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TABLE OF INTERNATIONAL CONVENTIONS

1. International Convention for the Unification of Certain rules relating to the Limitation of the Liability of Owners of Seagoing Vessels, 1924.
2. International Convention on Civil Liability for Oil Pollution Damage, 1969.
3. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.
4. International Convention on Limitation of Liability for Maritime Claims, 1976.
5. International Convention on Salvage, 1989, as amended.
6. International Convention on Tonnage Measurement of Ships, 1969.
7. International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957.
8. Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969.
9. Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976.
10. 2010 Protocol to the International Convention on Liability and Compensation for Damages in Connection with the Carriage of Hazardous and Noxious Substances by Sea.
11. Resolution LEG.5 (99) of April 19, 2012, Adoption of Amendments of the Limitation amounts in the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims, 1976.

PANAMA NATIONAL LEGISLATION

1. Law No. 8 of March 30, 1982, creating the maritime courts and dictating rules of maritime procedure.
2. Law No. 96 of December 15, 1998, whereby the Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage is approved.
3. Law No. 7 of January 14, 2009, whereby the International Convention on Civil Liability for Bunker Oil Pollution Damages, 2001, on March 23, 2001, is approved.
4. Law No. 57 of August 06, 2008, known as ‘The General Merchant Marine Law’.

5. Law No. 96 of November 07, 2013, whereby the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 2002, made in London, on November 01, 2002, is approved.
6. Law No. 26 of May 04, 2015, whereby the Nairobi International Convention on the Removal of Wrecks, 2007, made in Nairobi, on May 18, 2007, is approved.

ABREVIATIONS

IMO	International Maritime Organization
LLMC Convention	Convention on Limitation of Liability for Maritime Claims, 1976
Protocol of 1996	Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976
1924 Convention	International Convention for the Unification of Certain rules relating to the Limitation of the Liability of Owners of Seagoing Vessels, 1924
1957 Convention	International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957
1996 LLMC Convention	Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976

PART I
EXPLANATORY NOTE

I. Purpose and Objectives

The purpose of this drafting project is the incorporation of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976[1], into Panamanian Law. For this purpose, will be explain the Convention on Limitation of Liability for Maritime Claims, 1976,[2] as amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 and the Resolution LEG.5 (99) of April 19, 2012, and highlight the necessary changes to be introduced. In addition, will also recommend the accession by the Republic of Panama.

It is important to understand the term '*limitation of liability'* defined by Martinez as "a legal concept which allows the shipowner to limit his financial exposure for maritime claims up to a maximum sum regardless of the actual amount of the claims being brought against him."[3]

Özçayir states that "the right of global limitation of liability was conceived to serve the needs of commerce..."[4] Some authors, have described this principle as outdated, while others believe that is the balance between international trade, shipping and insurance sectors.

II. Background

The first attempt to harmonize principles of limitation of liability followed the incident of the *RMS Titanic* in 1912, a British vessel that sank in the North Atlantic Ocean after it collided with an iceberg, and an estimated of 1,500 persons died, generating many claims for loss of life, personal injury and loss of property, leading to the constitution of a fund based on the value of the vessel including saved lifeboats and pending unpaid passages.

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[1] Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 [adopted date 2 May 1996, entered into force 13 May 2004] 35 ILM 1433.
[2] Convention on Limitation of Liability for Maritime Claims, 1976 [adopted date 19 November 1976, entered into force 1 December 1986] 1456 UNTS 221.
[3] Norman A Martínez Gutiérrez, 'Limitation of Liability for Maritime Claims' in David J Attard and others (eds), *The IMLI Manual on International Maritime Law: Volumen II - Shipping Law* (1st Ed. Oxford University Press 2016) 551.
[4] Z. O Özçayir, *Liability for oil pollution and collisions* (LLP 2004) 299.

In 1913, the Comité Maritime International (CMI) came up with a draft convention seeking an international system for limitation of liability, which was submitted to a Diplomatic Conference held in Brussels in 1922 and 1924.

