

## Annex I

### Draft convention on negotiable cargo documents

*The States Parties to this Convention,*

*Reaffirming* their belief that international trade on the basis of equality and mutual benefit is a key factor in promoting friendly relations among States,

*Conscious* of the important role played by negotiable transport documents in facilitating trade finance and the sale of goods in transit,

*Convinced* of the desirability of establishing uniform rules for negotiable transport documents covering all modes of transport, including multimodal transport, thereby supporting the growth of door-to-door transportation,

*Acknowledging* that digital transformation in international trade depends on reliable systems and data, which in turn can enhance operational efficiency and support end-to-end digitalization,

*Convinced* that certainty with regard to the legal effect of negotiable cargo documents, as well as the rights and liability of the holder, will encourage the acceptance of such documents by banks, financial institutions and other stakeholders, thereby fostering international trade and contributing to economic growth,

*Convinced also* that a sound legal framework could help reduce the costs of trade along inland routes and will assist both landlocked countries and countries with large mainland territories in integrating more effectively into global supply chains,

*Have agreed* as follows:

#### CHAPTER 1. GENERAL PROVISIONS

##### *Article 1. Scope of application*

1. This Convention applies to the issuance, transfer and legal effects of a negotiable cargo document that contains a conspicuous reference to this Convention in connection with the international transport of goods by one or more than one mode of transport if:
  - (a) The place of taking in charge of the goods by the transport operator as indicated in the negotiable cargo document is located in a State Party;
  - (b) The place of delivery of the goods by the transport operator as indicated in the negotiable cargo document is located in a State Party; or
  - (c) The place of issuance of the negotiable cargo document as indicated in the negotiable cargo document is located in a State Party.
2. This Convention does not affect the application of any international convention or national law relating to the regulation and control of transport operations.
3. Except as otherwise provided for herein, this Convention does not modify the rights and obligations of the transport operator, consignor or consignee or their liability under applicable international conventions or national law governing the transport contract.

##### *Article 2. Definitions*

For the purposes of this Convention:

1. “Consignor” means a person with whom the transport operator has concluded a transport contract.

2. “Consignee” means a person named in the transport contract as the person entitled to take delivery of the goods.
3. “Electronic record” means information generated, communicated, received or stored by electronic means, including, where appropriate, all information logically associated with, or otherwise linked together so as to become part of, the record, whether generated contemporaneously or not.
4. “Holder” means a person that is in possession of a negotiable cargo document and is identified in it as the consignor, as the person to whose order it is issued or as the person to which the document is duly endorsed, or, if the document is an order document endorsed in blank, is the bearer thereof.
5. “Negotiable cargo document” means a paper document or an electronic record signed and issued by the transport operator that indicates by wording such as “to order” or “negotiable” or an equivalent expression that the goods as specified in the document have been taken in charge by the transport operator and consigned to the order of the holder.
6. “Transport contract” means a contract whereby the transport operator undertakes to perform international transport of goods for reward.
7. “Transport document” means a document that:
  - (a) Evidences or contains the transport contract; and
  - (b) Evidences the taking in charge of the goods for transport under the transport contract.
8. “Transport operator” means a person who concludes a transport contract with the consignor and who assumes responsibility for the performance of the contract, irrespective of whether or not that person performs the transport itself.

## **CHAPTER 2. ISSUANCE, CONTENT AND LEGAL EFFECT OF NEGOTIABLE CARGO DOCUMENTS**

### *Article 3. Issuance of a negotiable cargo document*

1. If so agreed between the transport operator and the consignor, the transport operator shall issue a negotiable cargo document, in the medium agreed upon, that contains a conspicuous reference to this Convention.
2. The transport operator and the consignor shall agree on the method of issuing a negotiable cargo document, which may include:
  - (a) Entering an annotation signed by the transport operator in each original of the transport document; or
  - (b) Issuing a stand-alone negotiable cargo document where no transport document has been issued or where a transport document has been issued and cancelled.
3. Where the parties have agreed on the method described in paragraph 2 (a) of this article, the annotation shall contain, in a conspicuous manner, the indication set out in article 2, paragraph 5, as well as a statement indicating that the transport document is to serve as a negotiable cargo document from a specified date.
4. The negotiable cargo document shall be issued when the goods are taken in charge by the transport operator. If so agreed between the transport operator and the consignor, where a transport document has been issued, the transport operator may issue the negotiable cargo document at a later stage.
5. The transport operator who issues a negotiable cargo document shall not request the issuance of a negotiable transport document in respect of the goods to which the negotiable cargo document relates.

