



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organisation
A specialised agency of the United Nations

SHIPPING (AMENDMENT) BILL 2017

OF

BARBADOS:

**A BILL TO AMEND THE SHIPPING ACT 1994 TO INCORPORATE THE 1996
PROTOCOL TO THE CONVENTION ON LIMITATION OF LIABILITY FOR
MARITIME CLAIMS 1976 AS AMENDED BY RESOLUTION LEG 5 (99) OF
THE IMO LEGAL COMMITTEE ADOPTED ON 19 APRIL 2012**

A Legislative Drafting Project submitted in partial fulfilment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

Submitted By: Deshon Jahrel Griffith (Barbados)

Supervisor: Prof. Norman A. Martínez Gutiérrez

Academic Year 2016-2017

DEDICATION

This drafting project is dedicated to all of the amazing persons I met who work in the Maritime Industry of Barbados; those who believe in the great potential of my country's Maritime Sector. In particular, I wish to thank the officers of the Ministry of Tourism and International Transport and the Barbados Maritime Ship Registry. You have all inspired me to lobby for a revolutionised and properly regulated Maritime Sector which can someday become a leader in its own right. I hope to make you all proud.

ACKNOWLEDGEMENTS

Mrs. Vanessa M. John; you are my rock, my motivation, my mother and my best friend. I would like to thank you for being an inspiration throughout my period of study. I wish to also acknowledge my father, Mr. Mervin S. Skeete, who fostered in me a love for the sea from a very young age; you will always retain a place in my heart. Special thanks are extended to: Ms. Jessica Taylor of the Ministry of Tourism and International Transport; Parliamentary Counsel, Ms. Deidre Kinch and Mr. Colin Young, Regional Maritime Advisor who have all been instrumental in providing guidance and information critical to the completion of this project. Lastly, it would be remiss of me to fail to acknowledge my very patient and knowledgeable supervisor and mentor Prof Norman Martínez Gutiérrez, without whom the completion of this project would have been impossible.

GUIDANCE FOR THE READER

In Barbados, an Explanatory Memorandum is attached at the end of every Bill which explains each provision. This is different from the Explanatory Note in the following section which precedes the Bill which is more synonymous with a proposal. In other words, notwithstanding the fact that it explains the general rationale behind the Bill, the following Explanatory Note should be considered as a separate from but complimentary to the Bill whereas the Explanatory Memorandum should be considered as one with the Bill.

The Bill is entitled “An Act to amend the Shipping Act, Cap 296 to incorporate the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976, as amended by Resolution LEG 5 (99) of the IMO Legal Committee adopted on 19 April 2012.” Although it may seem contradictory to refer to a Bill as “An Act” please note that this is a legislative convention practice in Barbados and many other Commonwealth Caribbean States. In light of these differences in drafting styles, insofar as possible, the legislative conventions have been identified in the Endnotes to the Explanatory Memorandum.

After the Bill is a copy of the relevant provisions of the Shipping Act 1994. This is for ease of reference when considering the provisions of the Bill amends the Act. Finally, the project ends with the relevant provisions of the amended version of the Shipping Act 1994 for the reader’s convenience.

TABLE OF INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION

International Instruments (Conventions and Resolutions)

1. Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the 1976 and 2002 Protocols Relating thereto
2. Convention on Limitation of Liability for Maritime Claims, 1976
3. International Convention on Civil Liability for Bunker Oil Pollution, 2001
4. International Convention on Civil Liability for Oil Pollution Damage, 1992
5. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010
6. International Convention on Salvage, 1989
7. International Convention on Tonnage Measurement of Ships, 1969
8. Nairobi International Convention on the Removal of Wrecks, 2007
9. Protocol of 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, 1976
10. Resolution LEG.5 (99) of the International Maritime Organisation Legal Committee adopted on 19 April 2012

National Legislation

1. Accidents Compensation (Reform) Act, Cap 193A
2. Shipping Act, Cap 296
3. Shipping (Oil Pollution) Act, Cap. 296A
4. Nuclear Installations Act (UK) 1965 as extended to Barbados

TABLE OF CONTENT

Dedication	i
Acknowledgement.....	ii
Guidance for the Reader.....	iii
Table of International Instruments and National Legislation.....	iv
Table of Content.....	v
Part 1: Explanatory Note.....	2
Purpose, Aims and Objectives.....	2
Rationale.....	3
Giving Domestic Force of Law to the 1996 Protocol.....	3
Raising the General Limits of Liability to Match Those Adopted By the Legal Committee of the IMO by Regulation LEG (99)	8
Introducing an Effective Overspill Provision So That Personal Claims Are Fully Satisfied Insofar as Possible.....	10
Applying the Relevant Limits of Liability in the 2002 Athens Protocol to Passenger Claims for Death or Personal Injury, Provided They Are Higher Than Those of The 1996 Protocol.....	11
Giving Claims in Respect of Damage to Harbour Works, Basins, Waterways and Aids to Navigation Priority Over Claims Other Than Personal Claims	16
Excluding Claims for Wreck and Cargo Removal in the Absence of a Functioning National Supplementary Fund.....	16
Excluding Claims for HNS Damage from the Moment Becomes Bound by That Convention and it Enters into Force	18
Part 2: The Bill	1
Objects and Reasons.....	2
Arrangement of Sections	3
Provisions	5
Commencement.....	9
Explanatory Memorandum.....	10
Endnotes	13
Annex 1: Relevant Provisions of the Shipping Act 1994.....	i
Annex 2: Amended Provisions of the Shipping Act 1994.....	i

PART I

EXPLANATORY NOTE

EXPLANATORY NOTE

PURPOSE, AIMS AND OBJECTIVES

This Explanatory Note proposes Barbados' denunciation of the Convention on Limitation of Liability for Maritime Claims, 1976;¹ accession to the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims, 1976;² and subsequent enactment of the Shipping (Amendment) Bill, 2017.³ The foregoing would improve the legal regime for limitation of liability for maritime claims in Barbados by:

- (a) Giving domestic force of law to the LLMC Convention as amended by the 1996 Protocol;
- (b) Raising the general limits of liability to match those adopted by the Legal Committee of the International Maritime Organisation⁴ by Resolution LEG 5(99);
- (c) Raising the limits of liability in respect of vessels of a tonnage less than 300 tons⁵;
- (d) Introducing an effective overspill provision so that claims in respect of death or personal injury are fully satisfied insofar as possible;
- (e) Applying the relevant limits of liability in the 2002 Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974⁶ to passenger claims for death or personal injury, provided they are higher than those of the 1996 Protocol;
- (f) Giving claims in respect of damage to harbour works, basins, waterways and aids to navigation priority over claims other than personal claims;
- (g) Excluding claims for wreck and cargo removal in the absence of a functioning National Supplementary Fund; and
- (h) Excluding claims for damage within the meaning of International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous

¹ This is henceforth referred to as the 'LLMC Convention'.

² This is henceforth referred to as the '1996 Protocol'.

³ This is henceforth referred to as the 'the Bill'.

⁴ This is henceforth referred to as the 'IMO'.

⁵ These are henceforth referred to as 'small ships'.

⁶ This is henceforth referred to as the '2002 Athens Protocol'.

and Noxious Substances by Sea, 2010⁷ from the moment Barbados becomes bound by that Convention and it enters into force.

RATIONALE

A. Giving Domestic Force of Law to The LLMC Convention as Amended by the 1996 Protocol

Limitation of liability is said to be a balancing and thriving factor in international trade, shipping and insurance sectors.⁸ A simple illustration of its importance is the fact that without limitation of liability, insurance cover would be difficult if not impossible for shipowners to obtain; resulting in either a halt on trade or a hike in the rates for freight and passage-money in order to absorb the costs of unlimited liability for the proverbial perils of the sea.

In the late 20th century, the LLMC Convention represented one of the most successful attempts by the international community to provide predictability for shipping interests including *inter alia* shipowners and salvors while on the other hand securing adequate compensation for claimants.

The main features of the LLMC Convention are as follows. Firstly, the Convention extends to right to limit liability to a wide range of actors. These include:

1. Shipowners and salvors;
2. Any person for whose act, neglect or default the shipowner or salvor is responsible; and
3. The insurer of liability for claims subject to limitation in accordance with the LLMC Convention.

⁷ This is henceforth referred to as the 'HNS Convention, 2010'.

⁸ Kourosh Taheri, 'Limitation of Liability for Maritime Claims: Multiple Perspectives and Legal Implications'

<<http://lup.lub.lu.se/luur/download?func=downloadFile&recordOid=3858032&fileOid=3858041>>
accessed 8 April 2017.

