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LAW ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 2019

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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Submitted By: Maja Radunovic (Montenegro)

Supervisor: Prof. Norman A. Martínez Gutiérrez

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EXPLANATORY NOTE

1. Introduction to Limitation of Liability for Maritime Claims

Limitation of liability is a long-standing concept in shipping law. That is because it allows shipowners and their representatives to limit their liability for damages which occur in maritime adventures in respect of claims that can be brought against them. By exercising the right to limit their liability up to maximum sum, regardless of actual amount of damages, not only shipowners preserve their financial existence, but also claimants are granted certain payments from liability funds established by persons liable.

In absence of the right of the shipowner to limit liability, the overall amount of damages from the loss or injury to persons or goods caused by or on the board of the ship could often exceed value of the ship and other assets of the shipowner. Furthermore, unlimited liability could have led to the bankruptcy of even those merchants whose assets extended well beyond the carrying vessel.¹

Last century saw a tendency for determining a global limitation of liability system. Due to construction of huge ships, massive cargoes and variety of goods being shipped, the responsibility of the shipowner was spread not just in respect to cargo and passengers and their goods, but also in terms of pollution, wrecks etc. The first attempt for creating uniform rules for limitation of liability was done by Comité Maritime International (CMI), which came up with The 1924 Convention.² However, it was considered quiet unsuccessful, having in mind small number of its ratifications or accessions.³ Even though its successor, the 1957 Convention⁴ was more successful,⁵ the international community soon recognized the need for its revision and further work on the international plan of limitation of liability.

¹ Norman A Martínez Gutiérrez, *Limitation of Liability in International Maritime Conventions: The relationship between global limitation conventions and particular liability regimes* (London: Routledge 2011) 1.

² International Convention for the Unification of Certain Rules relating to the Limitation of Liability of Owners of Sea-going Vessels and Protocol of Signature, August 1924, entered into force June 1931.

³ It was ratified or acceded only by fifteen states, from which seven later denounced the Convention.

⁴ The International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships, adopted October 10, 1957, entered into force 31 May 1968.

⁵ It gathered 50 parties which included main shipping nations (but without United States, Greece and Russia). That Convention still remains in force for a few States.

2. Current International Framework for Global Limitation of Liability

2.1 The 1976 LLMC Convention⁶

The significant inflation noted in the middle of 20th century also had its effect on global systems of limitation of liability and required new solutions. This is because, due to the decreasing of money values, limitation amounts appeared practically low. Furthermore, the market had become dominated by bigger ships and new categories of the ship operators appeared (e.g. salvors), who were supposed to take their place in limitation of liability regimes.

Therefore, joint work of Inter-Governmental Consultative Organization – IMCO (later known as International Maritime Organization - IMO) and CMI on revising the 1957 Convention led to the adoption of completely new convention – the 1976 LLMC Convention. The text of the Convention indeed represents a compromise: much higher limits of liability were established, in exchange to virtually unbreakable right to limit liability.⁷ According to the Article 4, 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.

2.2. The 1996 LLMC Protocol⁸

The 1996 LLMC Protocol was adopted to increase the 1976 LLMC Convention's limits, but also to facilitate the up-dating of such limits. As stated in the document LEG 69/4/11 introduced by United Kingdom, limits of compensation established in the 1976 LLMC were in need of urgent review, bearing in mind that seventeen years of inflation since the Convention was adopted had turned these limits to a small fraction of their 1976 value, which resulted the position of the victims had been severely undermined.⁹ The draft given by the UK also included a simplified revision and amendment procedure: amendments to the limits could be adopted by the Legal

⁶ The Convention on Limitation of Liability for Maritime Claims, 1976, entered into force 1 December 1986.

⁷ Patrick Griggs, Richard Williams and Jeremy Farr: *Limitation of Liability for Maritime Claims*, 4th Edition (Lloyd's Shipping Law Library, 2005) 3.

⁸ Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, adopted 2 May 1996, entered into force 13 May 2004.

⁹ Francesco Berlingieri, *The Travaux Préparatoires of the LLMC Convention 1976 and of the Protocol of 1996*, (CMI, 2000) 494.

