liable for any detriment caused by the loss of, physical damage to, or incorrect use of the documents entrusted to the carrier, unless the loss, damage, or incorrect use was caused by circumstances which the carrier could not avoid and the consequences of which it was unable to prevent. The liability of the carrier shall not exceed the amount which would have been payable if the goods had been lost. Any arrangement expanding or

further restricting this liability shall be effective only if an agreement is reached after detailed negotiations, whether for one or several similar contracts between the same parties. However, any provision in the bill of lading further reducing the liability shall not be valid vis-à-vis third parties.

#### Section 488

##### Liability of the shipper and of third parties

(1) The shipper shall compensate the carrier for damages and expenditures caused by any of the following:

1. The failure to provide the required information regarding the goods in an accurate and/or complete manner;
2. The failure to disclose the goods' dangerous nature to the carrier;
3. The insufficient packing or marking of the goods; or
4. The failure to provide the documents or information stipulated in section 487 (1) in a complete or accurate manner.

However, the shipper shall be released from liability insofar as it is not responsible for the breach of duties.

(2) If the third party mentioned in Section 482 (2) provides incorrect or incomplete information when handing over the goods for carriage, or if it fails to disclose the goods' dangerous nature to the carrier, then the carrier may also demand compensation from said third party for the damages the carrier has suffered and the expenditures it has incurred as a result. This shall not apply if the third party is not responsible for the breach of duties.

(3) If a bill of lading is issued, the shipper and the *Ablader* (Section 513 (2)) shall compensate the carrier, even if they were not responsible, for the damages the carrier has suffered and the expenditures it has incurred as a result of:

1. The failure to provide correct or complete information in the bill of lading pursuant to Section 515 (1) number 8 as regards the goods' quantity, number or weight, or as regards the leading marks used for identification, or
2. The failure to disclose the goods' dangerous nature to the carrier.

However, the shipper and the *Ablader* shall each be liable to the carrier only for the damages and expenditures resulting from the respective incorrect or incomplete information that either of them provided.

(4) If the carrier contributed, by its conduct, to the damages suffered or expenditures incurred, then the obligation pursuant to paragraph (3) of the shipper and of the *Ablader* to compensate the carrier, as well as the scope of such compensation, shall depend on the extent of the carrier's contribution to the resulting damages and expenditures.

(5) Any arrangement ruling out the liability pursuant to paragraphs (1), (2), or (3) shall be effective only if an agreement is reached after detailed negotiations, whether for one or several similar contracts between the same parties. Notwithstanding the first sentence, the compensation of damages to be provided by the shipper or the *Ablader* may be limited, in terms of its amount, also by pre-worded terms of contract.

#### Section 489

##### Termination by the shipper

(1) The shipper may terminate the contract for the carriage of general cargo at any time.

(2) If the shipper so terminates the contract, the carrier may claim either:

1. The agreed freight, as well as any expenditures that the carrier is entitled to have refunded, after setting off any savings occasioned by the termination of the contract, or any monies which the termination of the contract has enabled it to earn, or any such earnings it has failed, in bad faith, to earn; or

2. Payment of one third of the freight agreed (dead freight, *Fautfracht*).

Where the termination is based on reasons within the sphere of risks to be borne by the carrier, no claim to payment of *Fautfracht* pursuant to the first sentence number 2 shall arise; in such event, the entitlement pursuant to the first sentence number 1 shall likewise not be applicable insofar as the carriage is of no interest to the shipper.

(3) If goods have already have been loaded and stowed prior to the termination, the carrier shall be entitled to take, at the shipper's cost, the measures set out in section 492 (3) second through fourth sentences. Where the termination is based on grounds within the sphere of risks to be borne by the carrier, the carrier must bear the costs, notwithstanding the first sentence.

### **Section 490**

#### **Carrier's rights if the goods are not handed over for carriage in due time**

(1) Should the shipper fail to have the goods handed over for carriage within the time contractually agreed therefor, or should it fail to do so completely, the carrier may set a reasonable deadline within which the goods are to be handed over.

(2) If the goods have not been handed over for carriage by the deadline set pursuant to paragraph (1), or if it is obvious that the goods will not be handed over for carriage within the deadline set, then the carrier may terminate the contract and assert the claims pursuant to section 489 (2).

(3) If only a part of the goods has been handed over for carriage by the deadline set pursuant to paragraph (1), then the carrier shall be entitled to carry that part of the goods that has already been loaded and stowed; in this case, the carrier is entitled to the full freight as well as compensation for any expenditures incurred because of the incompleteness of the consignment. However, any freight for goods which the carrier transports on the same ship in place of the goods which had not been loaded and stowed shall be deducted from the full freight. In addition, the carrier is entitled to demand further security to the extent that the incompleteness of the consignment causes it to lose security for the full freight.

(4) The carrier may exercise the rights set out in paragraph (2) or (3) also without setting a deadline if the shipper or the third party mentioned in section 482 (2) refuses to hand over the goods for carriage, such refusal being made in earnest and being conclusive.

Furthermore, it may also terminate the contract pursuant to paragraph (2) without setting a deadline if unusual circumstances dictate that, after balancing out the respective interests of the parties, it cannot be reasonably expected of the carrier to continue the contractual relationship.

(5) If the failure to hand over the goods in due time occurred for reasons within the sphere of risks to be borne by the carrier, the carrier shall not be entitled to the above rights.

### **Section 491**

#### **Subsequent instructions**

(1) Unless otherwise provided for by section 520 (1), the right of disposal in relation to the goods is vested in the shipper. Specifically, it may instruct the carrier to stop the goods in transit or to deliver them to another destination, or that it deliver them to a different discharging wharf or to another consignee. The carrier is obligated to comply with such instructions only insofar as this can be done without the risk of prejudice to its business, or damage to the shippers or consignees of other shipments. The carrier may claim from the shipper reimbursement for the expenditures occasioned by the carrier's having carried out the instruction, and may also demand reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(2) The shipper's right of disposal shall expire following the goods' arrival at the discharging wharf. Henceforth, the right of disposal pursuant to paragraph (1) shall lie with the consignee. Should the consignee exercise this right, it shall reimburse the carrier for the resulting expenditures the latter must incur, while also paying reasonable remuneration; the carrier may require an advance payment as a precondition to carrying out the instruction.

(3) Insofar as a sea waybill has been issued, the shipper may exercise its right of disposal only upon presentation of the executed copy of the sea waybill intended for the shipper, provided that the stipulations of same specifically grant such power.

(4) Should the carrier intend not to comply with any instructions issued to it, then it shall notify the party issuing such instructions of its refusal to do so, and must do so without delay.

(5) If the exercise of the right of disposal has been made dependent upon the presentation of a sea waybill, but the carrier carries out instructions without having had an executed copy of the sea waybill presented to it, then the carrier shall be liable to compensate the rightholder for any loss or damage caused thereby. This liability shall not exceed the amount which would have been payable if the goods had been lost. Any arrangement expanding or further restricting the liability shall be effective only if an agreement is reached after detailed negotiations, whether for one or several similar contracts between the same parties.

### **Section 492**

#### **Obstacles to carriage and delivery**

(1) If it becomes evident, after the goods have been received for carriage, that the goods' carriage or delivery cannot be performed in accordance with the contract, the carrier shall ask for instructions from the party who has the right of disposal in relation to the goods pursuant to section 491 or section 520. If that party is the consignee, and if the consignee cannot be located or refuses to accept the goods, the shipper shall have the right of disposal pursuant to the first sentence, provided no bill of lading has been issued; the sea waybill need not be produced in such a case even if its terms require that this be done when exercising the right of disposal. If instructions have been issued to the carrier and the obstacle is not within the sphere of risks to be borne by the carrier, the carrier may assert claims pursuant to section 491 (1) fourth sentence.

(2) If the obstacle to carriage or delivery has arisen after the consignee has issued instructions, based on its right of disposal pursuant to section 491, that the goods are to be delivered to a third party, the consignee and the third party shall be deemed to be the shipper and the consignee respectively for the purposes of applying paragraph (1).

(3) If the carrier is unable to obtain instructions, within a reasonable period of time, with which it would have had to comply pursuant to section 491 (1) third sentence, it shall take such measures as seem to be in the best interest of the party having the right of disposal. For instance, the carrier may discharge the goods from the ship and store them, it may entrust them to a third party for storage for the account of the party having the right of disposal pursuant to section 491 or section 520, or it may return them; should the carrier entrust a third party with the goods, it shall be liable only for exercising due diligence in choosing such third party. The carrier may also have the goods sold pursuant to section 373 paragraphs (2) through (4) if they are perishable or if their condition warrants such a measure, or if the costs to be incurred otherwise are out of proportion to the goods' value. The carrier may destroy goods that cannot be sold. The carriage is deemed to have been terminated once the goods have been discharged from the ship.

(4) The carrier is entitled to reimbursement of the expenditures necessitated by the measures taken pursuant to paragraph (3), and to reasonable remuneration, unless the obstacle falls within the sphere of risks to be borne by the carrier.

### **Section 493**

#### **Payment; calculation of freight**

(1) The freight shall be payable on delivery of the goods. In addition to the freight, the carrier is entitled to be reimbursed for its expenditures insofar as these were incurred in the interests of the goods and the carrier could reasonably regard them as necessary in the circumstances.

(2) The entitlement to freight shall cease should it be impossible to perform the carriage. If the carriage is terminated prematurely due to an obstacle to carriage or delivery, the carrier shall be entitled to a pro-rata share of the freight for the completed part of the carriage, provided said partial carriage was of interest to the shipper.

(3) Notwithstanding paragraph (2), the carrier shall continue to be entitled to payment of freight if the carriage becomes impossible for reasons with the sphere of risk to be borne by the shipper, or for reasons arising at a point in time at which the shipper is defaulting on acceptance. However, the carrier must accept that any savings, or any monies it has earned, or has failed, in bad faith, to earn, are set off from this amount.

(4) If, for reasons within the sphere of risks to be borne by the shipper, delay occurs after the start of carriage and prior to arrival at the discharging wharf, then the carrier shall be entitled to reasonable remuneration in addition to the freight.

(5) If the freight is agreed by reference to the number, weight or quantity otherwise expressed of the goods, it shall be presumed for the purpose of calculating the freight that the statement in the sea waybill or bill of lading made in this regard is correct; this presumption shall apply even if such statement is accompanied by a reservation justified by the indication that there had been no reasonable means of checking the accuracy of the information.

#### **Section 494**

##### **Rights of consignee; duty to pay**

(1) After arrival of the goods at the discharging wharf, the consignee may require the carrier to deliver the goods to it in exchange for the performance of the obligations under the contract for the carriage of general cargo. If the goods have been delivered damaged or late or have been lost, the consignee may assert, in its own name, the rights against the carrier under the contract for the carriage of general cargo; the shipper remains entitled to assert these claims. It makes no difference in this context whether the consignee or the shipper are acting in their own interests or in the interest of another party.

(2) The consignee asserting its right pursuant to paragraph (1) first sentence must pay the freight up to the amount specified in the accompanying document. Where no accompanying document has been issued, or no accompanying document has been presented to the consignee, or where the amount payable as freight is not evidenced by the accompanying document, the consignee is to pay the freight agreed with the shipper, provided it is not unreasonable.

(3) Furthermore, the consignee asserting its right pursuant to paragraph (1) first sentence is to pay remuneration pursuant to section 493 (4), provided that the consignee was notified of the amount owed at delivery of the goods.

(4) The shipper remains under obligation to pay the sums owed under the contract.

#### **Section 495**

##### **Carrier's lien**

(1) For all of its claims under a contract for the carriage of general cargo, the carrier shall have a lien on the goods consigned to it for carriage, whether they belong to the shipper, the *Ablader*, or a third party that has consented to the carriage of the goods. The carrier shall also have a lien on the goods of the shipper for all undisputed claims under other contracts concluded with the shipper regarding marine freight, freight, forwarding, and storage. The lien extends to the accompanying documents.

(2) The lien shall persist for as long as the carrier has possession of the goods, and specifically for as long as it has the right of disposal over them by means of a bill of lading, consignment bill, or warehouse warrant.

(3) The lien shall persist even after delivery, provided the carrier asserts the lien by legal action within ten (10) days after delivery, and provided the goods are still in the consignee's possession.