These three categories have been widely interpreted by the courts of various nations.⁹ In fact, judicial interpretation has only invariably excluded independent contractors who are not performing non-delegable duties of the shipowner or salvor.¹⁰

Secondly, the Convention covers a comprehensive list of claims in respect of which the right to limit liability may be invoked. Art 2 (1) of the LLMC Convention states that subject to Arts 3 and 4 of the Convention a person listed in Art 1 is entitled to limit his liability for:

1. Claims in respect of loss of life or personal injury or loss of damage to property;
2. Claims resulting from delay;
3. Claims for infringement of rights;
4. Claims for wreck and cargo removal; and
5. Claims in respect of measures taken to avert or minimize loss.

This covers a very wide range of claims which are possible in the field of shipping.¹¹

The LLMC Convention also avoids discrepancies with other specific liability regimes by expressly excluding their application. Art 3 of the LLMC Convention lists the following claims as excepted from limitation:

1. Salvage and general average;¹²
2. Nuclear claims;¹³ and

⁹ Art 1(2) of the LLMC Convention explains that ‘shipowner’ means “the owner, charterer, manager or operator of a seagoing ship.” This has been interpreted as including part-owners of a ship [see Norman A Martínez Gutiérrez, *Limitation Of Liability In International Maritime Conventions* (1st edn, Routledge 2011) p 23].; slot charterers [The MSC Napoli [2009] 1 Lloyd’s Rep 246 at 250 per Mr. Justice Teare “... in accordance with the ordinary meaning of the word charterer and in light of the evident object and purpose of the convention, a slot charterer is within the definition of shipowner and therefore entitled to limit his liability.”]; and mortgagees who have repossessed a ship [S. Hodges and C. Hill, *Principles of Maritime Law*, London: Lloyd’s of London Press Ltd., 2001, p. 520].

¹⁰ See Martínez Gutiérrez p 31 generally for discussion.

¹¹ For example, limitation is permitted for damage within the meaning of International Convention on Civil Liability for Bunker Oil Pollution, 2001 (Bunkers Convention), to which Barbados is a Party. See Martínez Gutiérrez p 190 on this point. Other Conventions linked to the LLMC Convention include the HNS Convention and Nairobi International Convention on the Removal of Wrecks, 2007, neither of which Barbados is party to. See Martínez Gutiérrez p 188-190 and 197-200 respectively for discussion on interrelation between these two Conventions and the LLMC Convention.

¹² See Art 3(a) of the LLMC Convention. This exclusion only applies to direct claims by salvors or parties who have suffered a general average loss or sacrifice. See also Martínez Gutiérrez p 47 and *The Aegean Sea* [1998] 2 Lloyd’s Rep. 39 at 55 generally for discussion.

3. Oil pollution claims.¹⁴

Claims by servants of the shipowner and salvor are also excluded¹⁵.

A major triumph of the LLMC Convention was the so-called virtually unbreakable right to limit liability. In addition to proving that the claim is excluded under Art 3 of the LLMC Convention, a claimant may also succeed in denouncing the defendant's right to limit liability if he successfully proves that he is barred from doing so pursuant to Art 4. Art 4 notes that a "person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act of omission, committed with the intent to cause such loss or recklessly and with knowledge that such loss would probably result."

This provides for two eventualities; (1) the loss or damage from which limitation is possible under Art 2 results from "the personal act or omission" of a person listed in Art 1, "committed with intent to cause that specific loss" or (2) the loss or damage for which limitation is possible under Art 2 results from "the personal act or omission" of a person listed in Art 1, committed with "recklessly and with knowledge that that specific loss or damage would probably result." The standard of proof for these two scenarios is very high and in very few circumstances would a claimant be able to successfully allege that a person listed in Art 1 has lost his right to limit liability. Fortunately, this virtually unbreakable right to limit is coupled with high limits of liability to ensure that a claimants' loss is sufficiently satisfied in most cases.

The general limits of liability under the LLMC Convention are as represented in Tables 1a and b respectively whereas the limit of liability for passenger claims 46,666 Special

¹³ See Arts 3(c) and (d) of the LLMC Convention. See also s4(2) Second Schedule, Part II, Shipping Act (Barbados): "the claims excluded from the convention by paragraph (c) of Art 3 are claims made by virtue of either sections 10 and 11 of the Nuclear Installations Act (UK) 1965 as extended to Barbados as modified and adapted in the Schedule thereto."

¹⁴ See Art 3(b) of the LLMC Convention. See also s4(1) Second Schedule, Part II, Shipping Act (Barbados) 1994: "the claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 20 of the *Barbados Shipping (Oil Pollution) Act, Cap 296A*."

¹⁵ See Art 3(e) of the LLMC Convention. See p 50 Martínez Gutiérrez generally for discussion.

Drawing Rights¹⁶ multiplied by the number of passengers the ship is certified to carry with an overall cap of 25 Million SDRs.

Table 1a: Limits of liability for claims for loss of life or personal injuries

Tonnage	Limits of Liability
Ships of less than 500 tons	333,000 SDRs
From 501 to 3,000 tons	500 SDRs per ton
From 3,001 to 30,000 tons	333 SDRs per ton
From 30,001 to 70,000 tons	250 SDRs per ton
70,001 tons and above	167 SDRs per ton

Table 1b: Limits of liability for claims for any other claims

Tonnage	Limits of Liability
Ships of less than 500 tons	167,000 SDRs
From 501 to 30,000 tons	167 SDRs per ton
From 30,001 to 70,000 tons	125 SDRs per ton
70,001 tons and above	83 SDRs per ton

At the time these were acceptable limits which would cover most claims however, by the 1990's these limits proved to be inadequate. This was one of the main driving forces behind the entry into force of the 1996 Protocol. The LLMC Convention as amended by the 1996 Protocol is now the most widely applied¹⁷ and up to date international instrument which strikes a fair balance between predictability and adequate compensation. It comprises most of the provisions of the LLMC Convention but goes beyond by *inter alia*:

1. Raising the general limits of liability;

¹⁶ These are henceforth referred to as the SDRs.

¹⁷ This convention is applicable to 58.9% of the World's Tonnage. See 'IMO Web Accounts' (Gisis.imo.org, 2017) <<https://gisis.imo.org/Public/ST/Treaties.aspx>> accessed 12 April 2017.

2. Amending the automatic exclusions;
3. Adding an optional exclusion;
4. Increasing the limits of liability for passenger claims;
5. Adding a tacit acceptance procedure for the amendment of the limits of liability.

Being a dualist State, if Barbados decides to denounce the LLMC Convention and accede to the 1996 Protocol, it would be necessary to reflect this decision domestically for the Convention to be enforceable on the domestic plane.

The main provisions of LLMC Convention are found in the Second Schedule of the Shipping Act 1994. This Schedule has two parts, the first being the substantive provisions of the LLMC Convention and the second being additional provisions which have effect in respect of the Convention.¹⁸

The most efficient method of giving effect to the LLMC Convention as amended by the 1996 Protocol is by enacting the Bill which will *inter alia*:

1. insert the requisite additions and adjustments made by the 1996 Protocol into the first part of the Second Schedule;¹⁹
2. activate certain optional empowering provisions from the LLMC Convention saved by the LLMC Convention as amended by the 1996 Protocol; and
3. replace all references in the Shipping Act 1994 to the LLMC Convention with references to the LLMC Convention as amended by the 1996 Protocol.

¹⁸ This is henceforth referred to as the *Part II*.

¹⁹ This includes the extension of the 'salvage exclusion' to special compensation under Art 14 of the International Convention on Salvage 1989, as amended by Art 3 of the LLMC Convention as amended by the 1996 Protocol. Note, however, that Barbados is not a party to the Salvage Convention 1989 and thus special compensation is, in any event, not applicable.

B. Raising the General Limits of Liability to Match Those Adopted by The Legal Committee of The IMO by Regulation LEG 5(99)

As mentioned above, the general limits of liability set out in the LLMC Convention have been rendered nugatory since the 1990s due to inflation. These limits were first amended by the 1996 Protocol and again by Resolution LEG.5 (99) of the IMO Legal Committee on 19 April 2012.