6. The negotiable cargo document may be made out to order or to the order of a named person. If the negotiable cargo document fails to name the person to whose order it is made out, it shall be deemed to be made out to the order of the consignor.

*Article 4. Contents of the negotiable cargo document*

1. The negotiable cargo document shall indicate:
  - (a) The name and address of the transport operator;
  - (b) The name and address of the consignor;
  - (c) The following particulars as furnished by the consignor: (i) the general nature of the goods; (ii) the leading marks necessary for identification of the goods; (iii) an express statement, if applicable, as to the dangerous character of the goods; (iv) the number of packages or pieces; and (v) the gross weight of the goods or their quantity otherwise expressed;
  - (d) The apparent order and condition of the goods as taken in charge by the transport operator;
  - (e) The place and date of taking in charge of the goods by the transport operator;
  - (f) The place and date of issuance of the negotiable cargo document;
  - (g) The terms of the transport contract, if issued as a stand-alone negotiable cargo document;
  - (h) The place of delivery of the goods;
  - (i) The number of originals of the negotiable cargo document; and
  - (j) A statement as to whether the freight has been prepaid or an indication as to whether the freight is payable at destination.
2. The negotiable cargo document may further indicate:
  - (a) The date or the period of delivery of the goods at the place of delivery, if expressly agreed upon between the consignor and the transport operator;
  - (b) The intended journey route, mode of transport, places of trans-shipment and information enabling tracking of the goods;
  - (c) The law applicable to the transport contract, in particular any international convention to which the transport contract is subject; and
  - (d) Any other particulars that the consignor and the transport operator agree to insert in the negotiable cargo document.

*Article 5. Deficiencies in the negotiable cargo document*

1. The absence of one or more of the particulars referred to in article 4, paragraph 1, does not of itself affect the legal effect or validity of the document as a negotiable cargo document provided that the document nevertheless falls within the definition of negotiable cargo document as set out in article 2, paragraph 5.
2. Nothing in paragraph 1 affects the liability of the transport operator under applicable law for any deficiency in the negotiable cargo document.
3. If the negotiable cargo document includes a date but fails to indicate the significance of that date, the date is deemed to be the date of issuance of the negotiable cargo document.
4. If the annotation referred to in article 3, paragraph 3, does not state the date from which the transport document is to serve as a negotiable cargo document, the transport document is deemed to serve that function from the date of its issuance.

5. If the negotiable cargo document does not include the date of taking in charge of the goods by the transport operator, the goods are deemed to have been taken in charge by the transport operator on the date of issuance of the negotiable cargo document.
6. If the negotiable cargo document fails to state the apparent order and condition of the goods at the time the transport operator takes them in charge, it shall be deemed to state that the goods were in apparent good order and condition at the time the transport operator took them in charge.

*Article 6. Evidentiary effect of the negotiable cargo document*

1. The transport operator may qualify any of the information in the negotiable cargo document furnished by the consignor and referred to in article 4, paragraph 1 (c), to indicate that the transport operator does not assume responsibility for the accuracy of such information if it has:
  - (a) Either actual knowledge or reasonable grounds to believe that any such information is false or misleading; or
  - (b) No reasonable means of checking such information.
2. Except to the extent that the information furnished by the consignor has been qualified in the manner set out in paragraph 1, the negotiable cargo document shall constitute prima facie evidence of the taking in charge of the goods by the transport operator as stated in the negotiable cargo document.
3. If the negotiable cargo document has been transferred to a third party acting in good faith in reliance on any of the information therein, proof to the contrary by the transport operator in respect of any information in the negotiable cargo document shall not be admissible against that third party, except to the extent that the information furnished by the consignor has been qualified in the manner set out in paragraph 1.

### **CHAPTER 3. RIGHTS AND LIABILITY OF THE HOLDER**

*Article 7. Rights of the holder of a negotiable cargo document*

1. Upon the issuance of a negotiable cargo document, the rights provided for in the negotiable cargo document can be exercised only by the holder, which shall include the right to demand delivery of the goods at destination.
2. A person other than the consignor who becomes a holder of the negotiable cargo document shall, by virtue of becoming the holder, have acquired the right to bring a claim against the transport operator and, where applicable, the right of disposal under the transport contract, as well as those rights provided for in the law applicable to the transport contract, as if it were a party to that contract.
3. The transport operator may not invoke against a holder that is not the consignor any terms of the transport contract that are inconsistent with the express terms of the negotiable cargo document.
4. The issuance and initial transfer of possession of a negotiable cargo document, as well as any subsequent transfers, to the holder shall have the same effect, for the purpose of acquisition of rights to the goods, as the physical handing over of the goods.
5. In order to exercise its rights, the holder shall present the negotiable cargo document to the transport operator. If the negotiable cargo document states that more than one original has been issued, the holder shall present all originals to exercise the right of disposal.