The adopted instrument entitled the International Convention for the Unification of Certain rules relating to the Limitation of the Liability of Owners of Seagoing Vessels, 1924, contemplated the limitation based on residual value (post-acccident value of the ship plus freight) and on tonnage (sum equal to £8 per ton), and allowed the shipowners the option to choose which system would apply.

The 1924 Convention, left certain issues unanswered, so further discussions have taken up by the CMI resulting in the second international instrument on limitation of liability, namely the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships, 1957, which gave the shipowner the right to limit his liability for any of the listed claims, except where the occurrence giving rise to the claim resulted from the actual fault or privity of the owner.

During the 1960s, the Inter-Governmental Maritime Consultative Organization (IMCO) realized that the 1957 Convention, required a revision to the new international developments in shipping.

The LLMC Convention, replaced the 1957 Convention, with the intention to bring some uniformity in the global limitation of liability of shipowners and salvors for maritime claims arising from maritime incidents.

III. LLMC Convention

1. Persons entitled to limit their liability

The right to limit their liability for the claims stated in the Article 2, is granted by the LLMC Convention only to the shipowners and salvors.[5] However, is important to take into consideration the wide coverage in the definition of who is considered a shipowner and a salvor.

[5] Convention on Limitation of Liability for Maritime Claims, 1976 (n 2) Article 1. Also see paragraph 2 and 3, where is defined the term '***shipowner***' as the owner, charterer, manager and operator of a seagoing ship; and '***salvor***' as any person rendering services in direct connection with salvage operations, including the operations referred in paragraph 1(d), (e) and (f) of Article 2.

a. Owners

The LLMC includes in the term "shipowner", the owner, charterer, manager and operator of a ship. This definition leaves the term "shipowner" more as a generic term rather than a specific term. The generality of the term has led to a situation that several States have enacted the definition with certain modifications, some have extended the right to limit, and others have failed to define the extent of the term.[6]

b. Charterers

Since the definition of shipowner included the charterer, there are different criteria on whether the LLMC Convention covers Demise Charterers or it includes all Charterers. In ***The MSC Rosa M*** case,[7] the Court held that the demise charterers of the vessel are the shipowners for the purpose of LLMC Convention; however ***The Laemthong Pride*** case,[8] recognized not only demise charterers, but also time and voyage charterers as having the right to limit under the LLMC Convention.

A special attention has to been taken in regard to 'slot charter' which is a form of voyage charter of part of a ship, where in the United Kingdom has been considered it within the definition of shipowner, and therefore entitled to limit his liability, as is seen in ***MSC Napoli*** case.[9]

c. Managers and operators

Some authors, considered that those terms under the LLMC Convention may include crewing agents depending on the relationship between the agent and the ship and mortgagees who have taken possession of the ship. However, a mortgagee does not fall within the definition of operator, and does not have automatic right to limit liability.

d. Salvors

In ***Tojo Maru*** case,[10] a Japanese vessel was involved in a collision with an Italian vessel and suffered extensive damage, including a fissure to the hull. Due to the extent of the damage, a salvage agreement was made. The salvor planned to repair the hull, but a diver employed by

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[6] Norman A. Martínez Gutiérrez, *Limitation of liability in international maritime conventions: The relationship between global limitation conventions and particular liability regimes* (Routledge 2011) 24–25.
[7] *The MSC Rosa M (2000) 2 Lloyd's Rep. 399*.
[8] *The Laemthong Pride (1982) 149 A.I.R. 675*.
[9] *The MSC Napoli (2009) 1 Lloyd's Rep. 246*.
[10] *Tojo Maru (1971) 1 Lloyd's Rep. 341; and (1971) 1 All ER 1110*.

the salvor negligently fired the bolt and caused an explosion. The Court held that the salvor was unable to limit their liability by reference to the tonnage of the tug, in respect of a claim arising out of the negligence of one of its divers by the tow.