(4) The warning regarding the impending sale of a pledged item provided for by section 1234 (1) of the Civil Code (*Bürgerliches Gesetzbuch*, BGB), as well as the notifications stipulated by sections 1237 and 1241 of the Civil Code, are to be addressed to the consignee, who holds the right of disposal pursuant to section 491 or section 520. If the consignee cannot be traced, or if the consignee refuses to accept the goods, then the warning and the notifications are to be addressed to the shipper.

**Section 496**  
**Subsequent carrier**

(1) Where carriage is provided by several carriers and where it is incumbent on the last of them to collect, at delivery, the payments owing to the preceding carriers, the last carrier is to exercise the rights of the preceding carriers, particularly the lien. The lien of each preceding carrier shall persist for as long as the lien of the last carrier is in force.

(2) If a preceding carrier is paid by a subsequent carrier, the claim and the lien of the former shall devolve to the latter.

(3) Paragraphs (1) and (2) shall also apply to the claims and rights of any forwarder who has participated in performing the carriage.

**Section 497**  
**Ranking order of several liens**

Should several liens covering the same goods arise pursuant to sections 397, 441, 464, 475b and 495, the ranking of these liens as between themselves shall be determined pursuant to section 443.

**Subtitle 2**  
**Liability for loss of or physical damage to the goods**

**Section 498**  
**Grounds for liability**

(1) The carrier shall be liable for any damage resulting from the loss of or physical damage to the goods occurring between the time the goods are received for carriage and their delivery.

(2) The carrier shall be released from liability pursuant to paragraph (1) insofar as the loss of or physical damage to the goods was due to circumstances which the carrier could not avoid and the consequences of which it was unable to prevent. If the goods were carried by a ship that was not in seaworthy or cargoworthy condition, and if the facts of the case indicate a likelihood that the goods were lost or physically damaged due to the ship's lack of seaworthiness or cargoworthiness, then the carrier shall be released from liability pursuant to paragraph (1) only if the carrier can prove that the lack of seaworthiness or cargoworthiness could not have been discovered prior to commencement of the journey by a reputable carrier exercising due care.

(3) If the damaged party contributed to the occurrence of the damage, due to its fault or neglect, then the obligation to pay compensation and the amount of the compensation payable shall depend on the circumstances, and specifically on the extent to which the damages were caused primarily by one or the other party.

**Section 499**  
**Particular grounds for exclusion of liability**

(1) The carrier shall be relieved of liability insofar as the loss of or physical damage to the goods was caused by any of the following circumstances:

1. Perils, dangers, and accidents of the sea or other navigable waters;
2. War or hostilities, social unrest, acts by public enemies, or measures taken by sovereigns, as well as quarantine restrictions;
3. Seizure by a court;
4. Strikes, lockouts, or other restraints of labour;
5. Acts or omissions by the shipper or the *Ablader*, specifically insufficiency of packing or improper marking of the cargo units by the shipper or the *Ablader*;



6. Inherent features or characteristics of certain goods that make them particularly susceptible to damage, particularly through breakage, rust, internal spoiling, drying, leakage, or normal wastage in bulk or weight;
7. The carriage of live animals;
8. Measures serving to save human life at sea;
9. Salvage measures at sea.

The first sentence shall not apply insofar as the carrier could not have avoided the circumstance and was unable to prevent their consequences.

(2) If damage has occurred which, given the circumstances, might have been due to one of the risks set out in paragraph (1) first sentence, then the presumption shall be that the corresponding damages have in fact been caused by this risk. The first sentence shall not apply if the goods were carried by a ship that was not seaworthy or not cargoworthy.

(3) If the carrier, by virtue of the contract for carriage of general cargo, is under obligation to protect the goods particularly from the effects of heat, cold, variations in temperature, humidity, vibrations or similar effects, then the carrier may avail itself of the defences set out in paragraph (1) first sentence number 6 only if it has taken all of the measures incumbent upon it in light of the circumstances, in particular in respect of the choice, maintenance, and use of specific equipment, and only if it has complied with any special instructions that may have been issued.

(4) The carrier may avail itself of the defences set out in paragraph (1) first sentence number 7 only if it has taken all of the measures incumbent upon it in the circumstances, and if it has complied with any specific instructions that may have been issued.

### **Section 500**

#### **Inadmissible loading and stowing of goods on deck**

If the carrier has loaded and stowed goods on deck without having obtained the consent required from the shipper or from the *Ablader* pursuant to section 486 paragraph (4), the carrier shall be liable for any damages arising from the goods' loss or physical damage as a result of so being loaded and stowed on deck, even if the damages occurred without the direct fault or neglect of the carrier. Where the circumstances set out in the first sentence are given, the presumption shall be that the goods' loss or physical damage is attributable to the fact that they were loaded and stowed on deck.

### **Section 501**

#### **Responsibility for other persons**

The carrier must assume responsibility for any fault or neglect on the part of its servants and of the ship's company to the same extent as if the fault or neglect in question were its own. The same shall apply to fault or neglect on the part of other persons whose services it is using for the carriage of goods.

### **Section 502**

#### **Compensation based upon value**

(1) Insofar as the carrier is liable to pay compensation for the total or partial loss of goods pursuant to the provisions of the present Subtitle, such compensation shall be calculated by reference to the value that the goods would have had if they had been delivered in due time at the destination contractually agreed.

(2) Insofar as the carrier is liable to pay compensation for the physical damage to the goods pursuant to the provisions of the present Subtitle, the measure of the damages payable shall be the difference between the value of the damaged goods at the place and time of delivery and the value the goods would have had at the place and time of delivery had they not been physically damaged. The costs necessary in order to mitigate or remedy the damage are considered to be equal to the amount of the difference determined in accordance with the first sentence.

(3) The value of the goods shall be fixed in accordance with their current market price, or, if there is no such price, in accordance with the normal market value of goods of the same kind and having the same characteristics. If the goods were sold immediately prior to being received for carriage, the purchase price noted in the seller's invoice, including the costs of carriage factored into said price, shall be considered to be the current market price.

(4) The amount to be compensated pursuant to the paragraphs above is to be offset by the amount saved in customs duties and other costs as a result of the loss or physical damage, or by the amount that was saved due to a loss of cargo.

### **Section 503** **Assessment costs**

In the event of loss of or damage to the goods, the carrier shall bear the costs of assessing the damage; this shall be in addition to the compensation payable pursuant to section 502.

### **Section 504** **Limit of liability in the event the goods are damaged**

(1) The compensation payable for loss or physical damage pursuant to sections 502 and 503 shall be limited to the amount of 666.67 units of account per package or per unit, or to the amount of 2 units of account per kilogram of the goods' gross weight, whichever amount is higher. If a container, pallet or any other article of transport is used to consolidate cargo units, then each package and each unit listed in an accompanying document as being contained in a given article of transport shall be deemed to be a "package" or "unit" within the meaning of the first sentence. Inasmuch as the accompanying document does not provide this information, the given article of transport shall be deemed to be a package or unit.

(2) If the goods consist of several cargo units (cargo) and only individual cargo units have been lost or physically damaged, then the limitation pursuant to paragraph (1) shall be calculated on the basis:

1. Of the entire cargo if the entire cargo has depreciated in value; or
2. Of the part of the cargo that has depreciated in value, if only a part of the cargo has depreciated in value.

### **Section 505** **Unit of account**

The unit of account referred to under the present Subtitle shall be the Special Drawing Right (SDR) of the International Monetary Fund. Each amount shall be converted into euros using the exchange rate between the euro and the Special Drawing Right on the date of delivery of the goods, or on the date agreed by the parties. The value of the euro, in terms of the Special Drawing Right, is to be determined using the calculation that the International Monetary Fund applies for its operations and transactions on the day in question.

### **Section 506** **Non-contractual claims**

(1) The exemptions from and limitations on liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall also apply to any non-contractual claims that the shipper or the consignee may have against the carrier for loss of or physical damage to the goods.

(2) The carrier may also lodge the objections pursuant to paragraph (1) against any non-contractual claims that third parties may assert for loss of or physical damage to the goods. However, these objections may not be lodged if any of the following situations apply:

1. They are made with regard to an agreement that deviates from the regulations stipulated by the present Subtitle to the detriment of the sender;

2. The third party had not consented to carriage of the goods, and the carrier was aware that the shipper did not have the authority to send the goods, or was unaware of this due to its own gross negligence; or

3. The goods, prior to being received for carriage, had been lost while in the possession of the third party, or by a person deriving its right to possession from said third party.

#### **Section 507**

##### **Conduct barring exemptions from liability and limitations of liability**

The exemptions from and limitations of liability provided for under the present Subtitle and under a contract for the carriage of general cargo shall not apply in the following cases:

1. The damages were caused by an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result; or

2. The carrier had agreed with the shipper or the *Ablader* that the goods were to be carried below deck, whereas the damages resulted from the goods having been loaded and stowed on deck.

#### **Section 508**

##### **Liability of servants and of the ship's company**

(1) If non-contractual claims are asserted for loss of or physical damage to the goods against one of the carrier's servants, that servant, too, may avail himself of the exemptions from liability and limitations of liability provided for under the present Subtitle and under the contract for the carriage of general cargo. The same shall apply if the claims are asserted against a member of the ship's company.

(2) Recourse to the releases and limitations of liability pursuant to paragraph (1) shall be ruled out if the debtor has acted intentionally or recklessly and with knowledge that such damage would probably result.

(3) If both the carrier and one of the persons mentioned in paragraph (1) are responsible, due to fault or neglect, for the loss of or physical damage to the goods, they shall be liable jointly and severally.

#### **Section 509**

##### **Actual carrier**

(1) Where the carriage is performed, in whole or in part, by a third party who is not the carrier, then that third party (actual carrier) shall be liable, in the same way as the carrier, for any damages resulting from the loss of or physical damage to the goods during the carriage performed by it.

(2) Any contractual arrangements with the shipper or the consignee whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(3) The actual carrier may lodge all objections and avail itself of all defences to which the carrier is entitled under the contract for the carriage of general cargo.

(4) The carrier and the actual carrier shall be liable jointly and severally.

(5) If a claim is asserted against a servant of the actual carrier or against a member of the ship's company, then Section 508 is to be applied *mutatis mutandis*.

#### **Section 510**

##### **Notice of damage**

(1) If any loss of or physical damage to the goods is externally apparent and the consignee or the shipper fails to notify the carrier of said loss or physical damage on delivery of the goods, at the latest, then the presumption shall be that the goods were delivered in their entirety and in undamaged condition. The notice must describe the loss or physical damage in sufficiently clear terms.

- (2) The presumption pursuant to paragraph (1) shall also apply if the loss or physical damage was not externally apparent and no notice was filed within three (3) days of delivery.
- (3) The notice of damage must be filed in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice in order to comply with the corresponding deadline.
- (4) If notice of the loss or physical damage is made upon delivery, it shall suffice for such notice to be given to the party delivering the goods.

#### **Section 511** **Presumption of loss**

- (1) The person entitled to raise a claim may consider the goods lost if delivery has not taken place within a period that is twice as long as the agreed delivery period, but not shorter than thirty (30) days or, in cases involving cross-border carriage, within a period of sixty (60) days. The first sentence shall not apply if the carrier is relieved from its obligation to deliver the goods due to a right of retention or lien, or if a lien has been placed on the goods for a contribution owed to the general average, thereby preventing delivery of the goods.
- (2) If the person entitled to raise a claim receives compensation for the loss of goods, the person entitled to raise a claim may demand, upon receiving such compensation, to be notified immediately in the event the goods are found.
- (3) Within one (1) month of having been notified of the goods' having been found, the person entitled to raise a claim may demand that the goods be delivered to it concurrently with its repaying the compensation, where appropriate less any costs that may have been a part of the compensation. Any obligation to pay the freight and any claims to compensation of damages shall remain unaffected.
- (4) If the goods have been found after the compensation has been paid and the person entitled to raise a claim has not asked to be informed of such event, or if, having been informed, the person entitled to raise a claim does not assert its claim to delivery of the goods, then the carrier has the right of free disposal in relation to the goods.

#### **Section 512** **Divergent arrangements**

- (1) The arrangements made may diverge from the provisions of the present Subtitle only if their particulars have been negotiated individually; this shall also apply where such arrangements are agreed for a plurality of similar contracts between the same contracting parties.
- (2) Notwithstanding the provisions under paragraph (1), however, the pre-worded terms of contract may stipulate the following:

1. That the carrier is not responsible for any fault or neglect on the part of its servants or of the ship's company, insofar as the corresponding damage was caused in the course of steering or otherwise operating the ship, or was caused by fire or explosion on board the ship and the measures taken were not predominantly for the benefit of the cargo.
2. That the liability of the carrier for loss or physical damage will be limited to higher amounts than those set out in Section 504.