*Article 8. Missing information, instructions or documents*

If the transport operator needs information, instructions or documents relating to the goods in order to perform its obligations, it shall seek that information or those instructions or documents from the holder of the negotiable cargo document. If the transport operator, after reasonable effort, is unable to obtain that information or those instructions or documents within a reasonable time, it shall proceed in accordance with the transport contract.

*Article 9. Liability of the holder*

1. A holder of the negotiable cargo document that is not the consignor and that does not exercise any right in accordance with article 7 does not assume any liability under the transport contract solely by reason of being a holder of the negotiable cargo document.
2. A holder of the negotiable cargo document that is not the consignor and that exercises a right in accordance with article 7 assumes any liability:
  - (a) Attributable to the person exercising such a right under the law applicable to the transport contract; or
  - (b) That arises from the exercise of that right under the transport contract to the extent that such liability is ascertainable from the negotiable cargo document, as if it were a party to the transport contract.

*Article 10. Delivery of the goods*

1. Delivery of the goods may be demanded from the transport operator only against surrender of the negotiable cargo document by the holder.
2. If more than one original of the negotiable cargo document has been issued, delivery of the goods may be demanded against surrender of one original. If the negotiable cargo document states that more than one original has been issued, the other originals will cease to have any effect or validity after the surrender of one original.

*Article 11. Transfer of rights of the holder*

A holder transfers the rights provided for in the negotiable cargo document to another person:

- (a) By endorsement either to such person or in blank and by the transfer of possession of the negotiable cargo document to that person; or
- (b) By mere transfer of possession of the negotiable cargo document to that person, if the last endorsement is in blank.

## **CHAPTER 4. SPECIAL CONDITIONS FOR ELECTRONIC NEGOTIABLE CARGO DOCUMENTS**

*Article 12. Requirements for an electronic negotiable cargo document*

1. A negotiable cargo document may be in the form of an electronic record provided that a reliable method is used:
  - (a) To identify that electronic record as the negotiable cargo document;
  - (b) To render that electronic record capable of being subject to control from its issuance until it ceases to have any effect or validity; and
  - (c) To retain the integrity of that electronic record.

2. The criterion for assessing integrity shall be whether information contained in the negotiable cargo document, including any authorized change that arises from its issuance until it ceases to have any effect or validity, has remained complete and unaltered apart from any change which arises in the normal course of communication, storage and display.

*Article 13. Content requirements*

For the purposes of this Convention, a requirement for information to be contained in a negotiable cargo document is met with respect to an electronic record if the information contained therein is accessible so as to be usable for subsequent reference.

*Article 14. Signature requirements*

For the purposes of this Convention, a requirement for a negotiable cargo document to be signed is met with respect to an electronic record if a reliable method is used to identify the signatory and to indicate that person's intention in respect of the information contained in the electronic record.

*Article 15. Possession requirements*

1. For the purposes of this Convention, a requirement for a negotiable cargo document to be possessed is met with respect to an electronic record if a reliable method is used:

- (a) To establish exclusive control of that electronic record by a person; and
- (b) To identify that person as the person in control.

2. A requirement to transfer possession of a negotiable cargo document is met with respect to an electronic record through the transfer of control over the electronic record.

*Article 16. Endorsement requirements*

For the purposes of this Convention, a requirement for a negotiable cargo document to be endorsed is met if the information required for the endorsement is included in the electronic record and that information is compliant with the requirements set forth in articles 13 and 14.

*Article 17. Change of medium*

1. If so agreed between the transport operator and the holder, the transport operator shall change the medium of the negotiable cargo document from a paper document to an electronic record or from an electronic record to a paper document provided that a reliable method for the change of medium is used.

2. For the change of medium to take effect:

(a) The holder shall surrender to the transport operator all originals of the negotiable cargo document in its previous medium; and

(b) The negotiable cargo document in its new medium shall include a statement that it replaces the negotiable cargo document in its previous medium.

3. Upon a change of medium, all originals of the negotiable cargo document in its previous medium shall be made inoperative and cease to have any effect or validity.