Salvors are entitled to limit their liability, even when damage arose from the negligence of the salvor's employee not operating from any ship or operating exclusively on board a ship in distress to which salvage services are being rendered.[11]

e. Any person for whose act the shipowner or salvor is responsible

The LLMC Convention extended the right to limit beyond the servants or agents of the shipowner, including the independent contractors, as the shipowner is considered responsible for their actions.

f. Liability insurers

The right to limit was extended to the insurer of liability, who is entitled to the benefits of the Convention to the same extent as the assured himself.

2. Claims subject to limitation

Any act, negligence or default against any person, where the shipowner or salvor is responsible, gives the shipowner or salvor the right to make use of the limitation of liability, which includes liability in action against the vessel herself. Nevertheless, the act of invoking limitation of liability shall not constitute an admission of liability.

There are six (6) types of claims where the limitation of liability is available under the LLMC Convention, and it is worth mentioning, that the right to limit will be subject to the exclusions available under the Convention, in respect of claims for wreck removal, and for cargo removal:[12]

a. Claims in respect of loss of life or personal injury or loss of or damage to property;

This covers all personal and property claims that may occur on board or in direct connection with the operation of the ship or with salvage operations, such as claims for property damages.

[11] Norman A. Martínez Gutiérrez (n 6) 33.
[12] Convention on Limitation of Liability for Maritime Claims, 1976 (n 2) Article 2.

b. Claims in respect of loss resulting from delay;

This applies in relation with 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;

The infringement of rights must occur in direct connection with the operation of the ship or salvage operations.

d. Claims for wreck removal;

In respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned.

e. Claims for cargo removal; and

In respect of claims for the removal, destruction, or the rendering harmless of the cargo of the ship.

f. Claims in respect of measures taken in order to avert or minimize loss.

This applies to claims of third parties against the person liable, in respect of measures taken in order to avert or minimize loss, and is also extended to claims in relation to further loss cause by such measures.

3. Claims excepted from limitation

There are five (5) types of claims where the limitation of liability does not apply under the LLMC Convention:[13]

a. Claims for Salvage or general average;

The exclusion over claims for salvage or general average only applies to direct claims by salvors or parties who have suffered a general average loss or sacrifice. The Protocol of 1996 included a modification, applying also to any claim for special compensation under article 14 of the International Convention on Salvage, 1989, as amended.

Panama has introduced in the national law regulations regarding salvage, without becoming party to such Convention, through the Law No. 55 of 06 August 2008, whereby is stated for

[13] ibid Article 3.

assistance and **s**alvage operations which have had a useful result give rise to an equitable reward.

b. Claims for Oil pollution damage;

It also excluded claims for oil pollution damages within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, 1969, whether is applicable or not.

Panama is not party of the International Convention on Civil Liability for Oil Pollution Damage, 1969.[14] However, it has acceded to its amendments, the Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969,[15] through the Law No. 96 of December 15, 1998.

c. Claims for Nuclear damage; and

Another exclusion applies to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage. If the State is not party to an international convention nor have a domestic legislation regulating limits of liability, the claims will remain under the LLMC Convention.

d. Claims by servants of the shipowner and salvor.

This exclusion applies to servants whose duties are connected with the ship or the salvage operations.

4. Conduct barring limitation

Article 4 of the LLMC Convention provides that "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.", meaning that a shipowner or salvor may lose his right to limit his liability if it is proved by an interested party that the shipowner or salvor conduct a personal act or omission contained in the above mentioned article.

[14] International Convention on Civil Liability for Oil Pollution Damage [adopted date 29 November 1969, entered into force 19 June 1975] 973 (p.3) UNTS 14097.
[15] Protocol of 1992 to amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 [adopted date 27 November 1992, entered into force 30 May 1996] 1956 UNTS 14097.

The "***person liable***" referred to in Article 4 of the LLMC Convention, is the shipowner and salvor. An exception applies for the insurer, who is only entitled to the same extent as the assured himself, meaning that if the shipowner and salvor are denied the right to limit their liability, then the insurer also will not have right to limit their liability.