As demonstrated by Tables 2a and b respectively, the original limits of the 1996 Protocol increased the limits of the LLMC Convention by approximately 600.6%. These substantially increased limits were further increased by 51% as a result of Resolution LEG.5 (99) and have been in force since 2015.²⁰ When one compares the current limits of liability Barbados accepts under the LLMC Convention and the current limits of the most widely accepted global liability regime i.e. the 1996 Protocol as amended by Resolution LEG.5 (99), it becomes apparent that retention of the LLMC Convention is unconscionable if only for the great financial disadvantage that would be meted out to claimants in Barbados.

Table 2a: Limits of liability for claims for loss of life or personal injuries²¹

LLMC Convention		1996 Protocol	
Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships of less than 500 tons	333,000 SDRs	Ships if less than 2,000 tons	2,000,000
From 501 to 3,000 tons	500 SDRs per ton		
From 3,001 to 30,000 tons	333 SDRs per ton	From 2,001 to 30,000 tons	800
From 30,001 to 70,000 tons	250 per ton	From 30,001 to 70,000 tons	600
70,001 tons and above	167 per ton	70,001 tons and above	400

²⁰ See Tables 3a and b.

²¹ Table adapted from Martínez Gutiérrez p 107.

Table 2b: Limits of liability for any other claims²²

LLMC Convention		1996 Protocol	
Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships of less than 500 tons	167,000 SDRs	Ships if less than 2,000 tons	1,000,000 SDRs
From 501 to 3,000 tons			
From 3,001 to 30,000 tons	167 SDRs per ton	From 2,001 to 30,000 tons	400 SDRs per ton
From 30,001 to 70,000 tons	125 SDRs per ton	From 30,001 to 70,000 tons	300 SDRs per ton
70,001 tons and above	83 SDRs per ton	70,001 tons and above	200 SDRs per ton

Table 3a: Limits of liability for claims for loss of life or personal injuries²³

LLMC Convention		Resolution LEG.5 (99)	
Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships of less than 500 tons	333,000 SDRs	Ships if less than 2,000 tons	3,020,000 SDRs
From 501 to 3,000 tons	500 SDRs per ton		
From 3,001 to 30,000 tons	333 SDRs per ton	From 2,001 to 30,000 tons	12,08 SDRs per ton
From 30,001 to 70,000 tons	250 SDRs per ton	From 30,001 to 70,000 tons	906 SDRs per ton
70,001 tons and above	167 SDRs per ton	70,001 tons and above	604 SDRs per ton

²² Table adapted from Martínez Gutiérrez p 108.

²³ *Supra* note 22.

Table 3b: Limits of liability for any other claims²⁴

LLMC Convention		Resolution LEG.5 (99)	
Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships of less than 500 tons	167,000 SDRs	Ships if less than 2,000 tons	1,510,000 SDRs
From 501 to 3,000 tons			
From 3,001 to 30,000 tons	167 SDRs per ton	From 2,001 to 30,000 tons	604 SDRs per ton
From 30,001 to 70,000 tons	125 SDRs per ton	From 30,001 to 70,000 tons	453 SDRs per ton
70,001 tons and above	83 SDRs per ton	70,001 tons and above	302 SDRs per ton

C. Raising the Limits of Liability in Respect of Small Ships

The LLMC Convention as amended by the 1996 Protocol retains Art 15(2) (b) which permits States Parties to regulate by national law the system of limitation of liability to be applied to ships of less than 300 tons i.e. small ships. Barbados has utilised this option by providing in *Part II* that the limits of liability for small ships in respect of claims for loss of life or personal injury and other claims will be 166.667 SDRs and 83,333 SDRs respectively.

If Barbados denounces the LLMC Convention and accedes to the LLMC Convention as amended by the 1996 Protocol, it is proposed that the abovementioned limits are raised in a manner which is proportional to the considerably higher limits accepted for larger ships. This would be achieved by multiplying the limits of liability for claims in respect of loss of life or personal injury by a factor of 9.096 and other claims by 9.0419.

Currently, the Shipping Act 1994 does not prescribe a separate liability regime for small ships in respect of passenger claims although this is permissible within the wording of Art 15(2) (b). However, the Global Limitation of Liability regimes have never made a

²⁴ *Supra* note 23.

distinction between the limits of liability of ships based on their tonnage where passenger claims are concerned as opposed to the general limits. Also, there is no compelling need to make such a distinction in the Barbadian context. As such, it is recommended that no such distinction is made in domestic law when implementing the LLMC Convention as amended by the 1996 Protocol; i.e. the same limits of liability should apply in respect of passenger claims regardless of the size of the ship in question.

D. Introducing an Effective Overspill Provision So That Personal Claims Are Fully Satisfied Insofar as Possible

The LLMC Convention as amended by the 1996 Protocol also retains Art 6(2) which is referred to as the Overspill Provision. This allows for the personal claims to be satisfied in accordance with the global limits of liability insofar as possible and not be restricted only to the amount in 1(a). Where there are also property claims, they will compete rateably with the unpaid balance of the personal claims *pari passu* and where there are no such claims the unpaid balance could be satisfied in full subject to the global limit.²⁵

Unfortunately, however, Art 6(2) was drafted with substantial errors and omissions when transposed into the Shipping Act 1994 rendering it inoperable.²⁶ Enactment of the Bill will rectify these errors and thus allow claimants under the LLMC Convention as amended by the 1996 Protocol thereto have the benefit of having their losses in respect of loss of life or personal injury compensated insofar as possible.

²⁵ See Martínez Gutiérrez p 80-3 generally for discussion.

²⁶ Art 6(2) as transcribed into the Laws of Barbados states that “Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(b).” Whereas it should state that the amount in 1(b) should be available for the unpaid balance in 1(a). Additionally, the transcription excludes the words “and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).” These words should be included in the absence of any compelling reason to exclude them.

E. Applying the Relevant Limits of Liability in the 2002 Athens Protocol to Passenger Claims for Death or Personal Injury, Provided They Are Higher Than Those of the 1996 Protocol

Under the LLMC Convention the limit of liability for passenger claims on each distinct occasion is 46,666 SDRs multiplied by the number of passengers the ship is certified to carry with a maximum limit of 25,000,000 SDRs. The same figure of 46,666 SDRs is referred to as the limits under the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the 1976 Protocol relating thereto²⁷ with the difference being that the Athens Convention's limits apply on a per carriage basis. The disadvantage, however, is that due to the LLMC Convention's global limitation cap of 25,000,000 SDRs, if passenger claims exceed 536, individual passenger claims would have to be satisfied on a *pro rata* basis.²⁸ This creates a manifestly detrimental situation for individual claimants when the claims reach the thousands as can be seen in Table 4 below.

Table 4 Potential Limits under Art 7 of the LLMC Convention

No. of passengers authorised to carry	Calculated limit	Maximum limit (capped at 25,000,000 SDRs)
100	4,666,600	4,666,600
400	18,666,400	18,666,400
500	23,333,000	23,333,000
536	25,012,976	25,000,000
1,000	46,666,000	25,000,000
2,000	93,332,000	25,000,000
3,000	139,998,000	25,000,000

²⁷ This is henceforth referred to as the 'Athens Convention'.

²⁸ See Martínez Gutiérrez p 178-9 regarding the combined effect of Arts 14 and 19 of the Athens Convention.

This problem is exacerbated by the fact that the 46,666 SDR limit per passenger is grossly inadequate to compensate for death or personal injury as was recognised by the 1990 Protocol to the Athens Convention.²⁹ The 1990 Athens Protocol proposed to raise the limits of liability for passenger claims for death or personal injury to 175,000 SDRs per carriage,³⁰ however, this protocol never entered into force because even this figure was considered insufficient due to inflation. Nonetheless, the 1996 Protocol followed this proposal and raised the limit of liability for passenger claims on each distinct occasion to 175, 000 SDRs multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate³¹ which amounts to an increase of limits by over 375%. The 1996 Protocol also removed the global cap of 25,000,000 SDRs found in the LLMC Convention.

Although the 1996 Protocol improved the LLMC Convention by facilitating claimants' receipt of full compensation within the prescribed limits of liability, 175,000 SDRs is still considerably low compensation for the loss of a life or a seriously incapacitating personal injury.³² This can be considered as potentially rectified by Art 15(3) bis of the LLMC Convention as amended by the 1996 Protocol permits States Parties to regulate by national law the system of liability to be applied to claims for loss of life or personal injury to passengers of a ship, provided that the limit of liability is not lower than that prescribed in Art 7(1).³³

After the failure of the 1990 Athens Protocol, the 2002 Athens Protocol introduced limits of liability which were much more satisfactory.

The Athens Convention as amended by the 2002 Protocol provides for a two-tier liability in claims for death or personal injuries namely:

²⁹ This is henceforth referred to as the '1990 Athens Protocol'.