Committee and accepted in accordance with the system of tacit acceptance of amendments. At the moment, the Protocol is the most widely accepted treaty on global limitation of liability.¹⁰

2.3 The 2012 Amendments to the 1996 LLMC Protocol¹¹

The latest increases of limitation of liability were proposed by Australia, as a result of the *Pacific Adventurer* incident off Queensland, Australia, in 2009.¹² This incident showed that limits of liability prescribed by the 1996 LLMC Protocol fell significantly short of the cost of responding to this incident.¹³ In accordance to the Article 8 of the Protocol, the IMO Legal Committee accepted the proposal and increased the 1996 LLMC Protocol's limits of liability through Resolution LEG.5(99) adopted on 19 April 2012 through the tacit acceptance procedure.

3. The 1996 LLMC Convention

Even though the 1976 LLMC Convention and its 1996 Protocol are two separate legal instruments, they have joint objective - to enable shipowners and others, including insurers, to limit their liability in a way which would allow legitimate claims to be satisfied, having regard to the availability of effective insurance cover or other financial guarantees.¹⁴ Having in mind that the Protocol is amending in its very nature, in order to understand the sense and purpose of its provisions, it should be read and interpreted together with the 1976 LLMC Convention.¹⁵ Furthermore, since limits of liability stated in Protocol have already been subjected to tacit amendments, it is necessary for them to be included in the further elaboration. Accordingly, for the purposes of the following discussion, the consolidated text of the 1976 LLMC Convention, the 1996 LLMC Protocol and Resolution LEG.5(99) will be referred to as *the 1996 LLMC Convention (the Convention)*. Having in mind that the Convention is object of implementation herein, the following sections will provide an overview of its most important provisions.

¹⁰With the number of 57 parties which represent 62.68% of the world fleet, online available at: <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/StatusOfTreaties.pdf>> accessed 11 April 2019.

¹¹ Amendments to the Protocol 1996 to Amend the Convention on Limitation of Liability for Maritime Claims, announced 19 April 2012, entered into force 8 June 2015.

¹² Norman A Martínez Gutiérrez, 'New Global Limits of Liability for Maritime Claims' (Martinus Nijhoff Publishers, 2013) 345.

¹³ Ibid.

¹⁴ W. A. O'Neil, "Foreword" in Francesco Berlingieri (n9) 1.

¹⁵ Article 9 of the 1996 Protocol.

3.1. Persons entitled to limit liability

According to Article 1 of the 1996 LLMC Convention, the persons entitled to limit liability are:

- shipowners (which term can be interpreted as including the owner, charterer, manager and operator of a seagoing ship),
- salvors (which include any person rendering services in direct connection with salvage operations, also including operations referred to in Article 2, paragraph 1(d),(e),(f)),
- any person for whose act, neglect or default the shipowner or salvor is responsible, and
- insurers of liability (to the extent as the assured himself).

3.2 Claims subject to and excepted from limitation

Article 2(1) of the Convention, specifies that the following claims can be subjected to limitation:

- (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 connexion 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 connexion 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.

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.¹⁶

Once it is determined that the claims fall within those listed above, the right to limit would be available, subject to Articles 3 and 4, regardless of the basis of liability.¹⁷

Article 3 of the Convention states which claims are excepted from limitation. Since the subparagraph (a) of the Article 3 of the Convention has been replaced by Article 2 of the 1996 Protocol, Article 3 now enumerates the excepted claims as follows:

- (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;¹⁸
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;¹⁹
- (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 of 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 6.²⁰

¹⁶ Article 2, Paragraph 2 of the Convention.

¹⁷ Norman A Martínez Gutiérrez, 'Limitation of Liability for Maritime Claims' in David Joseph Attard et al.(Eds.): *The IMLI Manual on International Maritime Law - Shipping Law, Vol. II* (Oxford, 2016) 551, 552.

¹⁸ The Salvage Convention is ratified by Montenegro and implemented in its legislation by the Law on Safety of Maritime Navigation.

¹⁹ Implemented in the Law on the Protection of the Sea from Pollution from Vessels.

²⁰ To date, there is no such law in Montenegro.

3.3 Conduct barring limitation

Article 4 of the Convention provides a case when 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.

It can be concluded from the wording of this provision that the burden of invoking and proving the quoted provision lies upon the person who is challenging the right to limit liability. It has also been confirmed in case law.²¹

3.4 Counterclaims

Where a person entitled to limitation of liability under the rules of the Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set off against each other and the provisions of the Convention shall only apply to the balance, if any.²²

3.5. The limits of liability

The limits of liability primarily stated in the Article 6, paragraph 1 of the 1976 LLMC Convention, changed by Article 3 of the 1996 Protocol, were subsequently amended by IMO Resolution LEG.5(99) adopted on 19 April 2012. Therefore, the consolidated provision reads:

“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) 3,02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

²¹ *The Capitan San Luis* (1994), 1 All ER 1016, 1023.