#### **Subtitle 3** **Accompanying documents**

##### **Section 513** **Entitlement to issuance of a bill of lading**

- (1) Unless otherwise agreed in the contract for the carriage of general cargo, the carrier must issue to the *Ablader*, at the latter's request, an order bill of lading that – at the choice of the *Ablader* – is made out "To Order" of the *Ablader*, "To Order" of the consignee, or simply "To Order" (blank); in the last case, this shall be deemed to mean "To Order" of the *Ablader*. The

master as well as any other party authorised to sign bills of lading on behalf of the ship owner-manager shall be entitled to issue the bill of lading on behalf of the carrier.

(2) The “*Ablader*” shall be defined as the party which hands over the goods to the carrier for carriage and which has been designated as *Ablader* by the shipper so as to be recorded as such in the bill of lading. If a party other than the *Ablader* hands over the goods for carriage, or if no party has been designated as *Ablader*, then the shipper shall be deemed to be the *Ablader*.

#### **Section 514**

##### **“On-board” bill of lading; “received-for-shipment” bill of lading**

(1) The bill of lading shall be issued once the carrier has received the goods for carriage. By virtue of the bill of lading, the carrier confirms receipt of the goods and enters into obligation to carry them to their destination and to deliver them to the person entitled by virtue of the bill of lading against return of said bill of lading.

(2) Once the goods have been taken on board, the carrier shall issue a bill of lading specifying when and by which ship the goods were taken on board (“on-board” bill of lading). If a bill of lading already has been issued before the goods are taken on board (“received-for-shipment” bill of lading), then the *Ablader* may require the carrier to add a notation specifying when and by which ship the goods were taken on board as soon as this has occurred (“shipped-on-board” notice).

(3) The bill of lading is to be issued in as many original, executed copies as the *Ablader* requests.

#### **Section 515**

##### **Contents of the bill of lading**

(1) The bill of lading must include the following information:

1. Place and date of issuance;
2. Name and address of the *Ablader*;
3. Name of the ship;
4. Name and address of the carrier;
5. Port of loading and destination;
6. Name and address of the consignee and special address, if any, for notification;
7. Nature of the goods along with their externally apparent condition and characteristic features;
8. Quantity, number or weight of the goods and their permanent, legible leading marks;
9. Freight owed at delivery, costs incurred up to the time of delivery as well as a note concerning payment of the freight;
10. Number of original, executed copies.

(2) At the *Ablader*'s request, the information to be provided pursuant to paragraph (1) numbers 7 and 8 must be recorded as the *Ablader* had provided it to the carrier prior to receipt of the goods, in text form (a readable statement that is permanently valid without a signature having been applied).

#### **Section 516**

##### **Bill of lading format; authorisation to issue statutory instruments**

(1) The carrier must sign the bill of lading; reproductions of the personal signatures by means of printing or stamp shall be sufficient.

(2) An electronic record having the same functions as a bill of lading shall be deemed equivalent to a bill of lading, provided that the authenticity and integrity of the record are assured at all times (electronic bill of lading).

(3) The Federal Ministry of Justice is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic bill of lading, as well as the particulars of the process of posting retroactive entries to an electronic bill of lading.

### **Section 517**

#### **Evidentiary effect of the bill of lading**

(1) A bill of lading shall give rise to the presumption that the carrier has received the goods in the state described pursuant to section 515 paragraph (1) numbers 7 and 8. If the description given therein refers to the contents of a sealed article of transport, then the bill of lading shall establish the presumption set out in the first sentence only if the carrier has inspected the contents and the results of said inspection have been recorded in the bill of lading. If the bill of lading does not provide any information regarding the goods' condition or characteristic features as externally apparent, then the bill of lading shall establish the presumption that the externally apparent condition and characteristic features of the goods were satisfactory at the time the carrier received them for carriage.

(2) The bill of lading shall not give rise to the presumption pursuant to paragraph (1) insofar as the carrier has entered a reservation in the bill of lading. Such reservation must indicate the following:

1. The condition of the goods upon being received by the carrier, or the goods' characteristic features at the time they are received;
2. Which information furnished in the bill of lading is incorrect, and what the correct information should be;
3. The carrier's justification for assuming that the information is incorrect;
4. Why the carrier had no sufficient opportunity to verify the information furnished.

### **Section 518**

#### **Position of ship owner-manager when carrier data are inadequate**

If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the ship owner-manager does not identify the carrier, or if said bill of lading identifies a person as a carrier who is in fact not the carrier, then the rights and duties under the bill of lading shall devolve onto the ship owner-manager instead of the carrier.

### **Section 519**

#### **Entitlement under the bill of lading; legitimation**

The claims by virtue of a contract for the carriage of goods by sea as confirmed in a bill of lading may be asserted only by the person entitled by virtue of the bill of lading. The presumption shall be that the rightful holder of a bill of lading is also the person entitled by virtue of the bill of lading. A party shall be deemed the rightful holder of a bill of lading if the bill of lading in question meets any one of the following criteria:

1. It is made out to "To Bearer";
2. It is made out "To Order" and identifies the holder as the consignee, either directly or through an unbroken chain of endorsements; or
3. It is made out in the name of the holder.

### **Section 520**

#### **Carrying out instructions**

(1) If a bill of lading has been issued, then solely its rightful holder shall be entitled to the right of disposal pursuant to sections 491 and 492. The carrier may carry out instructions only against presentation of all the executed copies of the bill of lading. However, the carrier may not carry out any instructions issued by the legitimate holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not the person entitled by virtue of same.

(2) If the carrier carries out instructions without having been presented with all executed copies of the bill of lading, the carrier shall be liable to the person entitled by virtue of the bill of lading for any resulting damages the latter may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

### **Section 521**

#### **Delivery in exchange for the bill of lading**

(1) Upon the goods' arrival at the discharging wharf, the rightful holder of the bill of lading shall be entitled to demand that the carrier make delivery of the goods. Opting to exercise this right shall obligate the rightful holder of the bill of lading to pay freight and any other remuneration pursuant to section 494 paragraphs (2) and (3).

(2) The carrier shall be obligated to deliver the goods only in exchange for a bill of lading in which delivery has been confirmed, and against payment in full of any outstanding amounts owed pursuant to section 494 paragraphs (2) and (3). However, the carrier may not deliver the goods to the rightful holder of the bill of lading if the carrier is aware, or grossly negligently unaware, that the rightful holder of the bill of lading is not also the person entitled by virtue of same.

(3) If several executed copies of the bill of lading have been made, then the goods are to be delivered to a rightful holder of even just one executed copy of the bill of lading. Should several rightful holders claim the goods, the carrier must deposit the goods in a public warehouse or in some other form of safe storage and must accordingly inform the holders who have come forward, while citing the reasons for proceeding in this manner. In this case, the carrier may have the goods sold off pursuant to section 373 paragraphs (2) through (4), provided the goods are if they are perishable or if their condition warrants such a measure, or if the costs foreseeably to be incurred otherwise are out of proportion to the goods' value.

(4) If the carrier makes delivery of the goods to any other party than the rightful holder of the bill of lading or, assuming the situation set out in paragraph (2) second sentence, to any other party than the person entitled by virtue of the bill of lading, then the carrier shall be liable for the resulting damages the person entitled by virtue of the bill of lading may suffer. The liability shall not exceed the amount which would have been payable if the goods had been lost.

### **Section 522**

#### **Objections**

(1) The carrier may lodge objections against the person entitled by virtue of the bill of lading only insofar as they concern the validity of the statements made in the bill of lading, or insofar as they arise from the contents of the bill of lading, or insofar as the carrier is directly entitled to such objections vis-à-vis the person entitled by virtue of the bill of lading. An agreement to which the bill of lading merely makes reference is not incorporated into the bill of lading.

(2) The carrier cannot rebut the presumptions pursuant to section 517 vis-à-vis a consignee, who is identified in the bill of lading and to whom the bill of lading has been transferred, unless the consignee was aware, or grossly negligently unaware, at the time the bill of lading was transferred, that the information therein is inaccurate. The same shall apply in relation to any third party to whom the bill of lading was transferred.

(3) If the person entitled by virtue of the bill of lading asserts a claim against the actual carrier pursuant to section 509, then the actual carrier, too, may raise the objections pursuant to paragraph (1). Notwithstanding the provisions under paragraph (2), moreover, the actual carrier may rebut the presumptions pursuant to section 517 if the bill of lading was

issued neither by the actual carrier, nor by a party whom the actual carrier authorised to sign bills of lading.

### **Section 523**

#### **Liability for inaccurate information in the bill of lading**

(1) The carrier shall be liable for resulting damages that the person entitled by virtue of a bill of lading may suffer due to a failure to set out the information and reservations in the bill of lading required by section 515 and section 517 (2), or due to the inaccuracy of the information and reservations provided in the bill of lading. This shall specifically apply if the goods' externally apparent condition was not satisfactory at the time of their receipt by the carrier, and if the bill of lading includes neither any information in this regard pursuant to section 515 (1) number 7, nor any reservation pursuant to section 517 (2). However, the liability pursuant to the first and second sentences shall not apply unless the carrier knew – or should have known, had it exercised the due care of a reputable carrier – that the information was missing or was inaccurate or incomplete.

(2) If an “on-board” bill of lading is issued before the carrier has received the goods, or if a “shipped-on-board” notice is included in a “received-for-shipment” bill of lading prior to the goods being loaded on board the ship, then the carrier shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer, even if they occur without the fault or neglect of the carrier.

(3) If a bill of lading issued by the master or by any other party authorised to sign bills of lading on behalf of the ship owner-manager does not accurately state the name of the carrier, then the ship owner-manager, too, shall be liable for resulting damages that the person entitled by virtue of the bill of lading may suffer due to the inaccuracy. The liability set forth in the first sentence shall not apply unless the issuer knew – or should have known, had it exercised the due care of a reputable carrier – that the name of the carrier was either missing or inaccurately stated.

(4) The liability pursuant to paragraphs (1) through (3) shall not exceed the amount which would have been payable if the goods had been lost.

### **Section 524**

#### **Transfer effected by the bill of lading (“effect of tradition”)**

Provided the carrier is in possession of the goods, the transfer of a bill of lading to the consignee identified therein shall have the same effects, in terms of the acquisition of rights to the goods, as does the consignment of the goods for carriage. The same shall apply to a transfer of the bill of lading to third parties.

### **Section 525**

#### **Divergent provision made in the bill of lading**

A provision made in the bill of lading that diverges from the regulations on liability set out in sections 498 through 511 or in section 520 (2), section 521 (4) or section 523 shall be effective only if the pre-requisites of section 512 have been met. However, any deviation to the detriment of the shipper or the *Ablader* shall be invalid vis-à-vis third parties. The second sentence shall not apply to any provision made pursuant to section 512 (2).

### **Section 526**

#### **Sea waybill; authorisation to issue statutory instruments**

(1) Unless it has issued a bill of lading, the carrier may issue a sea waybill. Section 515 is to be applied *mutatis mutandis* to the content of the sea waybill, subject to the proviso that the shipper takes the stead of the *Ablader*.

(2) In the absence of proof to the contrary, the sea waybill shall serve as *prima facie* evidence of the conclusion of the contract for the carriage of general cargo; it shall also serve as *prima facie* evidence of the contract's contents, as well as of the fact that the carrier has received the goods. Section 517 shall apply *mutatis mutandis*.



(3) The sea waybill must be signed by the carrier; a reproduction of the personal signature by means of printing or stamp shall be sufficient.

(4) An electronic record having the same functions as the sea waybill shall be deemed equivalent to the sea waybill, provided that the authenticity and integrity of the record are assured at all times (electronic sea waybill). The Federal Ministry of Justice is hereby empowered to determine by regulation, issued in agreement with the Federal Ministry of the Interior and not requiring the consent of the Federal Council (*Bundesrat*), the details of issuing, presenting, returning and transmitting an electronic sea waybill, as well as the particulars of the process of posting retroactive entries to an electronic sea waybill.

## **Title 2**

### **Voyage charter contract**

#### **Section 527**

##### **Voyage charter contract**

(1) The voyage charter contract places the carrier under obligation to carry the goods to the destination, in one or more specified voyages by sea, using either the entirety of a specified ship, a proportion of a specified ship, or a specifically designated space within such ship, and to deliver the goods to the consignee. Each of the parties may demand that the voyage charter contract be recorded in writing.