³⁰ Art 2(2) of the 1990 Athens Protocol.

³¹ Art 7(1) of the LLMC Convention as amended by the 1996 Protocol.

³² See generally for discussion, W. Dorsey, 'The 2002 Protocol to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea', *Benedict's Mar. Bull.* 1(1), 2003, 12.

³³ If this option is used it is also necessary to inform the Secretary General of the IMO of such regime. Also note that the preceding Art 15 (3) permits applying a different system of liability for claims only involving nationals of Barbados, however, this option will not be exercised, so as to hold all parties to the same standards and promotion international unification of laws, as is the purpose of this Convention.

1. Strict liability of up to 250,000 SDRs for any claim for death or personal injury suffered as a result of a ‘shipping incident’;³⁴ and
2. Further fault-based liability of up to 400,000 SDRs for any claim for death or personal injury.³⁵

On comparing the current limits of liability for passenger claims which Barbados accepts under the LLMC Convention and those adopted by the 2002 Athens Protocol, which represents the most widely accepted liability regime for such claims, Barbados’ limits of liability for passenger claims can only be described as unjust. The difference between the limits in the LLMC and those under the 2002 Athens Protocol as shown in Table 5 below represent a ratio of 1: 8.571 which is indeed a travesty.

Table 5 Limits of Liability per Person for Passenger Claims

LLMC Convention	2002 Athens Protocol
46,666 SDRs per distinct occasion*	400,000 SDRs per carriage (tier 2) 250,000 SDRs per carriage (tier 1)

* reduced rateably when there are more than 536 claimants.

The unjust nature of Barbados’ limits of liability for passenger claims is further exemplified when one considers that the general limits of liability under the LLMC Convention as amended by the 1996 Protocol are now approximately 9.069 times more than those under the LLMC Convention³⁶ whereas the limits for passenger claims are now only approximately 3.75 times more than those under the LLMC Convention. Thus,

³⁴ Art 3(1) Athens Convention as amended by the 2002 Protocol thereto, the defendant may only avoid liability in a limited set of circumstances. See Martínez Gutiérrez p 132 generally for discussion.

³⁵ In accordance with Art 3(1), where a claim for death or personal injury as a result of a shipping incident exceeds 250,000 SDRs the carrier would be liable up to a limit of 400,000 SDRs unless he proves that the incident giving rise to the loss occurred without his fault or neglect. On the other hand, in accordance with Art 3(2) where death or personal injury is not caused by a ‘shipping incident’, the carrier will be liable only if the claimant proves that the loss was caused by the fault or neglect of the carrier.

³⁶ This is a result of Resolution LEG.5 (99).

even if the LLMC Convention as amended by the 1996 Protocol is adopted, passenger claimants would still be at a significant disadvantage unless Art 15(3) bis is utilised to adjust the limits of liability for passenger claims under national law. The most expedient option, therefore, is to trigger Art 15(3) by incorporating provisions into the laws of Barbados regulating the limits of liability for passenger claims.

Martinez proposes that States Parties to the 1996 Protocol raise the limits of liability for passenger claims to 250,000 SDRs³⁷ to bring them in line with the 2002 Athens Protocol. Although the proposed amendment does not cover the full exposure of the shipowners (i.e. 400,000 SDRs per passenger), it covers the first tier of liability which is equivalent to the amount of compulsory insurance which must be maintained by the carrier who actually performs the whole or a part of the carriage.³⁸

Barbados is, however, still party to the Athens Convention and although the limits of liability per person under that Convention are outdated and grossly insignificant, defendants would still be allowed to limit their liability under that Convention. Even if the ‘opt out’ provision in the Athens Convention in respect of national carriers is activated, the scope of application of the new limit of liability for death or personal injury would be extremely narrow as most carriers whose ships visit Barbados are based overseas. As a major tourist destination where many cruise liners visit throughout the year, the foregoing delineates an utterly unsatisfactory state of affairs which could have major implications for the tourism industry if an accident were to occur and the very low limits of liability were to be publicised and sensationalised by the media. As such, for the 250,000 SDR limit of liability for passenger claims to be operable in Barbados, the only practical option is to do the following:

1. Denounce the Athens Convention and accede to the 2002 Athens Protocol
2. Stipulate in national law that passenger claims for death or personal injury will be regulated exclusively by the Athens Convention as amended by the 2002 Protocol

³⁷ See Martínez Gutiérrez p 224 regarding his proposal for a new draft of the LLMC Convention.

³⁸ See generally Art 4bis of the 2002 Athens Protocol.

thereto, provided that the limits of liability therein remain higher than those of the 1996 Protocol.

3. Inform the Secretary General of the IMO of the action taken in (2) above.

F. Giving Claims in Respect of Damage to Harbour Works, Basins, Waterways and Aids to Navigation Priority Over Claims Other Than Personal Claims

Pursuant to Article 6(3) of the LLMC Convention, States Parties may provide in their national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over claims other than personal claims.³⁹ This provision is retained by the LLMC Convention as amended by the 1996 Protocol. It is recommended that Barbados activates Art 6(3) by providing in its national law that such claims, which would normally come from the Harbour and Conservancy Authorities,⁴⁰ have priority over other claims; subordinate in ranking only to claims in respect of loss of life or personal injury. In doing so, added financial protection will be given to the Harbour and Conservancy Authorities in relation to serious damage which could affect the economy of the country such as a blockage of the entrance to the main ports

G. Excluding Claims for Wreck and Cargo Removal in The Absence of a Functioning National Supplementary Fund

The LLMC Convention permits States Parties to exclude the application of Article 2(1) (d)⁴¹ and (e)⁴² at any time; this right has been preserved in the LLMC Convention as amended by the 1996 Protocol.⁴³ In respect of paragraph 1(d), the Shipping Act 1994

³⁹ Priority over claims in art 6(1)(b) but not 6(1)(a) Where the priority of claims is concerned, personal claims will however be able to claim the proceeds of a limitation fund first, then the harbour authority and then any other claims, if the Art 6(3) is exercised in accordance with the Convention Martínez Gutiérrez p 83-4

⁴⁰ These include Barbados Port Inc. and the Environmental Protection Department.

⁴¹ Art 2(1) (d) of the LLMC Convention states that “claims in respect 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” shall be subject to limitation of liability.

⁴² Art 2(1) (e) of the LLMC Convention states that “claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;” shall be subject to limitation of liability.

⁴³ Art 18(1) (a) of the LLMC Convention as amended by the 1996 Protocol thereto.

provides in section 3(1) of *Part II* that this provision shall not apply unless a compensation fund has been set up by the Minister to indemnify the Harbour or Conservancy Authorities for reduction of amounts payable as a result of this provision.⁴⁴ This fund has been established and is administered by the Environmental Protection Department; as such both Art 2(1) (d) and (e) are currently operable in Barbados. However, the mere existence of a supplementary fund does not mean that such machinery is adequate to protect Harbour and Conservancy Authorities from major expenditure in relation to wreck and cargo removal.

Currently, due to the extremely low limits of the LLMC Convention, a situation where the Harbour and Conservancy Authorities are financially exposed because liability is capped way below their expenditure is not only conceivable but highly probable. As a Small Island Developing State, Barbados' remote location and lack of natural resources means that it is heavily reliant on the importation of goods by way of shipping to sustain the population. Barbados is also heavily reliant on tourism and many tourists enter the country through the main port. An incident where the entry to the port is blocked because of *inter alia* a wreck⁴⁵ or sunken cargo could impact the country's income from tourism⁴⁶ and generally bring the country to a standstill; as such it would be incumbent on Harbour and Conservancy Authorities to hastily remove such. This kind of event would place an immense burden on the National Supplementary Fund to cover its losses and it is highly unlikely that said fund is sufficient to cover these losses substantially due to the current economic position of the country. Worse yet, if the blockage is caused by jetsam, flotsam or an abandoned ship which has not sunk, the Harbour and Conservancy Authorities would be left to bear their financial losses because recourse to the National Supplementary Fund is restricted to claims in respect of Art 2(1)(d) and not (e).

⁴⁴ Note that this is not a fund constituted under Art 11 of the LLMC Convention as amended by the 1996 Protocol thereto but a supplementary fund constituted under national law. It is not clear whether this provision was entered pursuant to a reservation due to lack of access to the relevant documentation; however, it is permissible if such a reservation has been lodged.