²² Article 5 of the Convention.

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

for each ton from 2,001 to 30,000 tons, 1,208 Units of Account;

for each ton from 30,001 to 70,000 tons, 906 Units of Account; and

for each ton in excess of 70,000 tons, 604 Units of Account,

(b) in respect of any other claims,

(i) 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 2,001 to 30,000 tons, 604 Units of Account;

for each ton from 30,001 to 70,000 tons, 453 Units of Account; and

for each ton in excess of 70,000 tons, 302 Units of Account.

Other paragraphs (2, 3, 4 and 5) of the Article 6 were not amended. Therefore, 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(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b). 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.

Also, for the purpose of this Convention the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969,²³ which Montenegro is a Party to and which is implemented in its national laws in Law on Safety of Maritime Navigation and subsidiary legislation enacted by the competent maritime authority.

²³ Article 6.

3.6 The limits for passengers claims

Article 7 of the 1996 LLMC Convention establishes a global limit of liability specifically designated to cover claims arising on any distinct occasion for loss of life or personal injury to passengers, which is completely separate and distinct from the limits established in Article 6.²⁴ It can be noticed that the limit of liability of the shipowner is being calculated by multiplying an amount of 175,000 Units of Account by the number of passengers which the ship is authorized to carry according to the ship's certificate.²⁵ However, according to the Article 15(3)(bis), notwithstanding the limit of liability prescribed in paragraph 1 of Article 7, a State Party may regulate by specific provisions of 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 paragraph 1 of Article 7.

3.7 Unit of Account

Article 8 of the 1996 LLMC Convention provides that units mentioned in previous articles are the Special Drawing Right as defined by the International Monetary Fund. Also, the amounts mentioned shall be converted into 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.

Paragraph 1 of the Article provides the method of evaluation of a national currency in terms of Special Drawing Right mentioned above, for States which are members of the IMF, and paragraph 2 stipulates special method of fixing the limits for States which are not members of IMF. Having in mind that Montenegro is a member of IMF, the provisions of paragraph 1 will be applicable.

²⁴ Martínez Gutiérrez (n17), 571.

²⁵ Article 7(1).

3.8 Aggregation of Claims

The very purpose of Article 9 of the Convention is to ensure that the limits of liability calculated in accordance with Articles 6 and 7 shall apply to the aggregate ability of all the persons who have right to limit their liability, for claims which arise on any distinct occasion.²⁶ Therefore, it is important to determine in practice, as a matter of fact, what is in every single case considered as a distinct occasion.

3.9 The Limitation Fund

It is noteworthy that the Convention does not require constitution of a fund as a condition for exercising right to limit liability. According to the Article 10 of the Convention, limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

The other specific rules relating to the constitution and distribution of limitation funds are elaborated in detail in Articles 11-15 of the Convention.

Any fund constituted shall be distributed among the claimants in proportion to their established claims against the fund.²⁷ Furthermore, the Convention provides right to subrogation of rights, in case when person liable settles a claim before distribution of the fund, in amount the person would have enjoyed under the provisions. When 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 claim against any other assets of a person by or on behalf of whom the fund has been constituted.²⁸

²⁶ Martínez Gutiérrez (n.17) 572.

²⁷ Article 12(1).

²⁸ Article 13.

According to the Article 14, States are given the right to establish rules relating to the constitution and distribution of a limitation fund and all rules of procedure in connection, under their national laws.

3.10 Scope of Application

According to Article 15 of the Convention, its application takes place 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.

But, nevertheless, each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party. Furthermore, a State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to vessels which are: (a) according to the law of that State, ships intended for navigation on inland waterways or (b) ships of less than 300 tons.

Also, the Courts of a State party will not apply the Convention to ships constructed for, or adapted to, and engaged in, drilling: (a) when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or (b) when that State has become party to an international convention regulating the system of liability in respect of such ships²⁹.

Excluded from the scope of the Convention are: (a) air-cushion vehicles and (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the seabed or the subsoil thereof.³⁰

²⁹ Article 15(4).