(2) Sections 481 through 511 and sections 513 through 525 are to be applied *mutatis mutandis* to the voyage charter contract unless otherwise provided for by sections 528 through 535.

#### **Section 528**

##### **Port of loading; loading wharf**

(1) In order to load and stow the goods on board, the carrier must berth the ship at the loading wharf designated in the voyage charter contract or at the loading wharf to be designated by the shipper following conclusion of the voyage charter contract.

(2) If no port of loading or loading wharf has been designated in the voyage charter contract and the shipper is to designate the port of loading or loading wharf following conclusion of the voyage charter contract, then the shipper must exercise due diligence in choosing a secure port of loading or loading wharf.

#### **Section 529**

##### **Notice of readiness for loading**

(1) As soon as the ship berthed at the loading wharf is ready for the goods to be loaded and stowed on board, the carrier must notify the shipper of readiness for loading. Insofar as the shipper has yet to designate the loading wharf, the carrier may already give notice of readiness for loading once the ship has reached the port of loading.

(2) The notice of readiness for loading must be given during the office hours customarily kept at the loading wharf. If notice of readiness for loading is given outside of the office hours customary for the location of the loading wharf, then said notice shall be deemed to have been received at the start of the next office hour customary for the location.

#### **Section 530**

##### **Loading time; laytime on demurrage**

(1) Loading time shall begin on the day following the day of notice.

(2) Unless otherwise agreed, no separate remuneration may be demanded for loading time.

(3) If the carrier waits beyond the loading time on the basis of a contractual agreement between the parties or for reasons outside of the sphere of risks to be borne by it (laytime on demurrage), the carrier shall be entitled to reasonable remuneration (demurrage). If, following the ship's arrival at the discharging wharf, the consignee asserts its right pursuant to section 494 (1) first sentence, then the consignee, too, shall owe demurrage, provided that, upon delivery of the goods, the consignee was informed of the amount owed.

(4) Absent an agreement to any other effect, the loading time and the laytime on demurrage must correspond to a period that is reasonable under the circumstances. In calculating the loading time and the laytime on demurrage, days shall be counted in unbroken sequence, while including Sundays and holidays. Periods during which it is impossible to load and stow the goods on board the ship for reasons within the sphere of risks to be borne by the carrier shall not be included in the computation.

### **Section 531**

#### **Loading and stowing goods**

- (1) Unless otherwise required under the given circumstances or under customary standards, the shipper shall be responsible for loading and stowing the goods. The carrier's responsibility for ensuring the seaworthiness of the ship loaded with the goods shall remain unaffected.
- (2) The carrier shall not be authorised to reload the goods.

### **Section 532**

#### **Termination by the shipper**

- (1) The shipper may terminate the voyage charter contract at any time.
- (2) Should the shipper terminate the contract, then the carrier, insofar as it is asserting a claim pursuant to section 489 (2) first sentence number 1, may demand any demurrage that may have accrued.

### **Section 533**

#### **Partial carriage**

- (1) The shipper shall be entitled to demand at any time that the carrier carry only a part of the goods. If the shipper exercises this right, the carrier shall be entitled to the full freight, to any demurrage that may have accrued, as well as to compensation for any expenditures incurred because of the incompleteness of the consignment. If the voyage charter contract entitles the carrier to use the same ship to carry other goods in place of the cargo units that have not been loaded and stowed on board, and if the carrier exercises said right, then the freight for the carriage of these other goods shall be deducted from the full freight. Insofar as the carrier is deprived of security for the full freight due to the incompleteness of the consignment, it may demand that other security be provided. If the reasons for which the complete cargo is not carried are within the sphere of risks to be borne by the carrier, then the carrier shall be entitled to a claim pursuant to the second through fourth sentences only insofar as goods are in fact being carried.
- (2) If the shipper fails to load and stow all or part of the goods within the loading time plus any agreed laytime on demurrage, or – in cases in which the shipper is not responsible for loading and stowing the goods – if all or part of the goods are not handed over for carriage within this time, then the carrier may set a reasonable deadline for the shipper in which to load and stow the goods, or to hand them over for carriage. If by the expiry of the deadline, only a part of the goods has been loaded and stowed, or handed over for carriage, the carrier may carry the cargo units already loaded and stowed or handed over for carriage, and may assert the claims pursuant to paragraph (1) second through fourth sentences. Section 490 paragraph (4) shall apply *mutatis mutandis*.

### **Section 534**

#### **Termination by the carrier**

- (1) If the shipper fails to load and stow any goods whatsoever within the loading time plus any agreed laytime on demurrage, or – in instances in which the shipper is not responsible for loading and stowing the goods – if no goods are handed over for carriage within this time, then the carrier may terminate the contract pursuant to section 490 and may assert the claims pursuant to section 489 (2) in conjunction with section 532 (2).

(2) The carrier may terminate the contract already prior to expiry of the loading time plus any agreed laytime on demurrage in accordance with the stipulations of section 490 if it is obvious that the goods will not be loaded and stowed or handed over for carriage.

### **Section 535**

#### **Discharge from the ship**

(1) The provisions of sections 528 through 531 governing the port of loading and loading wharf, the notice of readiness for loading, the loading time, and the loading and stowing of goods on board are to be applied *mutatis mutandis* to the port of discharge and discharging wharf, to the notice of readiness for discharge, to the discharging time, and to the discharge of goods from the ship. However, notwithstanding the provisions under section 530 (3) second sentence, the consignee shall owe demurrage for any exceedance of the discharging time, even if, upon delivery of the goods, the consignee was not informed of the amount owed.

(2) If the consignee is not known to the carrier, then the notice of readiness for discharge must be given by public notice in the form customary for the location where the goods are to be discharged from the ship.

### **Subchapter 2**

#### **Contracts for the carriage of passengers and their luggage**

### **Section 536**

#### **Scope of application**

(1) If, in the course of the carriage of passengers and their luggage by sea, damages arise from the death of or personal injury to a passenger, or from the loss of, physical damage to or delayed re-delivery of luggage, then the carrier and the actual carrier shall be liable pursuant to the provisions of the present Subchapter. The right to assert a limitation of liability pursuant to sections 611 through 617 or sections 4 through 5m of the Inland Waterways Act (*Binnenschiffahrtsgesetz*) shall remain unaffected.

(2) The stipulations set out in the present Subchapter shall not apply insofar as the following provisions govern:

1. Self-executing provisions of the European Union as amended, specifically Regulation (EC) No 392/2009 of the European Parliament and of the Council on the Liability of Carriers of Passengers by Sea in the Event of Accidents (OJ L 131 of 28 May 2009, p. 24), or
2. Self-executing provisions in international instruments.

Furthermore, the liability-related provisions in the present Subchapter shall not apply if the damage is caused by a nuclear incident originating in a nuclear facility and the operator of said facility is liable for such damage pursuant to the regulations of the Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy in the version promulgated on 5 February 1976 (Federal Law Gazette (*Bundesgesetzblatt*) 1976 II p. 310, citation on p. 311) and the Protocol of 16 November 1982 (Federal Law Gazette (*Bundesgesetzblatt*) 1985 II p. 690) or of the Atomic Energy Act (*Atomgesetz*).

### **Section 537**

#### **Definitions**

The following definitions shall apply for the terms used in the present Subchapter:

1. A “carrier” shall be defined as a person concluding a contract of carriage for a passenger by sea (contract for the carriage of passengers and their luggage);
2. A “passenger” shall be defined as follows:
  - a) A person carried under a contract for the carriage of passengers and their luggage; or

- b) A person who, with the consent of the carrier, is accompanying a vehicle or live animals that are being carried under a contract for the carriage of goods by sea;
3. “Luggage” shall be defined as any article being carried under a contract for the carriage of passengers and their luggage, with the exception of live animals;
4. “Cabin luggage” shall be defined as the luggage that the passenger has in his cabin or that is otherwise in his possession; “cabin luggage” shall include luggage that the passenger has in or on his vehicle;
5. A “shipping incident” shall be defined as a shipwreck, collision, capsizing or stranding, an explosion or fire in the ship, or a defect in the ship;
6. A “defect in the ship” shall be defined as a malfunction, failure, or non-compliance with applicable safety regulations in respect of any part of the ship or its equipment that is being used for any of the following:
- a) Escape, evacuation, embarkation or disembarkation of passengers;
  - b) The propulsion, steering, safe navigation, mooring or anchoring, arriving at or leaving berth or anchorage, or damage control after flooding; or
  - c) In order to launch life-saving appliances.

#### **Section 538**

##### **Liability of the carrier for personal injuries**

- (1) The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the incident causing the damage was a shipping incident, the carrier’s fault or neglect shall be presumed.
- (2) Notwithstanding paragraph (1), the carrier shall be liable, even if the incident occurred without the fault or neglect of the carrier, for the damage suffered as a result of the death of or personal injury to a passenger if the incident that caused the damage so suffered occurred in the course of the carriage and insofar as the damage is not in excess of 250,000 units of account. However, the carrier shall be released from such liability if:

- 1. The incident occurred due to acts of public enemies, an act of war, a civil war, civil unrest, or an exceptional and unavoidable natural disaster that was impossible to avert; or
  - 2. The incident’s sole cause was an act or omission by a third party, done with the intention of causing the incident.
- (3) The term “carriage” as used in paragraphs (1) and (2) covers the following:
- 1. The period in which the passenger is on board the ship, including the period in which he is embarking or disembarking; and
  - 2. The period in which the passenger is transported by water from land to the ship or vice versa, insofar as the costs of this transport are included in the fare, or insofar as the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier.

The term does not cover the period which the passenger spends in a marine terminal or station, on a quay or in any other port installation.

#### **Section 539**

##### **Liability of the carrier for physical damage to luggage and damages resulting from delays in the re-delivery of luggage**

(1) The carrier shall be liable for the damage resulting from the loss of cabin luggage or luggage, or physical damage to same, if the incident that caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier. If the loss of or physical damage to cabin luggage is caused by a shipping incident, or if other luggage is lost or physically damaged, then the carrier's fault or neglect shall be presumed.

(2) The liability of the carrier pursuant to paragraph (1) shall also extend to damages resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried. However, such liability shall be ruled out if the delay in re-delivery of the luggage is attributable to labour disputes.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the carrier shall not be liable for damages resulting from the loss of, or physical damage to, monies, negotiable securities, gold, silver, gemstones, jewellery, works of art, or other valuables, or for damages resulting from the delayed re-delivery of such valuables, unless they had been deposited with the carrier for safe-keeping.

(4) The term "carriage" in the sense as used in paragraph (1) shall cover the following periods:

1. For cabin luggage, excepting luggage that the passenger has in or on the vehicle:
  - a) The period during which the cabin luggage is on board the ship, including the period in which the cabin luggage is transported onto or off the ship;
  - b) The period during which the cabin luggage is transported by water from land to the ship or vice-versa, insofar as the cost of such transport is included in the fare or if the vessel used for this auxiliary transport has been put at the disposal of the passenger by the carrier; and
  - c) The period which the passenger spends in a marine terminal or station or on a quay or in or on any other port installation, insofar as the cabin luggage has been received for carriage by the carrier or its servants or agents, and has not yet been returned to the passenger;
2. For luggage other than the cabin luggage referred to in number 1: the period between the luggage's receipt for carriage by the carrier on shore or on board and the time of its re-delivery.

#### **Section 540**

##### **Responsibility for other persons**

The carrier must assume responsibility for the fault or neglect of its servants and that of the ship's company to the same extent as if the fault or neglect in question were its own, provided that its servants and the ship's company were acting within the scope of their employment. This shall likewise apply to any fault or neglect on the part of any other person of whose services the carrier avails itself in performing the carriage.

#### **Section 541**

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

(1) The liability of the carrier for the death of or physical injury to a passenger shall in no case exceed 400,000 units of account per passenger per loss event. Where damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

(2) Notwithstanding paragraph (1), the liability of the carrier shall be limited to the amount of 250,000 units of account per passenger per loss event, if the death or physical injury was due to any of the circumstances set out below:

1. War, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or hostile acts by or against a belligerent power;
2. Seizure, attachment, arrest, restraint of disposition, or detention, as well as the consequences thereof, or any attempt thereat;
3. Derelict mines, torpedoes, bombs or other derelict weapons of war;
4. Attacks carried out by terrorists or by persons acting on malice or for political motives, as well as any action taken to prevent or counter such attacks;
5. Forfeiture and expropriation.