4. A change of medium in accordance with this article shall not affect the rights and obligations of the parties.

*Article 18. General reliability standard*

The method referred to in this chapter shall be:

- (a) As reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances, which may include:
  - (i) Any operational rules relevant to the assessment of reliability;
  - (ii) The assurance of data integrity;
  - (iii) The ability to prevent unauthorized access to and use of the system used to implement the method;
  - (iv) The security of hardware and software;
  - (v) The regularity and extent of audit by an independent body;
  - (vi) The existence of a declaration by a supervisory body, an accreditation body or a voluntary scheme regarding the reliability of the method;
  - (vii) Any applicable industry standard; or
- (b) Proven in fact to have fulfilled the function by itself or together with further evidence.

**CHAPTER 5. FINAL CLAUSES***Article 19. Depositary*

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

*Article 20. Signature, ratification, acceptance, approval, accession*

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification, acceptance or approval by the signatories.
3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.
4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

*Article 21. Participation by regional economic integration organizations*

1. A regional economic integration organization that is constituted by States and has competence over matters governed by this Convention may sign, ratify, accept, approve or accede to the Convention, in which case it shall have the same rights and obligations as a State Party, to the extent that those rights and obligations relate to the matters over which the organization has competence. For the purposes of articles 25 and 26, an instrument deposited by a regional economic integration organization shall not be counted in addition to the instruments deposited by its member States.
2. The regional economic integration organization shall make a declaration specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration made under this paragraph.
3. Any reference to a "State", "States", "State Party" or "States Parties" in this Convention applies equally to a regional economic integration organization where the context so requires.

*Article 22. Non-unified legal systems*

1. If a State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may declare that the Convention shall extend to all its territorial units or only to one or more of them.
2. Declarations made under this article shall state expressly the territorial units to which this Convention extends.
3. If a State makes a declaration under paragraph 1 of this article that this Convention shall extend to one or more but not all its territorial units, a place located in a territorial unit to which the Convention does not extend is not considered to be in a State Party for the purposes of the Convention.
4. If a State makes no declaration under paragraph 1, this Convention shall extend to all territorial units of that State.

*Article 23. Procedure for and effects of declarations*

1. Declarations under article 21, paragraph 2, and article 22, paragraph 1, shall be made at the time of signature, ratification, acceptance, approval or accession. Declarations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.
2. Declarations and their confirmations shall be made in writing and formally notified to the depositary.
3. A declaration shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned.
4. Any State that makes a declaration under article 21, paragraph 2, or article 22, paragraph 1, may modify or withdraw it at any time by a formal notification in writing addressed to the depositary. The modification or withdrawal shall take effect 180 days after the date of receipt by the depositary of the notification. If the depositary receives the notification of the modification or withdrawal before the entry into force of this Convention in respect of the State concerned, the modification or withdrawal shall take effect simultaneously with the entry into force of the Convention in respect of that State.

*Article 24. Reservations*

1. A State may declare, at the time of the deposit of its instrument of ratification, acceptance, approval or accession or at any time thereafter, that it will not apply this Convention to any negotiable transport document that evidences or contains a contract for the carriage of goods wholly by sea governed by an international convention to which it is a State Party.
2. Article 23, paragraphs 2 to 4, apply to reservations made under paragraph 1.
3. No reservations are permitted except as expressly authorized in this article.

*Article 25. Entry into force*

1. This Convention shall enter into force 180 days after the date of the deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force in respect of that State 180 days after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

*Article 26. Amendment*

1. Any State Party may propose an amendment to this Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall

thereupon communicate the proposed amendment to the States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within 120 days of the date of such communication at least one third of the States Parties indicate that they favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of States Parties shall make every effort to achieve consensus on each proposed amendment. If all such efforts are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the conference. For the purposes of this paragraph, the vote of a regional economic integration organization shall not be counted.

3. An adopted amendment shall be submitted by the depositary to all States Parties for ratification, acceptance or approval.

4. An adopted amendment shall enter into force 180 days after the date of deposit of the tenth instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those States Parties that have expressed their consent to be bound by it.

5. When a State Party ratifies, accepts or approves an amendment following the deposit of the tenth instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that State Party 180 days after the date of the deposit of its instrument of ratification, acceptance or approval.

#### *Article 27. Denunciation*

1. A State Party may denounce this Convention by means of a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 365 days after the date of receipt of the notification by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period.

DONE in Arabic, Chinese, English, French, Russian and Spanish, all texts being equally authentic.