³⁰ Article 15(5).

3.11 Reservations

It should be noted that a State Party may, according to the Article 18 of the Convention, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right to exclude the application of the Convention to claims set out under Article 2 (1)(d) and (e). States also may exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.³¹

4. The need for Montenegro to accede to the 1996 LLMC Protocol

The accession to the 1996 LLMC Protocol and incorporating the provisions of what is referred here as *the 1996 LLMC Convention* into Montenegrin legislation is of great important for many reasons.

First of all, to date, Montenegro is not a Party to any of the international conventions on limitation of liability. That is, in the current Law on Maritime and Inland Navigation, there are provisions on limitation of liability of the shipowner which are inherited from the time Montenegro was part of Former Yugoslavia. According to Articles 419-421 of the Law in force, limits of liability are amounts given in US dollars, which are to be converted to dinar, where the reference is given to the tonnage.³² Limits are prescribed separately for personal injuries and other claims for damages, generally shown as \$2000 per ton (for personal injuries claims) and \$650 per ton (for other types of claims). However, according to the Law, limits of liability cannot fall under the amount corresponding to the 100 tons-ship. In the same provisions, the Law establishes different limits for ships engaged in inland waters, subjecting them to the same regime of the limitation of liability. Furthermore, the Law does not clearly specify types of claims included in limitation, nor the persons entitled to limit their liability.

The said provisions are outdated and inapplicable in these times, since they provide old limits of liability and they are not following changes in currency. The fact that regime of limitation of liability exist under national law, but completely incompatible with international treaties in place,

³¹ Article 18(1)(b).

³² The *dinar* was a currency of former [Socialist Federal Republic of Yugoslavia](#) and the former [Federal Republic of Yugoslavia](#), used in Montenegro between 1918 and 1999.

causes more troubles than if the limitation of liability concept has not existed at all. Therefore, judges find themselves in a legal vacuum, at the end of the day hesitant which principles to apply when it comes to resolving disputes which entail limitation of liability for maritime claims.

Furthermore, the need to enact a new law on the subject matter also can be considered as a part of national policy which is highly concerned with the promotion of shipping, and specially in yacht tourism. In order to attract ships to its registry and become a “flag of confidence”, the State needs to create legal mechanism on limitation of liability of shipowners. Firstly by becoming a contracting Party to 1996 LLMC Protocol and then by effectively implementing its provisions.

It is important to mention that Montenegro is a Party to the Bunkers Convention, wherein the contracting parties are encouraged to become parties to the LLMC Convention, as amended.³³

Finally, since December 2010, Montenegro has become a candidate for future membership of the European Union. That means that its legislation needs to comply with directives of the Union, such as Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims. The main aim of the Directive is to improve the quality of merchant shipping by making all economic operators act more responsibly.³⁴

Moreover, the Preamble of the Directive clearly states: “On 9 October 2008, the Member States adopted a statement in which they unanimously recognised the importance of the application of the 1996 Protocol to the 1976 Convention on Limitation of Liability for Maritime Claims by all Member States.” Therefore, it is obvious that as part of its European integration, Montenegro is expected (and urged) to pay due attention to the question of limitation of liability for maritime claims and its compliance with current international regime.

³³ Article 6 of the Bunkers Convention states: “Nothing in this Convention shall affect the right of the shipowner and the person or persons providing insurance or other financial security to limit liability under any applicable national or international regime, such as Convention on Limitation of Liability for Maritime Claims 1976, as amended.” Furthermore, the International Conference on Liability and Compensation for Bunker Oil Pollution Damage, 2001 came up with a Resolution on limitation of liability LEG/CONF.12/18 from 27 March 2001 in order to urge all States that have not yet done so, to ratify, or accede to the Protocol of 1996 to amend the LLMC Convention, 1976 and also encourages States Parties to the LLMC, 1976 to denounce that Convention with effect from the entry into force of the Protocol of 1996 to amend the LLMC, 1976 for those States Parties, or after a limited period of time (Preamble of the Resolution).

³⁴ Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims, available at: <https://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:131:0128:0131:EN:PDF>, accessed 11 April 2019.

5. Incorporation and Implementation of 1996 LLMC Convention into Legal System of Montenegro

As aforesaid, Montenegro is not a Party to any of the international instruments concerning limitation of liability. Therefore, becoming a State Party to the 1996 LLMC Protocol (and thereby becoming bound also by 2012 Amendments) is the very starting point and inevitable step in revision and improvement of national limitation regime.