(3) If more than one passenger loses his life or suffers physical injury in a situation covered by paragraph (2), then the liability amount of 250,000 units of account per passenger per loss event set out in paragraph (2) shall be replaced by a liability amount of 340 million units of account per ship per loss event, where the latter amount is lower and can be distributed pro-rata amongst the injured parties, in proportion to their relative claims, as a single, non-recurring payment or as several partial payments.

#### **Section 542**

##### **Limit of liability for physical damage to luggage and damages due to delays in the re-delivery of luggage**

- (1) Unless otherwise provided for in paragraph (2), the liability of the carrier for the loss of, physical damage to, or delayed re-delivery of cabin luggage shall be limited to the amount of 2,250 units of account per passenger, per carriage.
- (2) The liability of the carrier for loss of, physical damage to or delayed re-delivery of vehicles, including the luggage in or on the vehicle, shall be limited to the amount of 12,700 units of account per vehicle, per carriage.
- (3) The liability of the carrier for loss of, physical damage to or delayed re-delivery of all other luggage items besides those named in paragraphs (1) and (2) shall be limited to the amount of 3,375 units of account per passenger, per carriage.
- (4) Unless valuables deposited with the carrier for safe-keeping are involved, the carrier and the passenger may agree that the carrier will be released from providing compensation for a portion of the damage. However, this portion may not exceed the amount of 330 units of account insofar as physical damage to a vehicle is involved, or 149 units of account insofar as the loss of, physical damage to or delayed re-delivery of other luggage items is involved.
- (5) Notwithstanding the provisions of paragraphs (1) through (4), the carrier must compensate passengers with reduced mobility in the event of loss of, or damage to, mobility equipment or other specific equipment, by paying the replacement value of the equipment concerned or, where applicable, the costs relating to repairs.

#### **Section 543**

##### **Interest and costs of court proceedings**

Any interest charges and costs of court proceedings must be reimbursed above and beyond the limits of liability set out in sections 538, 541 and 54

#### **Section 544**

##### **Unit of account**

The "unit of account" referred to in sections 538, 541 and 542 is the Special Drawing Right as defined by the International Monetary Fund. The relevant amount shall be converted into euros based on the exchange rate between the euro and the Special Drawing Right on the date of the judgment or the date agreed upon by the parties. The exchange rate between the euro and the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect on the date in question for its operations and transactions.

### **Section 545**

#### **Conduct barring limitation of liability**

The carrier shall not be entitled to the benefit of the limits of liability set out in sections 541 and 542 and provided for in the contract for the carriage of passengers and their luggage insofar as the damage suffered resulted from an act or omission of the carrier, done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

### **Section 546**

#### **Actual carrier**

(1) If the whole or a part of the carriage is performed by a third party who is not the carrier, that third party (actual carrier) shall be liable, just as though it were the carrier, for the damage caused by the death of or physical injury to a passenger, or by the loss of, physical damage to or delayed re-delivery of passenger luggage occurring in the course of the carriage as performed by the actual carrier. Any contractual arrangements whereby the carrier expands its own liability shall affect the actual carrier only if the actual carrier has agreed to them in writing.

(2) The actual carrier may lodge any and all objections and defences to which the carrier is entitled under the contract for the carriage of passengers and their luggage.

(3) The carrier and the actual carrier shall be liable jointly and severally.

### **Section 547**

#### **Liability of the carrier's servants and of the ship's company**

(1) If a claim is asserted against one of the carrier's or actual carrier's servants for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, such servant as well shall be entitled to avail himself of the defences and limitations of liability applicable to the carrier or actual carrier, provided the servant was acting within the scope of his employment. The same shall apply if such a claim is asserted against a member of the ship's company.

(2) Recourse to the limitations of liability pursuant to paragraph (1) shall be ruled out if the liable party has acted intentionally or recklessly and with knowledge that such damage would probably result.

(3) If the carrier or actual carrier shares joint responsibility for causing the damage with one of the persons mentioned in paragraph (1), then said parties shall be liable jointly and severally.

### **Section 548**

#### **Concurrent claims**

Claims in respect of the death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage may be asserted against the carrier or actual carrier only on the basis of the provisions of the present Subchapter.

### **Section 549**

#### **Notice of damage**

(1) Should a passenger fail to notify the carrier in due time that the passenger's luggage has been physically damaged or lost, he shall be presumed to have received the luggage undamaged. The notice need not be given, however, if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

(2) The notice shall be deemed timely if given within the following deadlines:

1. In the case of externally apparent physical damage to cabin luggage: the time of disembarkation;
2. In the case of externally apparent physical damage to luggage other than cabin luggage: the time of the luggage's re-delivery to the passenger;

3. In the case of physical damage to luggage that is not externally apparent, or for lost luggage: fifteen (15) days after disembarkation or re-delivery of the luggage, or after the date on which the luggage should have been re-delivered to the passenger.

(3) Notice of physical damage must be given in text form (a readable statement that is permanently valid without a signature having been applied). Timely dispatch of the notice shall suffice for purposes of compliance with the respective deadline.

### **Section 550**

#### **Lapse of claims to compensation of damages**

A claim for compensation of damages in respect of the death of or personal injury to a passenger, or in respect of the loss of, physical damage to, or delayed re-delivery of luggage shall lapse unless it is asserted before a court of law within one of the periods set out below:

1. Three (3) years from the date on which the claimant becomes aware of the death or personal injury, or of the loss of, physical damage to, or delayed re-delivery of luggage, or from the date on which the claimant should have become aware under normal circumstances; or
2. Five (5) years from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

### **Section 551**

#### **Divergent agreements**

Unless otherwise provided for in section 542 (4), any agreement which rules out or limits liability for the death of or personal injury to a passenger, or for the loss of, physical damage to or delayed re-delivery of passenger luggage, shall be invalid insofar as it was made prior to the event that caused the death of or personal injury to a passenger or the loss of, physical damage to or delayed re-delivery of passenger luggage.

### **Section 552**

#### **Carrier's lien**

- (1) To secure its claim to the fare, the carrier shall have a lien on the passenger's luggage.
- (2) The lien shall continue in force only as long as the luggage is retained or deposited.

## **Chapter 3**

### **Charter contracts for ships**

#### **Subchapter 1**

#### **Chartering a ship**

### **Section 553**

#### **Bareboat charter contract**

- (1) A bareboat charter contract obligates the owner to let a certain sea-going ship without company to the charterer, and to allow the charterer the use of this ship during the charter period.
- (2) The charterer shall be obligated to pay the charter rate agreed. Unless otherwise agreed, the charter rate is to be paid in advance on a fortnightly basis.
- (3) The provisions of the present Subchapter shall apply insofar as the charterer concludes the charter party for the purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the charterer does not carry on a trade in the sense as defined by section 1 (2), and if the charterer's company name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the bareboat charter contract; this shall not apply to the provisions of sections 348 through 350, however.

### **Section 554**

#### **Turning over and returning the ship; maintenance**



- (1) The owner must turn the ship over to the charterer at the time and location agreed, in a condition suitable for the contractually agreed use.
- (2) For the duration of the charter period, the charterer must maintain the ship in a condition suitable for the contractually agreed use. Upon the charter relationship ending, the charterer must return the ship in the same condition, with due account being taken of the wear and tear resulting from use in accordance with the terms of contract.

#### **Section 555**

##### **Safeguarding the owner's rights**

The charterer must safeguard the rights of the owner vis-à-vis third parties.

#### **Section 556**

##### **Termination**

The charter relationship may be terminated at the latest effective midnight of any given Saturday by giving one week's notice by the first workday of the preceding week. If the charter contract calls for charter rate to be paid monthly or at longer intervals, then it shall be possible to terminate the charter party in accordance with normal procedure giving notice of three months to the end of a calendar quarter.

#### **Subchapter 2**

##### **Time charter**

#### **Section 557**

##### **Time charter contract**

- (1) A time charter contract obligates the owner to let a certain sea-going ship and its company to the time charterer, for its use, for a certain period of time, and to carry goods or passengers on this ship or to render other services as may have been agreed.
- (2) The time charterer is under obligation to pay the hire agreed.
- (3) The provisions of the present Subchapter shall apply if the time charterer concludes the time charter contract for purposes of operating the ship to pursue marine navigation as a gainful economic activity. If the time charterer does not carry on a trade in the sense as defined by section 1 (2), and if the time charterer's company name has not been entered in the Commercial Register pursuant to section 2, then the provisions set out in Chapter 1 of Book 4 shall apply as a subsidiary source of law to the time charter contract; this shall not apply to the provisions under sections 348 through 350, however.

#### **Section 558**

##### **Time charter party**

Each of the parties to the time charter agreement may demand that the agreement be recorded in writing (time charter party).

#### **Section 559**

##### **Provision of the ship**

- (1) The ship must be put at the disposal of the time charterer at the time and location agreed, in a condition suitable for the contractually agreed use.
- (2) If it has been agreed that the ship is to be made available at a certain date or within a certain period, then the time charterer may rescind the charter contract, without setting any deadline, if the charter contract is not complied with, or if it becomes obvious that it will not be complied with.

#### **Section 560**

##### **Maintenance of the ship in contractually agreed condition**

For the duration of the time charter contract, the owner must maintain the ship in a condition suitable for the contractually agreed use. In particular, the owner must ensure that the ship is seaworthy and, insofar as the ship is to be used to carry goods, that it is also in cargoworthy condition.

**Section 561**  
**Use of the ship**

- (1) The time charterer shall determine the use of the ship. Insofar as the time charterer instructs the owner to navigate to a specific harbour or berth, it shall be incumbent on the time charterer to exercise proper care in choosing a safe harbour or berth.
- (2) The owner shall be responsible for steering and otherwise operating the ship.
- (3) The time charterer shall have the right to charter out the ship to third parties.

**Section 562**  
**Notification obligations**

The owner and the time charterer must notify each other of any and all significant circumstances concerning the ship and the voyage.

**Section 563**  
**Loading and discharge of goods**

- (1) If the ship is to be used to carry goods, the time charterer shall be responsible for loading and stowing the goods on board and also for discharging them from the ship.
- (2) The owner must ensure that loading and stowing the goods on board the ship does not impair its seaworthiness.

**Section 564**  
**Costs of operating the ship**

- (1) The owner is to bear the fixed cost of operating the ship, specifically the costs of its company, equipment, maintenance, and insurance.
- (2) The time charterer is to bear the variable cost of operating the ship, specifically port charges, pilotage charges, tug assistance charges, and the premiums for the continued insurance of the ship. Furthermore, the time charterer is to procure the fuel required for operating the ship; such fuel must be of commercial quality.

**Section 565**  
**Hire**

- (1) Absent an agreement otherwise, the hire is to be paid in advance on a fortnightly basis.
- (2) The obligation to pay the hire shall not apply to any periods in which the ship is unavailable to the time charterer for the contractually agreed use due to deficiencies or other circumstances within the sphere of risks to be borne by the owner. If the ship cannot be used to the full extent contractually agreed, a reasonably reduced hire shall be payable.

**Section 566**  
**Owner's lien**

- (1) To secure its amounts receivable under the time charter contract, the owner shall have a lien on the property on board the ship, including the fuel, insofar as such property is owned by the time charterer. The provisions governing the acquisition of ownership in good faith under Sections 932, 934 and 935 of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) shall not apply.
- (2) To further secure its amounts receivable under the time charter contract, the owner shall also have a lien on the time charterer's amounts receivable under the freight and sub-time charter contracts which the latter has concluded and intends to fulfil using the ship. Once the debtor of an amount receivable owed to the time charterer becomes aware of the owner's lien, the debtor may make payment only to the owner. However, the debtor shall be entitled to deposit the amount in question until such time as the charterer notifies it of the lien.
- (3) Notwithstanding the provisions under paragraphs (1) and (2), the owner shall have no lien to secure any future claims to compensation, nor shall the owner have any lien to secure any hire receivable but not yet due for payment.

**Section 567**  
**Breach of duties**

Unless stipulated otherwise in the present Subchapter, the legal consequences of a party's breach of its duties under a time charter contract shall be determined by the general provisions governing obligations made in the Civil Code (*Bürgerliches Gesetzbuch*, BGB).

**Section 568**  
**Right of retention**

The owner may refuse performance of its obligations, including the loading and stowing of goods on board and the issuance of bills of lading, for as long as the charterer is in default with regard to a hire amount that is due and payable.