⁴⁵ Note that this is a wreck in the sense of a ship that has sunk and not within the wide definition given under the Nairobi Convention which is not applicable in Barbados. See *supra* note 13.

⁴⁶ Bunker oil damage may also occur when such wreck is being removed and would be limited under the LLMC Convention because of the Art 6 of the Bunkers Convention. Compensations sought by the Harbour and Conservancy Authorities in respect of such clean-up efforts would therefore be similarly prejudiced.

The following actions are therefore recommended to rectify the current status quo:

1. Extend the application of the National Supplementary Fund to claims in respect of Art 2(1)(e);
2. Accede to the 1996 Protocol; and
3. Denounce the LLMC Convention.

Taking these actions would mean that the first tier of compensation supplied by a person entitled to limit liability under Art 1 would be much more satisfactory and would ease the burden of the National Supplementary Fund, which would cover the excess in respect of both claims under Art 2(1) (d) and (e).

H. Excluding Claims for HNS Damage from The Moment Barbados Becomes Bound by That Convention and it Enters into Force

The 1996 Protocol introduces the possibility of excluding claims for damage within the meaning of the HNS Convention, 1996 or of any amendment or protocol thereto.⁴⁷ The number of ships carrying Hazardous and Noxious Substances (HNS) worldwide is more than 16000 and is constantly growing;⁴⁸ thus the possibility of damage occurring within the meaning of the HNS Convention, 2010 is increasing. These incidents can have disastrous and long-lasting impacts⁴⁹ for a Small Island Developing State such as Barbados and, as such, a proactive approach should be taken so that compensation for damage is maximised and secured. Barbados is not a party to the HNS Convention, 2010, which provides for strict liability of the shipowner⁵⁰ coupled with the right of direct action against the insurer.⁵¹ As seen in Table 6 below, the limits of liability therein are also significantly higher than those in the 1996 Protocol for small and medium sized ships and

⁴⁷ Art 18 of the LLMC Convention as amended by the 1996 Protocol thereto. The most recent HNS Convention is the HNS Convention, 2010 which is not only the most attractive thus far but the only one which a State may ratify at this stage. See Martínez Gutiérrez p 155-158 generally for discussion.

⁴⁸ 'The HNS Convention, Why It Is Needed' (The International Maritime Organisation, 2017) <<http://www.imo.org/en/MediaCentre/HotTopics/Documents/HNS%20ConventionWebE.pdf>> accessed 12 April 2017.

⁴⁹ Ibid.

⁵⁰ See generally Art 12 of the HNS Convention.

⁵¹ Ibid.

some large ships as well. However, because liability is capped under the HNS Convention, 2010 and not under the 1996 Protocol once a ship carrying Bulk HNS exceeds 100,000 tons or a ship carrying Packaged HNS exceeds 140,000 tons, the 1996 Protocol would provide higher limits of liability. This would however be very few cases in the context of Barbados which does not have the infrastructure to receive very large ships beyond 140,000 tons.

Table 6 Limits of Liability for Ships of Varying Tonnage

Tonnage (tons)	1996 Protocol (SDRs)	Packaged HNS (SDRs)	Bulk HNS (SDRs)
140,000	115,544,000	115,000,000	100,000,000
120,000	103,464,000	115,000,000	100,000,000
100,000	91,384,000	115,000,000	100,000,000
70,010	73,270,040	102,584,140	89,203,600
30,000	37,024,000	59,800,000	52,000,000
2,000	3,200,000	11,500,000	10,000,000

If Barbados excludes HNS damage from the ambit of the LLMC Convention as amended by the 1996 Protocol, shipowners will be exposed to unlimited but fault-based liability which is the status quo under general law. However, shipowners would inevitably retaliate with a hike in freight rates for such substances to cover their potential liability for accidents. Such action would eventually be felt by the consumer of everyday products such as aerosols, kerosene etc. As such it is recommended that Barbados enters a reservation in respect of HNS damage which will only activate when Barbados becomes bound by the HNS Convention, 2010 and it enters into force.⁵²

⁵² I.e. HNS damage should continue to be regulated under the global liability regime until Barbados adheres to the HNS Convention and it enters into force. Thereafter, the limits of liability under the HNS Convention would apply.

PART II

THE BILL

Explanatory memorandum after page 9ⁱ

OBJECTS AND REASONSⁱⁱ

This Bill would amend the *Shipping Act*, Cap. 296 to incorporate the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976, as amended by Resolution LEG 5 (99) of the IMO Legal Committee adopted on 19 April 2012.ⁱⁱⁱ

Arrangement of Sections^{iv}

- 1.** Short Title
- 2.** Amendment of Section 302
- 3.** Amendment of Section 312(1) of Cap. 296
- 4.** Amendment of the Title of Part I of the Second Schedule of Cap. 296
- 5.** Amendment of the Article 3 of Part I of the Second Schedule of Cap. 296
- 6.** Amendment of Article 6(1) of Part I of the Second Schedule of Cap. 296
- 7.** Amendment of the Article 6(2) of Part I of the Second Schedule of Cap. 296
- 8.** Amendment of Section 3 of Part II of the Second Schedule of Cap 296
- 9.** Amendment of Section 4 of Part II of the Second Schedule of Cap 296
- 10.** Amendment of Section 5 of Part II of the Second Schedule of Cap 296
- 11.** Amendment of Section 6 of Part II of the Second Schedule of Cap 296
- 12.** Commencement

BARBADOS

A Bill entitled^v

An Act to amend the *Shipping Act*, Cap 296 to incorporate the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976, as amended by Resolution LEG 5 (99) of the IMO Legal Committee adopted on 19 April 2012^{vi}

ENACTED by the Parliament of Barbados as follows:^{vii}

Short Title^{viii}

1. This Act may be cited as the *Shipping (Amendment) Act 2017*.^{ix}

Amendment of Section^x 302 of Cap. 296

2. Section 302 of the Shipping Act, Cap 296, in this Act referred to as the principal Act, is amended in subsection^{xi} (1) by inserting the words “as amended by the 1996 Protocol thereto”^{xii} after “Convention on Limitation of Liability for Maritime Claims 1976”.

Amendment of Section 312(1) of Cap. 296

3. Section 312(1) of the principal Act is amended in paragraph^{xiii} (k) by inserting the words “as amended by the 1996 Protocol thereto” after “Convention on Limitation of Liability for Maritime Claims 1976”.

Amendment of the Title of Part I of the Second Schedule of Cap. 296

4. The title of Part I of the Second Schedule of the principal Act is amended by inserting the words “AS AMENDED BY THE 1996 PROTOCOL THERETO” after “CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS”.

Amendment of Article 3 of Part I of the Second Schedule of Cap. 296

5. Article 3 of Part I of the Second Schedule of the principal Act is amended in subparagraph^{xiv} (a) by substituting the words “claims for salvage or contribution in general average” with the words “(a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;”.

Amendment of Article 6(1) of Part I of the Second Schedule of Cap. 296

6. Article 6(1) of Part I of the Second Schedule of the principal Act is amended
 - (a) in subparagraph (a) by deleting^{xv}

- (i) the words “333,000 Units of Account for a ship with a tonnage not exceeding 500 tons” appearing in sub-subparagraph^{xvi} (i) and inserting the words “3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,”;
- (ii) the words “for each ton from 501 to 3,000 tons, 500 Units of Account;” appearing in sub-subparagraph (ii)
- (iii) the words “for each ton from 3,001 to 30,000 tons, 333 Units of Account;” appearing in sub-subparagraph (ii) and inserting the words “for each ton from 2,001 to 30,000 tons, 1,208 Units of Account;”
- (iv) the words “250 Units of Account;” appearing in sub-subparagraph (ii) and inserting the words “906 Units of Account;”; and
- (v) the words “167 Units of Account;” appearing in sub-subparagraph (ii) and inserting the words “604 Units of Account;”.

(b) in subparagraph (b) by substituting

- (i) the words “167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,” appearing in sub-subparagraph (i) with the words “1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,”
- (ii) the words “for each ton from 501 to 30,000 tons, 167 Units of Account;” appearing in sub-subparagraph (ii) with the words “for each ton from 2,001 to 30,000 tons, 604 Units of Account;”
- (iii) the words “125 Units of Account;” appearing in sub-subparagraph (ii) with the words “453 Units of Account;” and
- (iv) the words “83 Units of Account;” appearing in sub-subparagraph (ii) with the words “302 Units of Account;”.

Amendment of Article 6(2) of Part I of the Second Schedule of Cap. 296

7. Article 6(2) of Part I of the Second Schedule of the principal Act is amended by substituting the words “shall be available for payment of the unpaid balance of claims under paragraph 1(b)” with the words “shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).”