After signing the instrument of accession by the President of Montenegro, the Protocol (as amended) will be duly published in the Official Gazzete of Montenegro, from which moment it becomes integral part of the national laws and therefore binding for Montenegrin courts.³⁵ However, the most effective implementation of the Protocol will be done by enacting the “Law on Limitation of Liability for Maritime Claims, 2019” by the Montenegrin Parliament, after which the Law will be promulgated by the President of Montenegro.³⁶ The provisions of the current Law of the Inland and Maritime Navigation, articles 419-462 will be repealed. The drafters of said Law shall preserve the original language of the Convention, and at the same time will exercise some of the options given to State Parties to the Convention.

Montenegro will exercise its right to make all possible reservations to the Protocol, and therefore, in addition to claims from Article 3 of the Convention, under Montenegrin Law, the following claims will be excepted from limitation:

- a) 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;
- b) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship and
- c) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.

³⁵ As it is proclaimed by Article 9 of the Constitution of Montenegro.

³⁶ According to the Article 95 of the Constitution of Montenegro.

However, having in mind that Montenegro has not yet become party to the Carriage of Hazardous and Noxious Substances by Sea, 1996, the reservation in respect of such a claim will become applicable upon its accession. That means that such claims which arise from occurrences which take place after the coming into force of that Convention as part of Law of Montenegro shall be excluded from the limitation of liability in accordance with 1996 LLMC Convention.

Regarding general limits of liability, Montenegro will, without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, provide in its Law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1(b) of the Convention.³⁷

In exercising the right to set up specific provisions for the passenger claims given in Article 15(3)(bis) of the Convention, Montenegro will increase such limits to 250,000 Units, based on following reasons. Montenegro is a State Party to the Protocol of 2002 to the Athens Convention relating to the carriage of passengers and their luggage by sea, 1974,³⁸ which provides limits of liability for loss of life or personal injury to passengers up to 400,000 Units of Account. However, according to the Article 19 of the Athens Convention (as amended by the Protocol), its provisions are without prejudice to other systems of limitation of liability. Having in mind that the Article 4(bis) of 2002 Protocol introduces a requirement on passenger ship carriers and performing carriers engaged in international voyages, to maintain compulsory insurance which limits shall not be less than 250,000 units of account per passenger on each distinct occasion, in implementation of the 1996 LLMC Convention for such claims, the same number of units will be used. This is being done to ensure that the limit of liability under the 1996 LLMC Convention is increased to match the amount of compulsory insurance available under the 2002 Athens Protocol.

Even though the Convention does not require constitution of a fund as a precondition for exercising right to limit liability, Montenegro will, according to the Article 10(1) thereof, impose the duty upon a person entitled to limit liability to establish a limitation fund before

³⁷ According to the Article 6(3) of the Convention.

³⁸ The 2002 Protocol to the Athens Convention, Adopted 1 November 2002, Entry into force: 23 April 2014.

commencement of the procedure before the court. The fund shall be constituted in the sum corresponding to the limits prescribed by the Convention, as applicable to 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.³⁹ In respect of a manner in which the fund may be constituted, one may choose either to deposit the sum required, or to produce a guarantee issued by a bank or P&I Club, or other guarantee acceptable under the Montenegrin laws.

If the fund is not constituted at all, or it is not done in a described manner, the person will be prevented from exercising the right to limit liability.

According to the existing national maritime policy, Montenegro will opt to protect the smaller vessels (ships of less than 300 tons), and therefore, it will set up limits calculated based on one half of the limits determined by the Article 6(1) of the Convention.

Having in mind that the right to limit liability is often invoked within litigations, as well as the fact that constituting and distributing the limitation of liability fund is a type of judicial procedure, the provisions of the 1996 LLMC Convention will find its direct implementation before Commercial Court of Montenegro as a court competent for hearing the maritime claims.⁴⁰ In order for the Convention to be properly implemented, current procedural rules shall be renewed and amended in order to correspond to requirements of international law in terms of constitution and distribution of liability funds.⁴¹ Otherwise, having in mind that current regime does not provide even general rules on constitution of funds for maritime claims, no limitation of liability could not take place within the Court before enacting respective procedural provisions. Therefore, the Law on Limitation of Liability for Maritime Claims, 2019 should be applicable only upon entering into force of laws amending relevant civil procedure, which is to be considered in Final Provisions of the Law.