**Section 569**  
**Return of the ship**

(1) Upon the contractual relationship ending, the time charterer must return the ship at the location agreed.

(2) If the contractual relationship ends due to its being terminated without notice, then, notwithstanding paragraph (1), the time charterer must return the ship at whatever location it happens to be once the termination takes effect. However, the party responsible, by its fault or neglect, for causing the agreement to be terminated without notice must compensate the other party for any damages resulting from premature termination of the contractual relationship.

**Chapter 4**  
**Ship's emergencies**

**Subchapter 1**  
**Collision of ship**

**Section 570**  
**Obligation to compensate for damages**

In the event that sea-going ships are involved in a collision, the ship owner-manager of the ship causing the collision shall be liable for the damage caused to the other ship and to the persons and property located on board on either or both of the ships. However, such obligation to compensate damages shall arise only if the incident occurred due to the fault or neglect of the ship owner-manager of the ship causing the collision, or of one of the persons referred to in section 480.

**Section 571**  
**Contributory fault**

(1) If the ship owner-managers of several ships involved in a collision are obligated to compensate damages, the scope of compensation that a given ship owner-manager must pay shall be determined by the gravity of that owner-manager's fault or neglect in proportion to the fault or neglect of the other ship owner-managers. If it is not possible to determine any such proportional relationship, then the ship owner-managers shall be liable in equal shares.

(2) Notwithstanding paragraph (1), the ship owner-managers of several ships involved in a collision shall be liable jointly and severally for damages in respect of the death of or personal injury to a person located on board. The obligations of the ship owner-managers amongst each other shall be governed by the stipulations of paragraph (1).

**Section 572**  
**Damage without collision**

If a ship causes damage to another ship, or to the persons or property on board that ship, by performing or failing to perform a manoeuvre, or by failing to observe a navigation rule, but without a collision taking place, then sections 570 and 571 shall be applied *mutatis mutandis*.

### **Section 573**

#### **Involvement of an inland waterway vessel**

The provisions of the present Subchapter are to be applied *mutatis mutandis* if an inland waterway vessel is involved in the accident.

### **Subchapter 2**

#### **Salvage**

### **Section 574**

#### **Duties of the salvor and of other persons**

(1) A “salvor” shall be defined as a party that goes to the aid of the following ships or other property:

1. A sea-going ship or inland waterway vessel or other property that is in danger at sea;
2. A sea-going ship that is in distress in inland waters; or
3. An inland waterway vessel or other property that is in danger in inland waters, insofar as the assistance is provided from a sea-going ship.

(2) The term “ship” as used in paragraph (1) shall also cover floating equipment or a floating structure. The term “property” as used in paragraph (1) shall also cover a jeopardised claim to freight. However, the following shall not be deemed a ship or other property within the meaning of paragraph (1):

1. An object attached permanently and intentionally to the shoreline;
2. A fixed or floating platform, or a mobile offshore drilling rig, such platform or rig being engaged on site in the exploration, exploitation or production of sea-bed mineral resources.

(3) The salvor shall owe the following duties to the owner of the ship or other property to which it renders assistance: to carry out the operations with due care; to seek assistance from other salvors whenever circumstances reasonably require; and to accept the intervention of other salvors when reasonably requested to do so by the skipper, master or owner of the ship in distress, or by the owner of the other property in danger.

(4) The owner and the skipper or master of a ship in distress, as well as the owner of the other property in danger shall owe a duty to the salvor to co-operate in every regard with the salvor during the course of the salvage measures. Once the ship or other asset has been brought to a place of safety, the persons listed in the first sentence shall be obligated to accept re-delivery of the ship or of the other property upon being reasonably requested to do so by the salvor.

### **Section 575**

#### **Prevention or minimisation of damages to the environment**

(1) The salvor shall owe a duty to the owner of the ship or of the other property in danger which it is assisting to exercise due care in performing the salvage measures so as to prevent or minimise damage to the environment. The owner and the skipper or master of the ship in distress, as well as the owner of the other property in danger, in turn shall owe the same duty to the salvor. Any arrangement made in derogation herefrom shall be null and void.

(2) The term “damage to the environment” shall be defined as substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion, or similar major incidents.

### **Section 576**

#### **Right to a reward**

(1) Insofar as salvage measures prove successful, the salvor shall be entitled to receive payment of a salvage reward. This claim shall arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The salvage reward shall also comprise reimbursement of expenses incurred in the salvage measure. The following shall not be included in the salvage reward: any costs and fees charged by government authorities; any customs duties and other duties payable; the costs of warehousing, preserving, appraising, and selling the salvaged property (costs of salvage).

(3) The owner of the salvaged ship as well as the owner of the other salvaged property shall be obligated to pay the salvage reward and the costs of salvage, the pro-rata contribution of each being determined by the value of the ship in proportion to that of the other property.

### **Section 577**

#### **Amount of the salvage reward**

(1) Unless the parties already fixed the amount of the salvage reward beforehand, they shall set it at a level that encourages future salvage measures. In so doing, they must allow for the following criteria, without regard to the order in which they are presented below:

1. The salvaged value of the ship and of any other salvaged assets;
2. The skill and efforts of the salvor in preventing or minimising damage to the environment (Section 575 (2));
3. The measure of success obtained by the salvor;
4. The nature and degree of the danger;
5. The skill and efforts of the salvor in salvaging the ship, other property and human life;
6. The time, expenses, and losses incurred by the salvor;
7. The potential liability and other risks to which the salvor or its equipment was exposed;
8. The promptness of the services rendered;
9. The availability and deployment of vessels or other equipment intended for the salvage measures;
10. The state of readiness and efficiency of the salvor's equipment along with its value.

(2) The salvage reward, exclusive of any interest, costs of salvage, or recoverable legal costs, shall not exceed the salvaged value of the vessel and of the other salvaged property.

### **Section 578**

#### **Special compensation**

(1) If the salvor has carried out salvage measures for a ship that poses a danger to the environment, either by itself or by virtue of its cargo, then the salvor shall be entitled to demand special compensation from the owner of that ship in excess of the salvage reward to which the salvor is entitled. The claim to such special compensation shall also arise notwithstanding that the salvaged ship and the ship undertaking the salvage measures belong to the same owner.

(2) The amount of the special compensation shall correspond to the expenses incurred by the salvor. The term "expenses" as used in the first sentence shall cover all expenditures reasonably incurred by the salvor in the salvage measures as well as a fair rate for any equipment and personnel verifiably and reasonably deployed in the salvage measures. In determining the reasonableness of the amount to be assessed for equipment and personnel,

the criteria listed in section 577 (1) second sentence number 8 through 10 must be considered.

(3) Insofar as the salvor's salvage measures have prevented or minimised damage to the environment (section 575 (2)), the special compensation payable pursuant to paragraph (2) may be increased by up to 30 percent. Notwithstanding the first sentence, the special compensation payable may be increased by up to 100 percent if this is deemed fair and equitable in consideration of the criteria listed in section 577 (1) second sentence.

#### **Section 579**

##### **Exclusion of a claim to remuneration**

(1) The salvor may not claim any remuneration for salvage measures under the present Subchapter if the measures taken do not extend above and beyond what could be reasonably considered to be the due and proper fulfilment of a contract concluded prior to occurrence of the peril.

(2) Furthermore, the salvor may not claim any remuneration under the present Subchapter if it performed the salvage measures notwithstanding the express and reasonable prohibition of the owner, skipper or master of the ship, or of the owner of some other property in danger that is not and was not on board the ship.

#### **Section 580**

##### **Salvor's misconduct**

(1) A salvor may be deprived of all or part of the salvage reward to the extent that the salvage measures were rendered necessary or more difficult due to fault or neglect on the part of the salvor, or if the salvor has engaged in fraud or otherwise acted in bad faith.

(2) A salvor may be deprived of all or part of the special compensation if one of the reasons set out in paragraph (1) is given, or if the salvor was negligent and thereby failed to prevent or minimise damage to the environment (section 575 (2)).

#### **Section 581**

##### **Claim to apportionment**

(1) If a ship or its cargo is salvaged, in whole or in part, by another ship, then the salvage reward or special compensation shall be apportioned between the following: the ship's owner or the ship owner-manager; the skipper or master; and the other persons in the service of the other ship; in the process, the ship's owner or the ship owner-manager must be compensated for the damages the ship has suffered and must be reimbursed for expenses incurred, while the rest is to be apportioned such that the ship's owner or the ship owner-manager is paid two thirds, while the skipper or master and the other persons in the service of the ship each receive one sixth.

(2) The amount payable to the ship's company, not including the skipper or master, shall be apportioned to the members thereof while making special allowance for each member's personal skills and effort made. The skipper or master shall distribute the amount based on a disbursement scheme. This shall set out the portion to which each party is entitled. The ship's company is to be informed of the disbursement scheme prior to the end of the voyage.

(3) Any agreements diverging from the provisions of paragraphs (1) and (2) to the detriment of the ship's skipper or master or of the other persons in the service of the ship shall be null and void

(4) Paragraphs (1) through (3) shall be not applicable if the salvage measures are undertaken from a naval rescue and salvage ship or a salvage tug.

#### **Section 582**

##### **Plurality of salvors**

(1) If several salvors cooperate in the performance of salvage measures, then each of the salvors may demand only a share of the salvage reward. Section 577 (1) shall be applied *mutatis mutandis* in determining the salvors' pro-rata shares in the salvage reward; section 581 shall remain unaffected.

(2) Notwithstanding paragraph (1), a salvor may demand the full amount of a salvage reward if the salvor accepted the intervention of the other salvors at the request of the owner of the ship in distress or other property in danger, and if said request later proves to have been unreasonable.

### **Section 583** **Saving human life**

(1) No remuneration shall be due from persons whose lives have been saved, neither as a salvage reward nor as special compensation.

(2) Notwithstanding paragraph (1), any party who has taken action to save human life during salvage measures may demand a fair share of the salvage reward payable to the salvor pursuant to the present Subchapter in return for the salvor's salvaging of the ship or other property, or for his prevention or mitigation of damage to the environment (section 575 (2)). Where the salvor is not entitled to any salvage reward, or only a reduced amount, due to the reasons set out in section 580, thereby reducing the amount recoverable by a party claiming a fair share of the salvage reward, then that party may recover the lost portion of its fair share of the reward directly from the owners of the salvaged ship and of the other salvaged property; section 576 (3) shall apply *mutatis mutandis*.

### **Section 584**

#### **Conclusion of a salvage contract and retroactive review of its content by a court**

(1) Both the owner and the skipper/master of a ship in distress shall have the authority to conclude contracts for salvage measures on behalf of the owners of property on board the ship. Moreover, the skipper or master of said ship shall have the authority to conclude such contracts on behalf of the owner of the ship.

(2) The salvage contract or any terms thereof may be annulled or modified by a court ruling in response to a petition, provided one of the following applies:

1. The contract was entered into as a result of undue influence or under the influence of danger, and the contract's terms are inequitable; or
2. The payment provided under the contract is excessively large or small in view of the services actually rendered.

### **Section 585**

#### **Lien, right of retention**

(1) Pursuant to section 596 (1) number 4, the creditor of a claim to a salvage reward, to special compensation, or to reimbursement of the costs of salvage shall enjoy, for purposes of its claim, the same rights as a maritime lienor of the salvaged ship.

(2) The creditor shall also have a lien on other salvaged assets in order to secure its claim to a salvage reward or to reimbursement of the costs of salvage; if the creditor is the sole possessor of the property, it shall also have a right of retention.

(3) The creditor shall be barred from enforcing the lien or exercising the right of retention granted pursuant to paragraphs (1) or (2) in any of the following situations:

1. When satisfactory security for the creditor's claim, including interest and costs, has been duly tendered or provided;
2. In cases in which the salvaged ship or other salvaged property is owned by a State or, in the case of a ship, in cases in which it is operated by a State, and if the ship or other property serves non-commercial purposes and, at the time of salvage measures, is entitled to sovereign immunity under generally recognized principles of international law;
3. If the salvaged cargo is a humanitarian cargo donated by a State, provided such State has agreed to defray the cost of salvage services for such cargo.

## **Section 586**

### **Ranking order of several liens**

(1) Liens on property salvaged pursuant to section 585 (2) shall take priority over all other liens affecting the property, even if such liens may have accrued earlier.