Is important to prove that the person liable acted "***with the intent to cause such loss***", i.e. that the actions made were committed knowingly and intentionally, and with the awareness of the wrongfulness of his actions.

If the claimant is unable to prove intent to cause loss, then it must be proven that the person liable acted "***recklessly and with knowledge that such loss would probably result***", meaning that the person liable acts in such a way that engenders the risk which probably leads to the loss; and with the awareness at the time of the conduct.

5. Limitation of liability scheme

The limitation of liability scheme established by the LLMC Convention, was amended by the Protocol of 1996, increasing the amount of compensation payable under the LLMC Convention, and introduced a tacit acceptance procedure, whereby amendments to the limits of liability are adopted and automatically take effect for a State Party unless a specify number of State Parties objects within a specified time period, in order to promote expediency in the updating process.

Furthermore, the IMO Legal Committee increased the previous amendments of the limitation amounts in the Protocol of 1996, through the Resolution LEG.5 (99) of April 19, 2012, which modified article 3 of the Protocol of 1996.

The reason behind the further increase was based on the incident of the ***Pacific Adventurer***, where the vessel encountered bad weather conditions, losing 31 containers and resulting in a major ecological and socio-economic affectation to Queensland, Australia, as oils spills occurred. The limits of liability according to the Protocol of 1996 fell short in this particular case, as the clean-up costs and damages were way over the limit of liability.

The following table shows the increase in the limitation of liability scheme, through the LLMC Convention, the Protocol of 1996, and the Resolution LEG.5 (99):

a. General Limits. [16]

	LLMC Convention	Protocol of 1996	Res. LEG.5 (99)
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.	(i) **2 million units of account** for a ship with a tonnage not exceeding **2,000 tons**.	(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 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 in excess of 30,001 to 70,000 tons, 250 Units of Account; and -for each ton in excess of 70,000 tons, 167 Units of Account.	(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, 800 Units of Account**; -for each ton from **30,001 to 70,000 tons, 600 Units of Account**; and -for each ton in excess of **70,000 tons, 400 Units of Account**.	(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**.
In respect of any other claims.	(i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons.	(i) **1 million** Units of Account for a ship with a tonnage not exceeding **2,000 tons.**	(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	(ii) for a ship with a tonnage in excess thereof, the following	(ii) for a ship with a tonnage in excess thereof, the following

[16] Convention on Limitation of Liability for Maritime Claims, 1976 (n 2) Article 6. See also Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (n 1) Article 3.

	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 30,001 to 70,000 tons, 125 Units of Account; and -for each ton in excess of 70,000 tons, 83 Units of Account.	amount in addition to that mentioned in (i): -for each ton from 2,001 to 30,000 tons, **400 Units of Account**; -for each ton from 30,001 to 70,000 tons, **300 Units of Account**; and -for each ton in excess of 70,000 tons, **200 Units of Account**.	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**.

***The amendments of the limitation amounts in the Protocol of 1996 and in the Resolution LEG.5 (99) are marketed in bold, in order to see clearly the amendments made.**

If the amount calculated in respect of claims for loss of life or personal injury is insufficient, then the amount calculated in respect of any other claims shall be available for the payment of the balance due in respect of claims for loss of life or personal injury.

The LLMC Convention specifies that a State Party may include in its national legislation a priority rule to claims in respect to harbour works, basins and waterways and aids to navigation, over any other claim.

The limits of liabilities are calculated based on the gross tonnage of the ship, calculated in accordance with the International Convention on Tonnage Measurement of Ships, 1969.

b. Limit for passenger claims.[17]

	LLMC Convention	**Protocol of 1996**
In respect of claims for loss of life or personal injury to passengers of a ship.	46,666 Units of Account multiplied by the number of passengers which the ships is authorized to carry according	**175,000** Units of Account multiplied by the number of passengers which the ships is authorized to carry according to

[17] Convention on Limitation of Liability for Maritime Claims, 1976 (n 2) Article 7. Also see Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (n 1) Article 4.

	to the ship's certificate, but not exceeding 25 million Units of Account.	the ship's certificate. **(Note: was eliminated the maximum established in the LLMC Convention)**

***The amendments of the limitation amounts in the Protocol of 1996 are marketed` in bold, in order to see clearly the amendments made.**

The above mentioned claims refer to any claims brought by or on behalf of any passenger of a ship under a contract of passenger, or a person accompanying a vehicle or live animals covered by a contract for carriage of goods; the last condition only applies if the person has a previous consent by the carrier.

