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**Appendix E to the Convention concerning International Carriage
by Rail (COTIF)**

of 9 June 1999

Uniform Rules concerning the Contract of Use of Infrastructure in International Rail Traffic (CUI)

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CIT Edition

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Title I

General Provisions

Article 1 - Scope

§ 1 These Uniform Rules shall apply to any contract of use of railway infrastructure for the purposes of international carriage within the meaning of the CIV Uniform Rules and the CIM Uniform Rules. They shall apply regardless of the place of business and the nationality of the contracting parties. These Uniform Rules shall apply even when the railway infrastructure is managed or used by States or by governmental institutions or organisations.

§ 2 Subject to Article 21, these Uniform Rules shall not apply to other legal relations, such as in particular

- a) the liability of the carrier or the manager to their servants or other persons whose services they make use of to accomplish their tasks;
- b) the liability to each other of the carrier or the manager of the one part and third parties of the other part.

Article 2 - Declaration concerning liability in case of bodily loss or damage

§ 1 Any State may, at any time, declare that it will not apply to victims of accidents occurring in its territory the whole of the provisions concerning liability in case of bodily loss or damage (death, injury or any other physical or mental harm), when the victims are nationals of, or have their usual place of residence in, that State.

§ 2 A State which has made a declaration in accordance with § 1 may withdraw it at any time by notification to the Depository. This withdrawal shall take effect one month after the day on which the Depository notifies it to the Member States.

Article 3 - Definitions

For the purposes of these Uniform Rules, the term

- a) "railway infrastructure" means all the railway lines and fixed installations, so far as these are necessary for the circulation of railway vehicles and the safety of traffic;
- b) "manager" means the person who makes railway infrastructure available;
- c) "carrier" means the person who carries persons or goods by rail in international traffic under the CIV Uniform Rules or the CIM Uniform Rules;
- d) "auxiliary" means the servants or other persons whose services the carrier or the manager makes use of for the performance of the contract when these servants or other persons are acting within the scope of their functions;
- e) "third party" means any person other than the manager, the carrier and their auxiliaries;
- f) "licence" means the authorisation, in accordance with the laws and prescriptions of the State in which the carrier has the place of business of his principal activity, to carry on the activity of carrier by rail;

- g) "safety certificate" means the document attesting, in accordance with the laws and prescriptions of the State in which the infrastructure being used is situated, that so far as concerns the carrier,
- the internal organisation of the undertaking as well as
 - the personnel to be employed and the vehicles to be used on the infrastructure,
- meet the requirements imposed in respect of safety in order to ensure a service without danger on that infrastructure.

Article 4 - Mandatory law

Unless provided otherwise in these Uniform Rules, any stipulation which, directly or indirectly, would derogate from these Uniform Rules, shall be null and void. The nullity of such a stipulation shall not involve the nullity of other provisions of the contract. Nevertheless, the parties to the contract may assume a liability greater and obligations more burdensome than those provided for in these Uniform Rules or fix a maximum amount of compensation for loss of or damage to property.

Title II

Contract of Use

Article 5 - Contents and form

- § 1 Relations between the manager and the carrier shall be regulated in a contract of use.
- § 2 The contract shall regulate in particular the administrative, technical and financial conditions of use. It shall cover at least the following matters :
- a) the infrastructure to be used,
 - b) the extent of use,
 - c) the services provided by the manager,
 - d) the services provided by the carrier,
 - e) the personnel to be employed,
 - f) the vehicles to be used,
 - g) the financial conditions.
- § 3 The contract must be concluded in writing or in an equivalent form. The absence or irregularity of a written form or equivalent form of contract or the absence of one of the matters specified in § 2 shall not affect the existence or the validity of the contract which shall remain subject to these Uniform Rules.

Article 6 - Special obligations of the carrier and the manager

- § 1 The carrier must be authorised to carry on the activity of a carrier by rail. The personnel to be employed and the vehicles to be used must satisfy the safety requirements. The manager may require the carrier to prove, by the presentation of a valid licence and safety certificate or certified copies, or in any other manner, that these conditions are fulfilled.
- § 2 The carrier must notify the manager of any event which might affect the validity of his licence, his safety certificates or other elements of proof.
- § 3 The manager may require the carrier to prove that he has taken out a sufficient liability insurance or taken equivalent measures to cover any claims, on whatever grounds, referred to in Articles 9 to 21. Each year, the carrier must prove, by an attestation in due form, that the liability insurance or the equivalent provisions still exist; he must notify the manager of any modification relating to them before it takes effect.
- § 4 The parties to the contract must inform each other of any event which might impede the execution of the contract they have concluded.