(2) If several liens pursuant to section 585 (2) encumber a property, then a lien for a claim accruing later shall take priority over a lien for a claim accruing earlier; any liens for claims accruing simultaneously shall rank *pari passu* as between themselves; section 603 (3) shall apply *mutatis mutandis*. The same rule for determining the order of priority shall apply when the same event gives rise to both a lien pursuant to section 585 (2) as well as to a lien on a claim for contribution in general average pursuant to section 594 (1).

(3) Liens on any property salvaged pursuant to section 585 (2) shall be extinguished one (1) year after the corresponding claim arose; section 600 (2) shall apply *mutatis mutandis*.

(4) The creditor of a lien pursuant to section 585 (2) shall be satisfied from the salvaged property pursuant to the regulations governing compulsory enforcement. Insofar as the corresponding property is yet to be surrendered, legal action is to be directed against the skipper or master; any ruling handed down against the skipper or master shall also take effect against the owner.

## **Section 587**

### **Provision of security**

(1) The salvor may demand that the debtor provide satisfactory security for the salvor's claim to a salvage reward or to special compensation, including interest and costs. The first sentence shall not apply, however, if the salvage measures were performed for a ship that is owned or operated by a State, that serves non-commercial purposes and that, at the time of the salvage measures, enjoys sovereign immunity under generally recognized principles of international law.

(2) Without prejudice to paragraph (1), the owner of the salvaged ship shall use its best endeavours to ensure that the owners of the cargo provide satisfactory security for the claims against them, including interest and costs, before the cargo is released.

(3) Unless the salvor gives its express consent, the salvaged ship and other property may not be removed from the port or place at which they first arrive upon completion of the salvage measures until such time as the salvor's claims have been satisfied or until satisfactory security has been provided for the salvor's claim.

(4) If the skipper or master delivers salvaged cargo to be removed in contravention of paragraph (3), he shall be liable for the damages that he has culpably caused the salvor. This shall also apply if the skipper acted on the instructions of the ship's owner, or if the master acted on the instructions of the ship owner-manager.

## **Subchapter 3**

### **General average**

## **Section 588**

### **Preservation from common peril**

(1) If the ship, the fuel, the cargo or several of these items are intentionally damaged or voluntarily sacrificed upon the master's orders in order to preserve the ship, its company, and cargo from common peril, or if any expenditures are incurred to this end upon the master's orders (general average), the resulting damages and expenditures shall be borne jointly by the parties involved.

(2) A "party to the adventure" shall be defined as a party who, at the time of the general average act, is the owner of the ship or owner of the fuel, or who bears the risk of loss with regard to a cargo unit or freight claim associated with the shipment.

## **Section 589**

### **Fault or neglect of a party to the adventure or of a third party**



(1) The regulations on the general average shall remain applicable even in a case where the imminent peril is caused due to the fault or neglect of a party to the adventure or of a third party. However, the party to the adventure culpable of such fault or neglect may not demand any average in respect of the damage it has suffered.

(2) If the imminent peril occurred due to the fault or neglect of a party to the adventure, that party shall be obligated to compensate the contributing interests for the damages they have suffered as a result of having to jointly bear the damages and having to jointly incur the expenditures for saving the ship from common danger.

#### **Section 590**

##### **Assessment of the average**

(1) The average for the voluntary sacrifice of the ship, its accessories, the fuel, and the cargo units forming part of the cargo shall be assessed based on the current market value that these property items would have had at termination of the voyage.

(2) The average for the physical damage of the property items set out in paragraph (1) shall be assessed based on the difference between the current market value of the property at termination of the voyage, and the current market value the property would have had if sold in undamaged condition at termination of the voyage. If property has been repaired following the general average act, the presumption shall be that the costs expended for the repair of the property correspond to their depreciation.

(3) The average for the loss of a claim to freight shall correspond to the amount that is not owed to the carrier as a result of the general average.

(4) If the property voluntarily sacrificed or damaged was the subject of a sale and purchase agreement immediately prior to commencement of the voyage, the presumption shall be that the purchase price itemised in the seller's invoice corresponds to that property's current market value.

#### **Section 591**

##### **Contribution in general average**

(1) All parties to the adventure, excluding the ship's company and the passengers, must contribute to the average.

(2) The contribution in general average shall correspond to the value of the property items that were subject to common danger. The value of the ship, of the fuel and of the cargo units forming part of the cargo shall be determined based on the current market value of said items at the termination of the voyage, plus any average payable for physical damage or voluntary sacrifice of property covered by the general average. The value of a claim to freight shall be determined based on the gross amount of freight owed at the termination of the voyage, plus any average payable for loss of the claim to freight due to measures taken in the general average act.

#### **Section 592**

##### **General average disbursements**

(1) The amount of the average that a party to the adventure may claim for the voluntary sacrifice or physical damage of any property attributable to said party pursuant to section 588 (2), as well as the amount of the contribution that a party to the adventure must pay, shall be determined based on the proportion between the entire average owed to all parties to the adventure on the one hand, and the total contributions owed by all parties to the adventure on the other. If a pro-rated depreciation determined pursuant to section 590 is higher than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall receive a general average disbursement equivalent to the difference. If a pro-rated depreciation determined pursuant to section 590 is lower than the share calculated in accordance with the first sentence, then the party to the adventure affected by the depreciation shall pay a contribution equivalent to the difference.

(2) However, each contributing interest shall be liable only up to the value of the salvaged property that is attributable to that contributing interest pursuant to section 588 (2).

**Section 593**  
**Rights of maritime lienors**

Pursuant to section 596 (1) number 4, the parties entitled to general average disbursements shall have the rights of a maritime lienor of the ship in order to secure their claims to contribution in general average against the owner of the ship and against the creditor of the freight.

**Section 594**

**Lien of the parties entitled to a general average disbursement; prohibition of delivery**

- (1) To secure their claims to a general average disbursement, the parties entitled to such disbursements shall have a lien on the fuel and cargo of the contributing interests.
- (2) Said lien shall take priority over all other liens on such property items, even if they arose earlier. If a given property item is subject to several liens pursuant to paragraph (1), or if the property is also subject to a lien pursuant to section 585 (2), then the lien for a claim arising later shall take priority over the lien for a claim arising earlier. Any liens for claims arising simultaneously shall rank *pari passu* as between themselves. Section 603 paragraph (3) shall apply *mutatis mutandis*.
- (3) Liens pursuant to paragraph (1) shall be extinguished one (1) year from the time when the claim secured thereby arose; section 600 (2) shall apply *mutatis mutandis*.
- (4) The ship owner-manager shall exercise liens on behalf of the parties entitled to a general average disbursement. Section 368 and section 495 (4) shall be applied *mutatis mutandis* to the enforcement of liens on the cargo.
- (5) The master shall be prohibited from delivering property encumbered by liens pursuant to paragraph (1) before the corresponding contributions have been adjusted or secured. If, contrary to the first sentence, the master in fact delivers the property, he shall be liable for the damages that he caused, by his fault or neglect, to the parties entitled to a general average disbursement. This shall apply even if the master acted on the instructions of the ship owner-manager.

**Section 595**  
**Settlement of the average**

- (1) Each party to the adventure shall have the right to initiate settlement of the average at the destination or, insofar as this is not reached, at the harbour where the voyage ends. If the fuel or cargo was damaged or sacrificed intentionally, the ship owner-manager shall be obligated to promptly initiate settlement of the average at the location set out in the first sentence; any failure to do so shall make the ship owner-manager liable to the parties to the adventure for the resulting damages.
- (2) The average is to be settled by a licensed appraiser, or by an expert person separately appointed by the court (average adjuster).
- (3) Each party to the adventure must provide the average adjuster with all documents in its possession that may be required to settle the average.

**Chapter 5**  
**Maritime lienor**

**Section 596**  
**Secured claims**

- (1) Creditors of any of the following claims shall have the rights of a maritime lienor:
1. Wages due to the master and the other persons making up the ship's company in respect of their employment on the vessel;
  2. Public charges such as ship-specific duties; port, canal and other waterway dues; and pilotage dues;
  3. Claims to compensation of damages in respect of loss of life or personal injury, as well as for the loss of or physical damage to property, occurring in direct connection

with the operation of the ship; however, those claims in respect of the loss of or physical damage to property shall be ruled out that are based on a contract or that could be derived from a contract;

4. Claims to a salvage reward, to special compensation, and to the costs of salvage; claims against the owner of the ship and against the creditor of the freight for contribution in general average; claims for wreck removal;

5. Claims of the social security authorities against the ship owner-manager, including unemployment insurance claims.

(2) Paragraph (1) number 3 shall not be applied to claims that are the result of the radioactive properties, or a combination of radioactive properties with toxic, explosive or other hazardous properties, of nuclear fuel or of radioactive product or waste.

#### **Section 597**

##### **Lien held by maritime lienors**

(1) To secure their claims, maritime lienors shall have a statutory lien on the ship. Said lien may be asserted against any party in possession of the ship.

(2) The ship shall be liable also for the statutory interest accruing to the claims, as well as for the costs of bringing an action to obtain satisfaction of the creditors from the ship.

#### **Section 598**

##### **Object of the lien held by the maritime lienors**

(1) The lien held by maritime lienors shall cover the ship's accessories, excepting those items forming part of the ship's accessories that did not become the property of the owner of the ship.

(2) The lien shall also cover any claim to compensation which the ship owner-manager may have against a third party for loss of or physical damage to the ship. The same shall apply to the average to be disbursed for damages to the ship, assuming a general average is performed.

(3) The lien shall not extend to cover any claims to benefits under an insurance policy taken out for the ship by the ship owner-manager.

#### **Section 599**

##### **Lapse of the claim**

If a claim secured by a lien held by a maritime lienor lapses, the associated lien shall lapse as well.

#### **Section 600**

##### **Lapse by passage of time**

(1) The lien held by a maritime lienor shall lapse one year after the associated claim has arisen.

(2) The lien shall not lapse should the creditor obtain the seizure of the ship due to the lien within the limitation period set out in paragraph (1), provided that the ship is subsequently sold by way of compulsory enforcement before the seizure in favour of said creditor has been lifted. The same shall apply to the lien held by a creditor who accedes to the compulsory enforcement proceedings in order to realise its lien, and does so within the above-referenced limitation period.

(3) Any period during which a creditor is prevented by law from satisfying its claims out of the ship shall not be included in calculating the limitation period. Any suspension, extension, or re-commencement of the limitation period for other reasons shall be ruled out.

#### **Section 601**

##### **Satisfaction of the maritime lienor**

(1) The maritime lienor shall be satisfied out of the ship in accordance with the regulations governing compulsory enforcement.

(2) An action to obtain the toleration of compulsory enforcement may be brought against the owner of the ship and against its operator. Any ruling handed down against the operator shall also be effective against the owner.

(3) In favour of a maritime lienor, any party that has been entered as owner in the register of ships shall be deemed to be a ship's owner. This shall not affect the right of an owner not entered in the register of ships to assert those objections against the lien to which it is entitled.

#### **Section 602**

##### **Precedence of the liens held by maritime lienors**

Liens held by maritime lienors shall take priority over all other liens on the ship. They shall also take priority insofar as dutiable and taxable property is to serve as collateral for public charges pursuant to statutory regulations.

#### **Section 603**

##### **General ranking of liens held by maritime lienors**

(1) The liens held by maritime lienors shall rank amongst each other in the order in which the corresponding claims are listed in section 596.

(2) However, liens for the claims listed in section 596 (1) number 4 shall take priority over liens for any earlier claim on the part of any other maritime lienors.

(3) Any claims for contribution in general average shall be deemed to have accrued on the date on which the general average act was performed; claims to a salvage reward, to special compensation, and to compensation of the costs of salvage shall be deemed to have accrued on the date on which the salvage measures were terminated; claims for the removal of the wreck shall be deemed to have accrued at the time such removal of the wreck is completed.

#### **Section 604**

##### **Ranking order of liens listed under the same number**

(1) Liens for the claims listed in section 596 (1) numbers 1 through 3 and number 5 shall rank *pari passu* as between themselves insofar as they are listed under the same number, irrespective of the time at which they arose.

(2) Liens for the personal-injury claims listed in section 596 (1) number 3 shall take priority over liens for property-damage claims listed under the same number.

(3) With regard to liens for the claims listed in section 596 (1) number 4, the lien for a claim that arose later shall take priority over the lien for a claim that arose earlier. Liens for claims that arose at the same point in time shall rank *pari passu* as between themselves.