Amendment of Section 3 of Part II of the Second Schedule of Cap 296

8. Section 3 of Part II of the Second Schedule of the principal Act is amended by
- (a) substituting the words “Paragraph 1(d) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d),” appearing in subsection (1) with the words “Paragraphs 1 (d) and (e) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraphs 1(d) and (e),”; and
 - (b) inserting immediately after subsection (2) the following new section
“(3) Without prejudice to the right of claims for loss of life or personal injury according to Article 6 paragraph 2, claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over claims under paragraph 1(b).”

Amendment of Section 4 of Part II of the Second Schedule of Cap 296

9. Section 4 of Part II of the Second Schedule of the principal Act is amended by
- (a) inserting the following new subsection (1)
“(1) Claims for damage within the meaning of the International Convention on Liability for Damage in connection with the carriage of Hazardous and

Noxious Substances by Sea 1996, or any amendment of or Protocol to the Convention, which arise from occurrences which take place after the coming into force of that Convention as part of the Laws of Barbados shall be excluded from the Convention.”

- (b) Renumbering the subsections (1) and (2) as subsections (2) and (3) respectively.

Amendment of Section 5 of Part II of the Second Schedule of Cap 296

10. Section 5 of Part II of the Second Schedule of the principal Act is amended in subsection (1) by substituting

- (i) the words “166,667 Units of Account” appearing in sub-subsection (i) with the words “1,601,605 Units of Account”; and
- (ii) the words “83,333 Units of Account” appearing in sub-subsection (i) with the words “753,490 Units of Account”.

Amendment of Section 6 of Part II of the Second Schedule of Cap 296

11. Section 6 of Part II of the Second Schedule of the principal Act is amended by

- (a) renumbering that section as Section 6(3)
- (b) inserting immediately before subsection (3) the following new subsections
 - “(1) Claims for death or personal injuries within the meaning of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 or any amendment of or Protocol to the Convention, which arise from occurrences which take place after the coming into force of that Convention as part of the Laws of Barbados shall be excluded from the Convention.
 - (2) Notwithstanding subsection (1), Article 7 shall apply if the limits of liability in the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 or any amendment of or Protocol to the Convention for death or personal injuries are lower than those for loss of life or personal injuries in the Convention.”

Commencement^{xvii}

12. This Act shall come into force on the first day of January 2018.

Read three times and passed the House of Assembly this
day of _____, 2018.^{xviii}

Speaker^{xix}

Read three times and passed the Senate this _____ day of
, 2018.^{xx}

President^{xxi}

SHIPPING (AMENDMENT) BILL, 2017

EXPLANATORY MEMORANDUM^{xxii}

The Shipping (Amendment) Bill, 2017 would improve the legal regime for limitation of liability for maritime claims in Barbados by:

- (a) Giving domestic force of law to the LLMC Convention as amended by the 1996 Protocol;
- (b) Raising the general limits of liability to match those adopted by the Legal Committee of the International Maritime Organisation by Resolution LEG 5(99);
- (c) Raising the limits of liability in respect of vessels of a tonnage less than 300 tons;
- (d) Introducing an effective overspill provision so that claims in respect of death or personal injury are fully satisfied insofar as possible;
- (e) Applying the relevant limits of liability in the 2002 Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 to passenger claims for death or personal injury, provided they are higher than those of the 1996 Protocol;
- (f) Giving claims in respect of damage to harbour works, basins, waterways and aids to navigation priority over claims other than personal claims;
- (g) Excluding claims for special compensation under Art 14 of the International Convention on Salvage 1989, as amended;
- (h) Excluding claims for wreck and cargo removal in the absence of a functioning National Supplementary Fund; and
- (i) Excluding claims for damage within the meaning of International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 from the moment Barbados becomes bound by that Convention and it enters into force.

- Clause 1:** Clause 1 provides for the short title of the Act
- Clause 2:** Clause 2 gives force of law to the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the 1996 Protocol thereto; thereby simultaneously denouncing the Convention on Limitation of Liability for Maritime Claims, 1976
- Clause 3:** Clause 3 gives primacy to the Convention on Limitation of Liability for Maritime Claims, 1976 as amended by the 1996 Protocol thereto over domestic law where there is a conflict and allows for a vessel registered under the Barbadian flag to have its registration suspended if it is found to have contravened any of its provisions or any regulations enacted therefrom.
- Clause 4:** Clause 4 amends the title of the Convention in the Second Schedule to reflect the incorporation of the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims into its provisions.
- Clause 5:** Clause 5 expressly clarifies that claims for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, are excluded from the rules concerning limitation of liability. It also retains the exclusion of claims for contribution in general average and salvage.
- Clause 6:** Clause 6 amends the general limits of liability to match those adopted by the Legal Committee of the International Maritime Organisation by resolution LEG 5(99).
- Clause 7:** Clause 7 corrects a typographical error in Art 6(2) of the Convention on Limitation of Liability for Maritime Claims and facilitates the correct use of the Overspill provision in a domestic context. Passenger claims will be satisfied in full insofar as possible by allowing the unpaid balance from the passenger claims to compete rateably with other claims, if there are any. Where there are no other claims, this overspill provision will allow passenger claims to be satisfied using the full amount apportioned for other claims.
- Clause 8:** Clause 8 excludes the application of paragraphs 1(d) and (e) of Article 2

of the Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol thereto where provision has not been made by an order of the Minister for the setting up and management of a fund to be used for the making payments to Harbour or Conservancy Authorities to compensate them in respect of claims for removal of wrecks and cargo.

Clause 9: Clause 9 excludes from the scope of application of the Convention, claims for damage within the meaning of International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010 from the moment Barbados becomes bound by that Convention and it enters into force.

Clause 10: Clause 10 adjusts the general limits of liability for ships with a tonnage of less than 300 tons in a manner which is proportional to the general limits of liability for larger ships under the convention. The limit in paragraph (a) has been multiplied by 9.096 while the limit in paragraph (b) has increased by 9.0419.

Clause 11: Clause 11 excludes from the scope of application of the Convention, passenger claims for death or personal injury within the meaning of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 2002 or any amendment or protocol thereto from the moment Barbados is bound by that Convention or any amendment or protocol thereto provided that the limits of liability for passenger claims in respect of death or personal injury are higher than those of the Convention.

Clause 12: Clause 12 provides for a reasonable transition times so that the relevant stakeholders may be notified of the changes in the law before they come into force.

ⁱ This is a drafting convention in Barbados whereby it is clarified that this prefix to the Bill is merely a brief overview of the objects and reasons for said Bill and that further explanation can be found in the Explanatory Memorandum which is placed at the end of the Bill. See generally VCRAC Crabbe, *Legislative Drafting Vol I* (1st edn, Routledge-Cavendish 1994), p 119 for discussion.

ⁱⁱ ‘Objects and Reasons’ is a prefix to the Bill which, in Barbados, succinctly addresses the objects and reasons for the Bill. Ibid.

ⁱⁱⁱ This is the overall object and reason for the Bill. The minutiae of its purpose are spelt out in the explanatory memorandum such as activating optional clauses and raising limits of liability in respect of passenger claims in accordance with the 2002 Athens Protocol.

^{iv} The ‘Arrangement of Sections’ is a collection of marginal notes of the Bill. See Crabbe. p 120.

^v This is a drafting convention in Barbados. No punctuation is necessary here. It acts to introduce the ‘Long Title’ of the Bill.

^{vi} This is the ‘Long Title’ of the Bill, clearly and precisely indicating what the Bill is about. See Crabbe. p 120.

^{vii} This is the ‘Enacting Formula’ for Barbados in respect of Bills. Ibid.

^{viii} Ibid.

^{ix} This Short Title refers to the proposed calendar year of enactment and includes the phrase ‘(Amendment)’ to indicate that it amends the Shipping Act 1994. Ibid.

^x An Act of Parliament is divided into sections. Ibid. p 122.

^{xi} Sections are further divided into subsections. Ibid. p 122.

^{xii} Inverted commas are used for textual amendments. Ibid. p 93.

^{xiii} Where a section or a subsection is unduly long, it is broken up into paragraphs. Ibid. p124.

^{xiv} Part I is the text of the Convention and thus the subdivisions are referred to as paragraphs and subparagraphs.

^{xv} Reference here is made to deleting and inserting as opposed to substituting because in paragraph (ii) there is only a deletion.