³⁹ Article 11(1).

⁴⁰ Article 18 of the Law on courts of Montenegro.

⁴¹ Such conventions which Montenegro is a Party to at the moment are 1992 Protocol to amend the International Convention on Civil Liability for Oil Pollution Damage 1969 and 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage.

To be deposited with the Secretary-General of IMO, London

INSTRUMENT OF ACCESSION

WHEREAS the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 (hereinafter referred to as the “Protocol”) was adopted on 2nd May 1996 by the IMO International Conference on Hazardous and Noxious Substances and Limitation of Liability LEG/CONF.10/8,

AND WHEREAS Montenegro, being a State entitled to become a party to the said Protocol by virtue of Article 16 thereof,

NOW THEREFORE the GOVERNMENT OF MONTENEGRO, having considered and approved the said Protocol, hereby formally declares its accession to the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976 [as amended], subject to following reservations and declarations.

1. In accordance with Article 18 of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, Montenegro hereby:

(a) excludes the application of Article 2, paragraphs 1(d) and (e);

(b) excludes claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto, arising from occurrences which take place after the coming into force of that Convention as part of Law of Montenegro.

2. In accordance with Article 15(2)(b) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, the limit of liability for ships not exceeding 300 gross tonnage shall be regulated by specific provisions of the national law of Montenegro,

such that, in respect of those ships, the limit of liability, calculated in accordance with paragraph 1(a) and (b), article 6 of the Convention, shall be half of the limit of liability applicable to a ship not exceeding 2,000 gross tonnage.

3. The Government of Montenegro is making use of the option in article 15(3)(bis) of the 1976 Convention on Limitation of Liability for Maritime Claims as amended by the 1996 Protocol to regulate, by specific provisions of national law, the system of limitation of liability to be applied to passengers. National law in Montenegro will provide a higher limit of liability in respect of claims arising from the loss of life or personal injury to passengers of a ship, namely 250 000 Units of Account.

IN WITNESS WHEREOF I,, PRESIDENT OF MONTENEGRO, have signed this Instrument of Accession and affixed my official seal.

DONE at Podgorica, this..... day of Two Thousand and Nineteen.

(Seal)

(Signature)

.....



**MONTENEGRO
P R E S I D E N T**

DECREE ON PROMULGATING THE LAW

Pursuant to Article 95 item 3 of the Constitution of Montenegro, I hereby issue the
**DECREE ON PROMULGATING THE LAW ON LIMITATION OF LIABILITY FOR
MARITIME CLAIMS, 2019**

I hereby promulgate the **Law on Limitation of Liability for Maritime Claims, 2019** passed by
the ___ Parliament of Montenegro at the ___ sitting of the ___ ordinary session in ___ on
___ 2019.

No: _____

Podgorica, _____ 2019

The President of Montenegro

LAW ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 2019

I GENERAL PROVISIONS

Subject

Article 1

This Law provides a regime of limitation of liability for maritime claims, implementing the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims 1976, as amended by IMO Resolution LEG.5(99), adopted on 19 April 2012.

Scope of application

Article 2

1. This Law applies whenever any person referred to in Article 4 seeks to limit his liability before the Court or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of Montenegro.
2. The provisions of this Law shall not apply to:
 - a) air-cushion vehicles;
 - b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

Interpretation

Article 3

1. In this Law, unless the context otherwise requires:
 - a) “shipowner” means the owner, charterer, manager and operator of a seagoing ship.
 - b) “salvor” means any person rendering services in direct connection with salvage operations, which shall include operations referred to in Article 5(1)(d), Article 6(1)(f) and Article 6(1)(g).

c) “Court” means court competent for hearing maritime claims, under the Law on Courts of Montenegro.

d) “fund” means a fund constituted in accordance with this Law.

2. The terms used in this Law in masculine gender shall be considered to mean the same in feminine gender.

II THE RIGHT OF LIMITATION

Persons entitled to limit liability

Article 4

1. Shipowners and salvors, may limit their liability in accordance with the rules of this Law for claims set out in Article 5.

2. If any claims set out in Article 5 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 Law.

3. In this Law, the liability of a shipowner shall include liability in an action brought against the vessel itself.

4 An insurer of liability for claims subject to limitation in accordance with the rules of this Law shall be entitled to the benefits of this Law to the same extent as the assured himself.