### **Chapter 6**

#### **Statutory limitation period**

##### **Section 605**

##### **One-year statutory limitation period**

The following claims shall become time-barred after one year:

1. Claims under a contract for the carriage of goods by sea and under a bill of lading;
2. Claims under charter contracts;
3. Claims to contribution in general average;
4. Claims to which the ship owner-managers are entitled amongst each other pursuant to section 571 (2).

##### **Section 606**

##### **Two-year statutory limitation period**

The following claims shall become time-barred after two years:

1. Claims to compensation of damages for death of or personal injury to a passenger, or for the loss of, physical damage to, or delayed re-delivery of luggage, insofar as such claims are subject to the regulations set out in this Book;
2. Claims to compensation of damages resulting from the collision of ships or from one of the incidents set out under Section 572;
3. Claims to a salvage reward, to special compensation, and to the compensation of the costs of salvage;
4. Claims for the removal of a wreck.

### **Section 607**

#### **Commencement of statutory limitation periods**

- (1) The limitation period for the claims set out in section 605 number 1 shall commence on the date the goods are delivered or, failing such delivery, on the date the goods should have been delivered. If the claims arise from a voyage charter contract, the commencement of the limitation period shall be determined based on the date on which goods were delivered at the end of the last voyage, or based on the date they should have been delivered.
- (2) Notwithstanding paragraph (1), the limitation period for rights of recourse enjoyed by the debtor of a claim set out in section 605 number 1 shall commence on the day the ruling handed down against the debtor of such claim, as the party entitled to recourse, attains legal force or, if no legally valid ruling exists, on the day the party entitled to recourse satisfies the claim. The first sentence shall not apply if the recourse debtor is not informed of the damage within three months after the party entitled to recourse becomes aware of the damage and of the recourse debtor's identity.
- (3) The limitation period for the claims under charter contracts set out in section 605 number 2 shall commence at the end of the year in which the claim arises. Paragraph (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of a claim arising from a time charter contract.
- (4) The limitation period for the claims set out in Section 605 numbers 3 and 4 shall commence at the end of the year in which the claim arose.
- (5) The limitation period for the claims to compensation of damages set out in Section 606 number 1 shall commence as follows:
  1. For claims in respect of the personal injury of a passenger, from the date of disembarkation;
  2. For claims in respect of the death of a passenger: from the date when disembarkation should have taken place or, if the passenger died after disembarking, from the day of the passenger's death, but in no case later than one year after the passenger's disembarkation;
  3. For claims in respect of the loss of, physical damage to or delayed re-delivery of the luggage, from the date of disembarkation or from the date on which the passenger should have disembarked, whichever is later.
- (6) The limitation period for claims to compensation of damages resulting from a collision of ships as set out under section 606 number 2 or resulting from an incident covered by section 572 shall commence at the time of the incident causing the damage.
- (7) The limitation period for the claims set out in section 606 numbers 3 and 4 shall commence upon completion of the salvage measures or wreck removal efforts. Paragraph (2) shall be applied *mutatis mutandis* to the limitation of the recourse rights enjoyed by a debtor of such claims.

### **Section 608**

#### **Extension of the limitation period**

The limitation period of the claims set out in sections 605 and 606 may also be extended by the creditor's declaration asserting the creditor's claims to compensation; such an extension shall run for as long as the debtor refuses to satisfy the claim. Both the assertion of claims and the refusal to satisfy the same must be made in text form (a readable statement that is permanently valid without a signature having been applied). Any further declaration concerning the same claim to compensation shall not result in an additional extension of the limitation period.

### **Section 609**

#### **Arrangements as to the limitation period**

(1) The limitation of claims to compensation of damages under a contract for the carriage of general cargo or under a bill of lading for the loss of or physical damage to the goods may be eased or impeded only by an agreement reached after detailed negotiations, whether for one or several similar contracts between the same parties. However, any provision in the bill of lading easing the limitation of claims to compensation of damages shall be invalid vis-à-vis third parties.

(2) The limitation of claims resulting from personal injuries to persons, physical damage, or delayed re-delivery of luggage as set out in section 606 number 1 may be extended only by a declaration on the part of the carrier or by an agreement between the parties made after the grounds on which the claim is based have arisen. Both the declaration and the agreement must be made in writing. Any easing of the limitation, specifically a reduction in the limitation period, shall not be admissible.

### **Section 610**

#### **Concurrent claims**

If contractual claims to the compensation of damages that are subject to the regulations of the present Chapter are found to compete with concurrent, non-contractual claims to the compensation of damages, then the regulations of the present Chapter shall also apply to said non-contractual claims.

## **Chapter 7**

### **General limitation of liability**

#### **Section 611**

##### **Convention as to the limitation of liability**

(1) The liability for maritime claims may be limited pursuant to the Convention on Limitation of Liability for Maritime Claims of 19 November 1976 (published in the Federal Law Gazette (*Bundesgesetzblatt*) 1986 II p. 786), as amended by the protocol of 2 May 1996 (Federal Law Gazette 2000 II p. 790), in the version respectively valid for the Federal Republic of Germany (Convention on Limitation of Liability for Maritime Claims). This shall also apply to liability for bunker-oil pollution damage in accordance with the International Convention of 2001 on Civil Liability for Bunker Oil Pollution Damage (Federal Law Gazette 2006 II p. 578) (Bunkers Convention).

(2) According to the provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage (Federal Law Gazette 1994 II p. 1150, citation on p. 1152) (International Convention on Civil Liability for Oil Pollution Damage, 1992), the liability for claims covered by this Convention may be limited.

(3) Where claims to the compensation of "pollution damage" in the sense as defined in Article I number 6 of the International Convention on Civil Liability for Oil Pollution Damage, 1992 are asserted, and the International Convention on Civil Liability for Oil Pollution Damage, 1992 is not applicable, the persons designated in Article 1 of the Convention on Limitation of Liability for Maritime Claims may limit their liability for such claims by correspondingly applying the provisions of the Convention on Limitation of Liability for Maritime Claims. If one and the same incident gives rise to claims of the type set out in the first sentence as well as to claims for which liability may be limited pursuant to paragraph (1),

then the limits of liability under the Convention on Limitation of Liability for Maritime Claims shall apply, respectively, to the entirety of the claims set out in the first sentence, as well as to the entirety of the claims for which liability may be limited pursuant to paragraph (1).

(4) Liability may not be limited for the following:

1. Claims designated in Article 3 lit. e) of the Convention on Limitation of Liability for Maritime Claims, provided the contract of service is subject to German law;
2. Claims to compensation of costs incurred in bringing or defending against a legal action.

(5) Where the Convention on Limitation of Liability for Maritime Claims and in the International Convention on Civil Liability for Oil Pollution Damage, 1992 are silent, sections 612 through 617 shall apply.

#### **Section 612**

##### **Limitation of liability for claims arising from the removal of a wreck**

(1) The Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall apply to the claims set out below, with the proviso that such claims shall be subject to a separate limit of liability irrespective of their legal basis:

1. Claims in respect of the reimbursement of the costs of the raising, removal, destruction, or the rendering harmless of a ship which is sunk, wrecked, stranded, or abandoned, including anything that is or has been on board such ship, and
2. Claims in respect of reimbursement of the costs of the removal, destruction, or the rendering harmless of the cargo of the ship.

(2) The limit of liability pursuant to paragraph (1) shall be calculated in accordance with Article 6 (1) lit. b) of the Convention on Limitation of Liability for Maritime Claims. The limit of liability shall apply to the entirety of the claims designated in paragraph (1), insofar as such claims derive from the same incident and arise against persons who belong to the groups of persons listed in Article 9 paragraph (1) lit. a), b), or c) of the Convention on Limitation of Liability for Maritime Claims. Said limit of liability may only be applied to satisfy the claims specified in paragraph (1); Article 6 paragraphs (2) and (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable.

#### **Section 613**

##### **Limitation of liability for small ships**

Insofar as a ship has a tonnage of no more than 250 tons, the limit of liability to be calculated in accordance with Article 6 paragraph (1) lit. b) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) shall be assessed at half of the limit of liability applicable to ships with a tonnage of 2,000 tons.

#### **Section 614**

##### **Limitation of liability for damages to harbours and waterways**

Without prejudice to the right set out in Article 6 (2) of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) with regard to claims for loss of life or personal injury, any claims in respect of physical damage to harbour works, basins and waterways and to aids to navigation shall take priority over other claims under Article 6 (1) lit. b) of the Convention on Limitation of Liability for Maritime Claims.

#### **Section 615**

##### **Limitation of the pilot's liability**

(1) The limits of liability set out in Article 6 (1) lit. a) and lit. b) of the Convention on Limitation of Liability for Maritime Claims (section 611 paragraph (1) first sentence) shall apply to claims against a pilot working on board the ship, with the proviso that, if the tonnage of the

piloted ship is in excess of 2,000 tons, the pilot may limit his liability to the amount derived under an assumed tonnage of 2,000 tons.

(2) The limit of liability set out in Article 7 (1) of the Convention on Limitation of Liability for Maritime Claims shall apply to claims against a pilot working on board the ship, with the proviso that, if the ship's certificate of registry permits the carriage of more than twelve (12) passengers, the pilot may limit his liability to the amount derived under the assumption that only twelve (12) passengers were being carried.

(3) The constitution and distribution of a fund containing the amounts to be calculated pursuant to paragraphs (1) or (2), as well as the effects of constituting such a fund, shall be governed by those provisions of Article 11 of the Convention on Limitation of Liability for Maritime Claims which relate to the constitution and distribution of a fund and the effects of constituting a fund. However, Article 11 (3) of the Convention on Limitation of Liability for Maritime Claims shall not be applicable if the tonnage of a piloted ship is in excess of 2,000 tons, as per paragraph (1), or if the ship is licensed to carry more than twelve (12) passengers pursuant to its certificate of registry, as per paragraph (2).

(4) A pilot who is not working on board the piloted ship may limit his liability for the claims set out in Article 2 of the Convention on Limitation of Liability for Maritime Claims by correspondingly applying section 611 paragraphs (1), (3), and (4), as well as sections 612 through 614 and section 617, subject to the proviso that a special limit of liability shall apply for these claims; this shall be calculated pursuant to paragraph (1) or (2) and shall be available exclusively to satisfy claims against the pilot.

#### **Section 616**

##### **Conduct barring limitation of liability**

(1) Where the person liable is a legal entity or a commercial partnership, it shall not be entitled to the benefit of the limitation of liability if both of the following apply:

1. The damage is attributable to an act or omission by a member of the body authorised to represent such entity or partnership, or by a shareholder authorised to represent it, and

2. The limitation of liability pursuant to Article 4 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or pursuant to Article V (2) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 paragraph (2)) is ruled out as a result of such act or omission.

The same shall apply if the debtor is a joint owner-manager of the ship and the damage is attributable to an act or omission of the correspondent ship-owner manager representing the other ship owners.

(2) Where the person liable is a commercial partnership, each shareholder may limit his personal liability with regard to any claim for which the partnership is also entitled to limit its liability.

#### **Section 617**

##### **Procedure for limiting liability**

(1) The constitution and distribution of a fund within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims (section 611 (1) first sentence) or within the meaning of Article V (3) of the International Convention on Civil Liability for Oil Pollution Damage, 1992 (section 611 paragraph (2)) shall be governed by the regulations of the Maritime Distribution Statute (*Schiffahrtsrechtliche Verteilungsordnung*).

(2) The limitation of liability pursuant to the Convention on Limitation of Liability for Maritime Claims may also be asserted in the event that no fund is constituted within the meaning of Article 11 of the Convention on Limitation of Liability for Maritime Claims. Section 305a of the Code of Civil Procedure (*Zivilprozessordnung*) shall remain unaffected.

### **Chapter 8 Procedural Rules**



**Section 618**

**Injunction by a salvor**

Upon a salvor (section 574 (1)) filing a corresponding petition, the court responsible for hearing the main action may, at its equitable discretion and in due consideration of the facts of the case, issue an injunction obligating the debtor of a claim to a salvage reward or special compensation to make a fair and reasonable interim payment to the salvor; at the same time, the court may also stipulate the terms of such performance. Such an injunction may be issued even if the pre-requisites stipulated in sections 935 and 940 of the Code of Civil Procedure have not been met.

**Section 619**

**Service of documents to the master or skipper of a ship**

Notice of legal action by a maritime lienor to obtain toleration of compulsory enforcement against a ship, or a ruling or court order handed down in proceedings for the arrest of a ship, may be served on the master of said ship or, if an inland waterway vessel is involved, on the ship's skipper.