^{xvi} This clearly specifies where to look to find the cited phrase for the purpose of precision.

^{xvii} The Commencement provision is usually the last provision. Crabbe. p 138.

^{xviii} The Act must be read three times and passed by Parliament. See appendix B of Crabbe generally.

^{xix} The Act needs to be signed by the speaker of Parliament. Ibid.

^{xx} The Act must be read three times and passed by the Senate. Ibid.

^{xxi} The Act needs to be signed by the president of the Senate. Ibid.

^{xxii} In Barbados an Explanatory Memorandum is placed at the end of the Bill. Ibid. p 120.

ANNEX I

RELEVANT PROVISIONS OF THE SHIPPING ACT 1994

PART VI
LIMITATION AND DIVISION OF LIABILITY

Limitation of Liability

Scheduled Convention to have effect subject to provisions of Part II of the First Schedule

301.(1) The provisions of the Convention Relating to the Carriage of Passengers and their Luggage by Sea 1974 and the 1976 Protocol relating thereto as set out in Part I of the *First Schedule* (hereinafter in this section and in the *First Schedule* referred to as “the Convention”) shall have effect subject to the provisions of Part II of that Schedule.

(2) The provisions of Part II of that Schedule shall have effect in connection with the Convention and subsection (1) shall have effect subject to the provisions of that Part.

Limitation of liability

302.(1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 as set out in Part I of the *Second Schedule* (hereinafter in this section and in Part II of that Schedule referred to as “the Convention”) shall have the force of law in Barbados.

(2) The provision of Part II of that Schedule shall have effect in connection with the Convention and subsection (1) shall have effect subject to the provisions of that Part.

Exclusion of liability

303.(1) Subject to subsection (3) the owner of a Barbadian ship shall not be liable for any loss or damage in the following cases, namely

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or

- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.
- (2) Subject to subsection (3) where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude the liability of
- (a) the master, member of the crew or servant; and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph the person whose servant he is.
- (3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 4 of the Convention in Part I of the *First Schedule*.
- (4) In this section “owner”, in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

Provisions supplementary to sections 302 and 303

304. Nothing in sections 302 and 303 or in the *Second Schedule* shall apply in relation to any liability arising out of an occurrence which took place before the coming into force of those sections.

Extension of limitation of liability

305.(1) The provisions having the force of law under section 302 of this Act shall not apply to any liability in respect of loss of life or personal injury caused to, or loss of or damage to any property of, a person who is on board the ship in

question or employed in connection with that ship or with the salvage operations in question if

- (a) he is so on board or employed under a contract of service governed by the laws of Barbados; and
- (b) the liability arises from an occurrence which took place after the coming into force of this subsection.

(2) In this section “ship” and “salvage operations” have the same meaning as in the provisions referred to in section 302.

Limitation of liability of Port Authority and owners of docks

306.(1) Where, without the actual fault or privity of the owners of any dock or canal or any harbour or port authority, any loss or damage is caused to any vessel or vessels or to any goods, merchandise or other things whatsoever on board any vessel or vessels, such owners shall not be liable to damage beyond any aggregate amount equivalent to 66.67 units of account for each ton of the tonnage of the largest Barbadian ship that, at the time of such loss or damage occurring, is or within a period of five years previous thereto has been within the area over which such dock or canal owner or port or harbour authority performs any duty or exercises any power.

(2) For the purpose of this section, a ship shall not be deemed to have been within the area over which a port or harbour authority performs any duty or exercises any power by reason only that it has been built or fitted out within such area or that it has taken shelter within or passed through such area on a voyage between two places both situated outside that area or that it has loaded or unloaded mail or passengers within that area.

(3) The limitation of liability under this section shall relate to the whole of any loss and damage which may arise upon any one distinct occasion, although such loss or damage may be sustained by more than one person, and shall apply whether the liability arises at common law or under any written law, and notwithstanding anything contained in any written law.

PART VII
CONVENTIONS AND LEGAL PROCEEDINGS
Conventions

Application of Conventions

312.(1) Sections 313 and 314 apply in respect of the following international conventions and international regulations, namely

INTERNATIONAL CONVENTIONS

- (a) The International Convention for the Safety of Life at Sea, 1960, as amended.
- (b) The International Convention on Load Lines, 1966.
- (c) The Constitution and Convention of the International Telecommunications Union (NICE) 1989, and the Radio Regulations, 1990.
- (d) The Convention on Facilitation of International Maritime Traffic, 1965.
- (e) The International Convention on Tonnage Measurement of Ships, 1969.
- (f) The International Health Regulations (Geneva), 1969.
- (g) The International Regulations for Preventing Collisions at Sea, 1972.
- (h) The International Convention for Safe Containers, 1972.
- (i) The International Convention for the Safety of Life at Sea, 1974, and the Protocol of 1978 relating thereto.
- (j) The International Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 1976 relating thereto.

- (k) The International Convention on Limitation of Liability for Maritime Claims, 1976.
 - (l) The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.
 - (m) The International Convention on Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 and the Protocol of 1988.
 - (n) The Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention 147).
 - (o) Such other international conventions or regulations as the Minister may prescribe.
- (2) If the Minister by notice in the *Official Gazette* declares that a convention or regulation enumerated or described in subsection (1) is not applicable to Barbados, this section and section 311 thereupon cease to apply thereto.
- (3) The Director and Principal Registrar shall maintain in their offices a copy of
- (a) all international conventions and international regulations that have application in Barbados; and
 - (b) all regulations or directions made pursuant to this Act;

and the copies must be made available for inspection or, upon payment of a prescribed fee, for the taking of copies thereof by members of the public, seafarers or persons being concerned with or having an interest in vessels or merchant shipping.

Convention prevails

313. Where a provision of an international convention or international regulation and a provision of this Act or any regulation in force by virtue of this Act conflict in any manner, the provision of the international convention or international regulation prevails unless the Minister otherwise provides by such regulations as he may make in that behalf.

SECOND SCHEDULE*(Section 302)**CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS
1976*

PART I

TEXT OF CONVENTION

*CHAPTER I**The Right of Limitation**ARTICLE 1**Persons entitled to limit liability*

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.
2. The term “shipowner” shall mean the owner, charterer manager or operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1 *(d)*, *(e)* and *(f)*.
4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.
6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention to the same extent as the assured himself.
7. The act of invoking limitation of liability shall not constitute an admission of liability.

ARTICLE 2

Claims subject to limitation

1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability
 - (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
 - (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
 - (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
 - (d) claims in respect 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;
 - (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

2. Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1 (d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to

- (a) claims for salvage or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage dated 29th November, 1969 or of any amendment thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect to such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

*ARTICLE 4**Conduct barring limitation*

A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.

*ARTICLE 5**Counterclaims*

Where a person entitled to limitation of liability under the rules of this Convention, has a claim against the claimant arising out of the same occurrence, their respective claims shall be set out against each other and the provisions of this Convention shall only apply to the balance if any.

*CHAPTER II**Limits of Liability**ARTICLE 6**The General Limits*

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows
 - (a) in respect of claims for loss of life or personal injury
 - (i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons.

- (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i)

for each ton from 501 to 3,000 tons, 500 Units of Account; for each ton from 3,001 to 30,000 tons, 333 Units of Account; for each ton from 30,001 to 70,000 tons, 250 Units of Account; and for each ton in excess of 70,000 tons, 167 Units of Account;

- (b) in respect of any other claims

- (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,

- (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned for (i)

for each ton from 501 to 30,000 tons, 167 Units of Account, for each ton from 30,001 to 70,000 tons, 125 Units of Account; and for each ton in excess of 70,000 tons, 83 Units of Account.

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(b).

3. The limits of liability for any salvor not operating from any ship or for any salvor operating solely on the ship to, or in respect of which he is rendering salvage services, shall be calculated according to a tonnage of 1,500 tons.

ARTICLE 7

The Limit for Passenger Claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 46,666 Units of Account multiplied by the number

of passengers which the ship is authorised to carry according to the ship's certificate but not exceeding 25 million Units of Account.

2. For the purpose of this Article "claims for loss of life or personal injury to passengers of a ship" shall mean any such claims brought by or on behalf of any person carried in that ship

- (a) under a contract of passenger carriage; or
- (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods.

ARTICLE 8

Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment.

ARTICLE 9

Aggregation of Claims

1. The limits of liability determined in accordance with Article 6 shall apply to the aggregate of all claims which arise on any distinct occasion

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or

- (b) against the shipowner of a ship rendering services from that ship and the salvor or salvors operating from such ship and any person for whose act, neglect or default he or they are responsible; or
- (c) against the salvor or salvors who are not operating from a ship or who are operating solely on the ship, to or in respect of which, the salvage services are rendered and any person for whose act, neglect or default he or they are responsible.