6. Limitation Fund

The LLMC Convention establishes that although the limitation fund has not been constituted, the limitation of liability may be invoked. On the other hand, the national legislation of a State Party may indicate that it is only possible to invoke the right to limit liability if the limitation fund is duly constituted or if it is constituted when the right is invoked, when an action is brought to enforce a claims subject to limitation.

Panama has incorporated a limitation procedure for owners' liability[18], through the Law No. 8 of March 30, 1982, which creates the maritime courts and dictates rules of maritime procedure. It is established that the person with the right to limit their liability can invoke his right against their creditors within 6 months following the presentation of the claims to satisfy any claim.[19] It is also contemplated that in order to determine the amount to which the shipowner's liability is to be limited, a lawsuit must be submitted to the Maritime Court; and that the liability fund may not only be constituted by a cash bond, but also through a guarantee issued by a bank or an insurance company licensed in Panama.[20]

The constitution of the fund can be done by any liable person with a Court or other competent authority, through the deposit of the sum or by a guarantee acceptable under national legislation

[18] Law No. 57 of August 06, 2008, known as 'The General Merchant Marine Law' Articles 517 to 529.
[19] ibid Article 517.
[20] ibid Article 518 and 519.

of the State Party, and based in the sum of the amounts previous stated and any interest thereon.[21]

The limitation fund will be distributed among the claimants in proportion to their claims, up to the total amount of such fund.

IV. Rationale behind the necessity of the adoption of the Protocol of 1996, as amended

It is submitted that it is necessary for Panama to adopt the Protocol of 1996, as amended by the Resolution LEG.5 (99) of April 19, 2012. Therefore, the following discussion will address the reasons for such adoption; the required amendments to the existing national legislation; and the proposal that Panama accedes to such Protocol, as amended, by an instrument of accession duly deposited with the IMO.

It is important to note that the Protocol of 1996 is amending in nature and cannot be understood on its own, as per the content of the Article 9 paragraph 1, which states that "The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument."[22]

Panama being a coastal State with a strategic location, enjoying a unique position in the American continent is considered by the maritime industry the shortest marine trade route which connects the Pacific and Atlantic oceans through the Panama Canal. The Panama Canal's expansion will give the maritime sector a cost benefit by allowing bigger and wider ships to use the route, representing the possibility to increase the economic activities, and also to enhance environmental contributions by reducing emissions, as it is a more efficient transport that reduces the usage of fuel consumption compared with other routes that combine transport by land.

Additionally, it is important to consider that Panama is the largest flag registry in the world with an average of 8,122 merchant vessels worldwide, comprising 216.2 million of gross registration tonnage which represents 18.4% of the world fleet of vessels.[23] It is considered the

[21] Convention on Limitation of Liability for Maritime Claims, 1976 (n 2) Article 11 and 12.
[22] Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (n 1) Article 9 paragraph 1 and 2.
[23] UNCTAD, 'Review of Maritime Transport' (2017) <http://unctad.org/en/PublicationsLibrary/rmt2017_en.pdf>. Also See The World Bank, 'Global Rankings 2016' <https://lpi.worldbank.org/international/global>.

logistics leader of the Latin American region according to the Global Ranking 2016 of The World Bank, placing Panama in the 40th position, over other countries in the region.

As a country with a strong maritime interest, it is important to have effective international and national regulations in this area. Panama is not party to the LLMC Convention nor its amendments. However, Morgan considers that Panama has incorporated the LLMC Convention into domestic law, without its Protocol of 1996, almost verbatim,[24] as it can be seen in Title VIII, Chapters I, II and III of the Law No. 8 of 30 March 1982.