Article 7 - Duration of the contract

- § 1 The contract of use may be concluded for a limited or unlimited period.
- § 2 The manager may rescind the contract forthwith when
- a) the carrier is no longer authorised to carry on the activity of carrier by rail;
 - b) the personnel to be employed and the vehicles to be used no longer meet the safety requirements;
 - c) the carrier is in arrear with payment, that is to say
 1. for two successive payment periods and for an amount in excess of the equivalent of one month's use, or
 2. for a period covering more than two payment periods and for an amount equal to the value of two months' use;
 - d) the carrier is in clear breach of one of the special obligations specified in Article 6 §§ 2 and 3.
- § 3 The carrier may rescind the contract of use forthwith when the manager loses his right to manage the infrastructure.
- § 4 Each party to the contract may rescind the contract of use forthwith in the case of a clear breach of one of the essential obligations by the other party to the contract, when that obligation concerns the safety of persons or goods; the parties to the contract may agree the modalities for the exercise of this right.
- § 5 The party to the contract who is the cause of its rescission shall be liable to the other party for the loss or damage resulting from it, unless he proves that the loss or damage was not caused by his fault.
- § 6 The parties to the contract may agree conditions derogating from the provisions of § 2 letters c) and d) and § 5.

Title III

Liability

Article 8 - Liability of the manager

§ 1 The manager shall be liable

- a) for bodily loss or damage (death, injury or any other physical or mental harm),
- b) for loss of or damage to property (destruction of, or damage to, movable or immovable property),
- c) for pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules and the CIM Uniform Rules,

caused to the carrier or to his auxiliaries during the use of the infrastructure and having its origin in the infrastructure.

§ 2 The manager shall be relieved of this liability

- a) in case of bodily loss or damage and pecuniary loss resulting from damages payable by the carrier under the CIV Uniform Rules
 - 1. if the incident giving rise to the loss or damage has been caused by circumstances not connected with the management of the infrastructure which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent,
 - 2. to the extent that the incident giving rise to the loss or damage is due to the fault of the person suffering the loss or damage,
 - 3. if the incident giving rise to the loss or damage is due to the behaviour of a third party which the manager, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- b) in case of loss of or damage to property and pecuniary loss resulting from damages payable by the carrier under the CIM Uniform Rules, when the loss or damage was caused by the fault of the carrier or by an order given by the carrier which is not attributable to the manager or by circumstances which the manager could not avoid and the consequences of which he was unable to prevent.

§ 3 If the incident giving rise to the loss or damage is due to the behaviour of a third party and if, in spite of that, the manager is not entirely relieved of liability in accordance with § 2, letter a), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse against the third party.

§ 4 The parties to the contract may agree whether and to what extent the manager shall be liable for the loss or damage caused to the carrier by delay or disruption to his operations.

Article 9 - Liability of the carrier

§ 1 The carrier shall be liable

- a) for bodily loss or damage (death, injury or any other physical or mental harm),
 - b) for loss of or damage to property (destruction of or damage to movable or immovable property),
- caused to the manager or to his auxiliaries, during the use of the infrastructure, by the means of transport used or by the persons or goods carried.

§ 2 The carrier shall be relieved of this liability

- a) in case of bodily loss or damage
 1. if the incident giving rise to the loss or damage has been caused by circumstances not connected with the operations of the carrier which he, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent,
 2. to the extent that the incident giving rise to the loss or damage is due to the fault of the person suffering the loss or damage,
 3. if the incident giving rise to the loss or damage is due to the behaviour of a third party which the carrier, in spite of having taken the care required in the particular circumstances of the case, could not avoid and the consequences of which he was unable to prevent;
- b) in case of loss of or damage to property when the loss or damage is caused by a fault of the manager or by an order given by the manager which is not attributable to the carrier or by circumstances which the carrier could not avoid and the consequences of which he was unable to prevent.

§ 3 If the incident giving rise to the loss or damage is due to the behaviour of a third party and if, in spite of that, the carrier is not entirely relieved of liability in accordance with § 2, letter a), he shall be liable in full up to the limits laid down in these Uniform Rules but without prejudice to any right of recourse against the third party.

§ 4 The parties to the contract may agree whether and to what extent the carrier shall be liable for the loss or damage caused to the manager by disruption to his operations.

Article 10 - Concomitant causes

§ 1 If causes attributable to the manager and causes attributable to the carrier contributed to the loss or damage, each party to the contract shall be liable only to the extent that the causes attributable to him under Article 8 and 9 contributed to the loss or damage. If it is impossible to assess to what extent the respective causes contributed to the loss or damage, each party shall bear the loss or damage he has sustained.

§ 2 § 1 shall apply mutatis mutandis if causes attributable to the manager and causes attributable to several carriers using the same railway infrastructure contributed to the loss or damage.

§ 3 § 1, first sentence, shall apply mutatis mutandis in case of loss or damage referred to in Article 9 if causes attributable to several carriers using the same infrastructure contributed to the loss or damage. If it is impossible to assess to what extent the respective causes contributed to the loss or damage, the carriers shall be liable to the manager in equal shares.

Article 11 - Damages in case of death

§ 1 In case of death, the damages shall comprise :

- a) any necessary costs following the death, in particular those of transport of the body and the funeral expenses;
- b) if death does not occur at once, the damages provided for in Article 12.