2. The limits of liability determined in accordance with Article 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are responsible.

ARTICLE 10

Limitation of Liability Without Constitution of a Limitation Fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted.
2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.
3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

*CHAPTER III**The Limitation Fund**ARTICLE 11**Constitution of Fund*

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation liability can be invoked.
2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.
3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

*ARTICLE 12**Distribution of the Fund*

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.
2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.
3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law,
4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

*ARTICLE 13**Bar to Other Actions*

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from

exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted

- (a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury; or
- (c) at the port of discharge in respect of damage to cargo; or
- (d) in the State where the arrest is made.

3. The rules of paragraphs 1 and 2 shall apply only if the claimant may bring a claim against the limitation fund before the Court administering that fund and the fund is actually available and freely transferable in respect of that claim.

ARTICLE 14

Governing Law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, all rules of procedure in connection therewith, shall be governed by the law of the State Party in which the fund is constituted.

*CHAPTER IV**Scope of Application**ARTICLE 15*

This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered Article is a reference to the Article of the Convention which is so numbered.

Right to Limit Liability

2. This right to limit liability under the Convention shall apply in relation to any ship whether seagoing or not, and the definition of “shipowner” in paragraph 2 of Article 1 shall be construed accordingly.

3.(1) Paragraph 1(d) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d), of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

(2) Any order under sub-paragraph (1) above may contain such incidental and supplemental provisions as appear to the Minister to be necessary or expedient.

4.(1) The claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 20 of the Barbados *Shipping (Oil Pollution) Act, Cap. 296A*.

(2) The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of either sections 10 and 11 of the Nuclear Installations Act (U.K.) 1965 as extended to Barbados as modified and adapted in the Schedule thereto.

The General Limits

5.(1) In the application of Article 6 to a ship with a tonnage less than 300 tons that Article shall have effect as if

(a) paragraph (a)(i) referred to 166.667 Units of Account; and

(b) paragraph (b)(i) referred to 83,333 Units of Account.

(2) For the purposes of Article 6 and this paragraph a ship's tonnage shall be its gross tonnage calculated in such manner as may be prescribed by an order made by the Minister.

(3) Any order under this paragraph shall, so far as appears to the Minister to be practicable, give effect to the regulations in Annex 1 of the International Convention on Tonnage Measurement of Ships, 1969.

Limits for Passenger Claims

6. In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the *Accidents Compensation (Reform) Act, Cap. 193A* of the Laws of Barbados.

Units of Account

7.(1) For the purpose of converting the amounts mentioned in Articles 6 and 7 from special drawing rights into dollars one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being equivalent of one special drawing right for

- (a) the relevant date under paragraph 1 of Article 8; or
- (b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) A certificate given by or on behalf of the Central Bank stating

- (a) that a particular sum in dollars has been fixed as mentioned in the preceding sub-paragraph for a particular date; or
- (b) that no sum has been so fixed for that date and that a particular sum in dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

shall be conclusive evidence of those matters for the purposes of those Articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

Constitution of fund

8.(1) The Minister may, from time to time, with the concurrence of the Central Bank, by order prescribe the rate of interest to be applied for the purposes of paragraph 1 of Article II.

(2) Where a fund is constituted with the court in accordance with Article 11 for the payment of claims arising out of any occurrence, the Court may stay any proceedings relating to any claims arising out of that occurrence which are pending against the person by whom the fund has been constituted.

Distribution of Fund

9. No lien or other right in respect of any ship or property shall affect the proportions in which under Article 12 the fund is distributed among several claimants.

Bar to Other Actions

10. Where the release of a ship or other property is ordered under paragraph 2 of Article 13 the person on whose application it is ordered to be released shall be deemed to have submitted to the jurisdiction of the court to adjudicate on the claim for which the ship or property was arrested or attached.

Meaning of “Court”

11. References in the Convention and the preceding provisions of this Part of this Schedule to the court are, in relation to Barbados, references to the Supreme Court.

Meaning of “Ship”

12. References in the Convention and in the preceding provisions of this Part of this Schedule to a ship include references to any structure (whether completed or in course of completion) launched and intended for use in navigation as a ship or part of a ship.

Meaning of “State Party”

13. An Order made for the purposes of this paragraph and declaring that any State specified in the Order is a party to the Convention shall, subject to provisions of any subsequent Order made for those purposes, be conclusive evidence that the State is a party to the Convention.

ANNEX II

AMENDED PROVISIONS OF
THE SHIPPING ACT 1994

302. (1) The provisions of the Convention on Limitation of Liability for Maritime Claims 1976 **as amended by the 1996 Protocol thereto** as set out in Part I of the Second Schedule (hereinafter in this section and in Part II of that Schedule referred to as “the Convention”) shall have the force of law in Barbados.

312. (1) Sections 313 and 314 apply in respect of the following international conventions and international regulations, namely

INTERNATIONAL CONVENTIONS

(k) The International Convention on Limitation of Liability for Maritime Claims, 1976 **as amended by the 1996 Protocol thereto**.

SECOND SCHEDULE

(Section 302)

CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 **AS AMENDED BY THE 1996 PROTOCOL THERETO**

PART I

TEXT OF CONVENTION

ARTICLE 3

Claims excepted from limitation

The rules of this Convention shall not apply to

- (a) ~~claims for salvage or contribution in general average~~ **claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;**

Article 6

- (a) in respect of claims for loss of life or personal injury,
- i. ~~333,000 Units of Account for a ship with a tonnage not exceeding 500 tons~~ **3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,**
 - ii. for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
for each ton from 501 to 3,000 tons, ~~500 Unit of Account;~~
for each ton 3,001 to 30,000 tons, ~~333 Units of Account~~ **1,208 Units of Account;**
for each ton 30,001 to 70,000 tons, ~~250 Units of Account~~ **906 Units of Account;**
and
for each ton in excess of 70,000 tons, ~~167 Units of Account~~ **604 Units of Account;**
- (b) in respect of any other claims,
- i. ~~167,000 Units of Account for a ship with a tonnage not exceeding 500 tons~~ **1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,**
 - ii. for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in (i):
for each ton from 501 to 30,000 tons, ~~167 Units of Account~~ **for each ton from 2,001 to 30,000 tons, 604 Units of Account;**
for each ton from 30,001 to 70,000 tons, ~~125 Units of Account~~ **453 Units of Account;** and
for each ton in excess of 70,000 tons, ~~83 Units of Account~~ **302 Units of Account.**

2. Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

~~3. (1) Paragraph 1(d) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraph 1(d),~~ **Paragraphs 1 (d) and (e) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said paragraphs 1(d) and (e) of amounts recoverable by them in claims of the kind there mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.**

(3) Without prejudice to the right of claims for loss of life or personal injury according to Article 6 paragraph 2, claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over claims under paragraph 1(b).

Part II

4. (1) Claims for damage within the meaning of the International Convention on Liability for Damage in connection with the carriage of Hazardous and Noxious Substances by Sea 1996, or any amendment of or Protocol to the Convention, which arise from occurrences which take place after the coming into force of that Convention as part of the Laws of Barbados shall be excluded from the Convention.

~~(1)(2)~~ The claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 20 of the Barbados *Shipping (Oil Pollution) Act, Cap. 296A*.

~~(2)(3)~~ The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of either sections 10 and 11 of the Nuclear Installations Act (U.K.) 1965 as extended to Barbados as modified and adapted in the Schedule thereto.

5. (1) In the application of Article 6 to a ship with a tonnage less than 300 tons that Article shall have effect as if

(a) paragraph (a)(i) referred to ~~166,667 Units of Account~~ **1,601,605 Units of Account**; and

(b) paragraph (b)(i) referred to ~~83,333 Units of Account~~ **754,490 Units of Account**.

6. (1) Claims for death or personal injuries within the meaning of the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 or any amendment of or Protocol to the Convention, which arise from occurrences which take place after the coming into force of that Convention as part of the Laws of Barbados shall be excluded from the Convention.

(2) Notwithstanding subsection (1), Article 7 shall apply if the limits of liability in the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 or any amendment of or Protocol to the Convention for death or personal injuries are lower than those for loss of life or personal injuries in the Convention.

(3) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under the *Accidents Compensation (Reform) Act*, Cap. 193A of the Laws of Barbados.