It is important to take into consideration that such incorporation into domestic law of the LLMC Convention, through the Law No. 8 of 30 March 1982, without becoming party to such Convention represents a disadvantage not only to the claimants under Panamanian jurisdiction, but also to the shipowners, the salvors, and the marine insurers, as this prevents them from the opportunity to be globally protected with a global limitation of liability scheme providing the affected parties a more adequate compensation according to the worldwide reality and inflation.

Panama has demonstrated a high commitment to adopt a largely group of IMO international maritime conventions and protocols, with the sole intention to promote maritime safety and security, as well as environmental protection for our seas, where some of them cover liability and compensation schemes, that have a close relation with the 1996 LLMC Convention, including:

a. ***International Convention on Civil Liability for Bunker Oil Pollution Damages, 2001***, which was adopted through the Law No. 7 of January 14, 2009, whereby the International Convention on Civil Liability for Bunker Oil Pollution Damages, 2001, on March 23, 2001, is approved, Article 6 of which states:

> "**Article 6**
>
> **Limitation of Liability**
>
> 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 the Convention on Limitation of Liability for Maritime Claims, 1976, as amended."

[24] Juan David Morgan Jr, 'Panama' in George Eddings, Andrew Chamberlain and Rebecca and Warder (eds), *The Shipping Law Review* (4th Ed. Law Business Research Ltd 2017).

b. ***Nairobi International Convention on the Removal of Wrecks 2007***, which was adopted through Law No. 26 of May 04, 2015, whereby the Nairobi International Convention on the Removal of Wrecks, 2007, made in Nairobi, on May 18, 2007, is approved, and its Article 10, paragraph 2, indicates:

> "**Article 10**
>
> **Liability of the owner**
>
> …
>
> 2. Nothing in this Convention shall affect the right of the registered owner to limit liability under any applicable national or international regime, such as the Convention on Limitation of Liability for Maritime Claims, 1976, as amended. …"

NOTE: Both conventions (i.e. the International Convention on Civil Liability for Bunker Oil Pollution Damages, 2001 and the Nairobi International Convention on the Removal of Wrecks 2007) are affected by the 1996 LLMC Convention, as amended, as the new maximum limits to be paid accordingly to the 1996 LLMC Convention, as amended, are automatically incorporated into these Conventions.

c. ***Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002***, which was adopted through the Law No. 96 of November 07, 2013, whereby the Athens Convention relating to Carriage of Passengers and their Luggage by Sea, 2002, made in London, on November 01, 2002, is approved, and whose Articles 14 and 19, establish:

> "**ARTICLE 14**
>
> **Basis for claims**
>
> No action for damages for the death of or personal injury to a passenger, or for the loss of or damage to luggage, shall be brought against a carrier or performing carrier otherwise than in accordance with this Convention."

> "**ARTICLE 19**
>
> **Other conventions on limitation of liability**
>
> This Convention shall not modify the rights or duties of the carrier, the performing carrier, and their servants or agents provided for in international conventions relating to the limitation of liability of owners of seagoing ships."

1. Advantages to Panama of adopting the 1996 LLMC Convention

Among the advantages to Panama of adopting the Protocol of 1996, as amended by the Resolution LEG.5 (99) of April 19, 2012, the followings must be consider:

a. The 1996 LLMC Convention, as amended, provides for shipowners and salvors, as well as future claimants, an international uniform regime for the limitation of liability; which at the same time constitutes a successful tool for creating certainty in the presentation of claims against shipowners and salvors for any listed claim.

b. The 1996 LLMC Convention, as amended, provides that the calculation of the compensation to be paid is based on the gross tonnage of the ship, creating thus a certainty between the parties involved, and the marine insurers, except for claims for loss of life or personal injury to passengers of a ship.

c. The amendments made to the LLMC Convention, as amended (i.e. by the Protocol of 1996, and the Resolution LEG.5 (99)), increased the limitation of liability scheme contained in the LLMC Convention, providing the affected parties a more adequate compensation according the worldwide reality and inflation.