§ 2 If, through the death, persons whom the deceased had or would have had in the future a legal duty to maintain, are deprived of their support, they shall also be compensated for that loss. Rights of action for damages by persons whom the deceased was maintaining without being legally bound to do so, shall be governed by national law.

Article 12 - Damages in case of personal injury

In case of personal injury or any other physical or mental harm, the damages shall comprise :

- a) any necessary costs, in particular those of treatment and of transport;
- b) compensation for financial loss, due to total or partial incapacity to work, or to increased needs.

Article 13 - Compensation for other bodily harm

National law shall determine whether and to what extent the manager or the carrier must pay damages for bodily harm other than that provided for in Articles 11 and 12.

Article 14 - Form and amount of damages in case of death and personal injury

§ 1 The damages provided for in Article 11 § 2 and in Article 12 letter b) must be awarded in the form of a lump sum. However, if national law permits the award of an annuity, the damages shall be awarded in that form if so requested by the injured person or by persons entitled referred to in Article 11 § 2.

§ 2 The amount of damages to be awarded pursuant to § 1 shall be determined in accordance with national law. However, for the purposes of these Uniform Rules, the upper limit per person shall be set at 175,000 units of account as a lump sum or as an annuity corresponding to that sum, where national law provides for an upper limit of less than that amount.

Article 15 - Loss of right to invoke the limits of liability

The limits of liability provided for in these Uniform Rules as well as the provisions of national law, which limit the compensation to a certain amount, shall not apply if it is proved that the loss or damage results from an act or omission, which the author of the loss or damage has committed either with the intent to cause such loss or damage, or recklessly and with knowledge that such loss or damage would probably result.

Article 16 - Conversion and interest

- § 1 Where the calculation of compensation requires the conversion of sums expressed in foreign currency, conversion shall be at the exchange rate applicable on the day and at the place of payment of the compensation.
- § 2 The person entitled may claim interest on compensation, calculated at five per cent per annum, from the day of initiation of a conciliation procedure, of seizure of the Arbitration Tribunal provided for in Title V of the Convention or from the day on which legal proceedings were instituted.

Article 17 - Liability in case of nuclear incidents

The manager and the carrier shall be relieved of liability pursuant to these Uniform Rules for loss or damage caused by a nuclear incident when the operator of a nuclear installation or another person who is substituted for him is liable for the loss or damage pursuant to the laws and prescriptions of a State governing liability in the field of nuclear energy.

Article 18 - Liability for auxiliaries

The manager and the carrier shall be liable for their auxiliaries.

Article 19 - Other actions

- § 1 In all cases where these Uniform Rules shall apply, any action in respect of liability, on whatever grounds, may be brought against the manager or against the carrier only subject to the conditions and limitations laid down in these Uniform Rules.
- § 2 The same shall apply to any action brought against the auxiliaries for whom the manager or the carrier is liable pursuant to Article 18.

Article 20 - Agreements to settle

The parties to the contract may agree conditions in which they assert or renounce their rights to compensation from the other party to the contract.

Title IV

Actions by Auxiliaries

Article 21 - Actions against the manager or against the carrier

- § 1 Any action in respect of liability brought by the auxiliaries of the carrier against the manager on account of loss or damage caused by him, on whatever grounds, may be brought only subject to the conditions and limitations laid down in these Uniform Rules.
- § 2 Any action in respect of liability brought by the auxiliaries of the manager against the carrier on account of loss or damage caused by him, on whatever grounds, may be brought only subject to the conditions and limitations laid down in these Uniform Rules.

Title V

Assertion of Rights

Article 22 - Conciliation procedures

The parties to the contract may agree conciliation procedures or appeal to the Arbitration Tribunal provided for in Title V of the Convention.

Article 23 - Recourse

The validity of the payment made by the carrier on the basis of the CIV Uniform Rules or the CIM Uniform Rules may not be disputed when compensation has been determined by a court or tribunal and when the manager, duly served with notice of the proceedings, has been afforded the opportunity to intervene in the proceedings.

Article 24 - Forum

- § 1 Actions based on these Uniform Rules may be brought before the courts or tribunals of the Member States designated by agreement between the parties to the contract.
- § 2 Unless the parties to the contract otherwise agree, the competent courts or tribunals shall be those of the Member State where the manager has his place of business.

Article 25 - Limitation of actions

- § 1 The period of limitation for actions based on these Uniform Rules shall be three years.
- § 2 The period of limitation shall run from the day when the loss or damage occurred.
- § 3 In case of death of persons, the period of limitation shall be three years from the day after the day the death occurred, but not exceeding five years from the day after the day of the accident.
- § 4 A recourse action by a person held liable may be brought even after the expiration of the limitation period provided for in § 1, if it is brought within the period allowed by the law of the State where the proceedings are brought. However, the period allowed shall be not less than ninety days from the day when the person bringing the recourse action has settled the claim or has been served with notice of the proceedings against himself.
- § 5 The period of limitation shall be suspended when the parties agree a conciliation procedure or when they seize the Arbitration Tribunal provided for in Title V of the Convention.
- § 6 Otherwise, suspension and interruption of the limitation period shall be governed by national law.