5. The act of invoking limitation of liability shall not constitute an admission of liability.

Claims subject to limitation

Article 5

1. Subject to Articles 6 and 7, 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 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 Law, 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, claim set out under paragraph 1(d) shall not be subject to limitation of liability to the extent that it relate to remuneration under a contract with the person liable.

Claims excepted from limitation

Article 6

The rules of this Law shall not apply to:

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;

b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol 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 of 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 9.

f) 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;

g) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

i) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto, which arise from occurrences which take place after the coming into force of that Convention as part of Law of Montenegro.

Conduct barring limitation

Article 7

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.

Counterclaims

Article 8

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

III LIMITS OF LIABILITY

The general limits

Article 9

1. The limits of liability for claims other than those mentioned in Article 10, arising on any distinct occasion, shall be calculated as follows:

a) in respect of claims for loss of life or personal injury,

(i) 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 2 001 to 30 000 tons, 1 208 Units of Account;

for each ton from 30 001 to 70 000 tons, 906 Units of Account; and

for each ton in excess of 70,000 tons, 604 Units of Account,

b) in respect of any other claims,

(i) 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 2 001 to 30 000 tons, 604 Units of Account;

for each ton from 30 001 to 70 000 tons, 453 Units of Account; and

for each ton in excess of 70 000 tons, 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(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).

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

4. 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.

5. The limit of liability for ships not exceeding 300 gross tonnage, calculated in accordance with paragraph 1 of this Article, shall be half of the limit of liability applicable to a ship not exceeding 2,000 gross tonnage.

6. For the purpose of this Law the ship's tonnage shall be the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969.

The limit for passenger claims

Article 10

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 250,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

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:

1) under a contract of passenger carriage, or

2) 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.

Unit of accounts

Article 11

1. The Unit of Account referred to in Articles 9 and 10 is the Special Drawing Right as defined by the International Monetary Fund.
2. The amounts mentioned in Articles 9 and 10 shall be converted into Euro, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or bank guarantee is given equivalent to such payment. The value of a national currency in terms of the Special Drawing Right shall be calculated in accordance with the method of valuation applied by the International Monetary Fund in effect at the date in question for its operations and transactions.

Aggregation of claims

Article 12

1. The limits of liability determined in accordance with Article 9 shall apply to the aggregate of all claims which arise on any distinct occasion:
 - a) against the shipowner, as defined in this Law, and any person for whose act, neglect or default he or they are responsible; or
 - b) against the owner of a ship rendering salvage 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 10 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in Article 3(1)(a) in respect of the ship referred to in Article 10 and any person for whose act, neglect or default he or they are responsible.

IV THE LIMITATION FUND

Duty of constitution of a fund

Article 13

1. Where an action is brought in the Court to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Law or is constituted when the right to limit liability is invoked.
2. The fund shall be constituted in the sum of such of the amounts set out in Articles 9 and 10 as are applicable to 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 of liability can be invoked.
3. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under Montenegrin Law.
4. A fund constituted by one of the persons mentioned in paragraph 1, (a), (b) or (c) or paragraph 2 of Article 12 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1, (a), (b) or (c), or paragraph 2, respectively.

Distribution of a fund

Article 14

1. Subject to the provisions of paragraphs 1, 2, 3 and 5 of Article 9 and of Article 10, 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 Law.
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.

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 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.

Bar to other actions

Article 15

1. Where a limitation fund has been constituted in accordance with Article 13, any person having made a claim against the fund shall be barred from exercising any right in respect of such 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 a State Party to the 1996 LLMC Protocol, in accordance with Article 13 hereto, 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 Montenegro for a claim which may be raised against the fund, or any security given, may be released by order of the Court. 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 Montenegro.

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.

Procedure

Article 16

The procedure of invoking limitation of liability and constitution and distribution of a Fund shall be initiated and held before the Court in accordance with civil law procedure relating to constitution of funds for maritime claims.

V TRANSITIONAL AND FINAL PROVISIONS

Repeals

Article 17

Articles 419-462 of the Law of the Inland and Maritime Navigation are hereby repealed.

Entry into force

Article 18

This Law shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro, and will be applicable from_____.

SU-SK No: _____

Podgorica, _____2019

The Parliament of Montenegro

The President of the Parliament,