d. If it is taken into consideration that Panama already incorporated the LLMC Convention into domestic law, without being party to the Convention *per se*, this represents a disadvantage not only to the shipowners as they will be subject to unlimited liability in cases of maritime claims, but also for the claimants under Panamanian jurisdiction. So, becoming a party to the 1996 LLMC Convention will provide not only to shipowners and salvors, but also to marine insurers, the opportunity to be globally protected with a global limitation of liability scheme.

e. Panama would demonstrate its leadership position and commitment among the international maritime community, in the interest to continue adopting international maritime conventions and protocols, which aim to improve the maritime safety and security of the Panamanian fleet; and hopefully will also reflect the highest compromise acquired by open registries, such as Panama, which are willing to demonstrate the international community their full compliance with international regulations.

Additionally, it is important to point out that the adoption of the 1996 LLMC Convention, as amended, will not represent further costs neither to the Administration; the shipowners, salvors, or those entitled to limit their liability, or any of the affected parties.

2. Measures to be taken in the event of the adoption of the 1996 LLMC Convention, as amended

Research for this drafting project shed light on the fact that when Panama incorporated the LLMC Convention into domestic law, through the Law No. 8 of 30 March 1982, the articles of the Convention were included within the maritime courts and maritime procedure legislation, resulting in the changing of the numbers, and in order to avoid the long paragraph they were divided. Additionally, some changes in the wording of the Spanish version of the LLMC Convention were made. However, those changes do not affect the essence of the Convention *per se*.

It is also important to clarify that the format utilized in this drafting project, is the one commonly used and approved in Panama, to modify any existing national legislation; and it may differ from the format adopted in Common Law countries, for example the non-inclusion of a preamble, as is not required for a drafting law. Additionally, an Executive Summary was included, as Panama does not use the Explanatory Note herein included, normally a small brief or summary is enough to explain the necessity of the creation or modification of a law, as included in **Part II** of this paper.

In order to implement the 1996 LLMC Convention, as amended, Panama only requires to modify the Law No. 8 of 30 March 1982, with the changes introduced by such amendments, which are:

1. Amendments of Article 583 of Section 2ª of Chapter I of the Law No. 8 of March 30, 1982.

- Article 583 is amended by deleting the paragraph 4 "~~***4. 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;***~~", and paragraph 5 "~~***5. Claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;***~~".

- Consequently, paragraph 6 of Article 583, shall be renumbered as paragraph 4 of Article 583.

It is suggested the adoption of the reservations provided under the 1996 LLMC Convention, as amended, which are: (a) to exclude the application of Article 2, paragraph 1 (d) and (e); and (b) to 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,[25] or of any amendment or protocol thereto, [26] after the entry into force of such Convention in Panama.

In relation to the exclusion of claims covered by Article 2, paragraph 1(d) and (e), related to wreck and cargo removal, is recommend as in the past the Government of Panama had to deal with problems of removal of wrecked or abandoned ships closed to the shore or in internal waters, which represented an elevated cost to try to resolve these issues and to avoid further risks in the maritime safety and security and the protection to the environment.

It is important to make a clarification remark regarding the exclusion of wreck and cargo removal. Panama adopted the Nairobi International Convention on the Removal of Wrecks 2007, through Law No. 26 of May 04, 2015, and its Article 10, paragraph 2 indicates that nothing in such Convention affect the right to limit liability under the LLMC Convention. Likewise, this does not affect the right that a State have to make use at the moment of the accession of the reservations provided under the LLMC Convention. After the reservation is made, the strict liability based on Nairobi International Convention on the Removal of Wrecks 2007 will apply in Panama, and the shipowner will not be entitled to make use of the global limitation of liability contained under the LLMC Convention.

Panama is not a party to the HNS Convention, which creates a system of strict liability for the shipowner for damages caused by the carriage of hazardous and noxious substances by sea,

[25] International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea [adopted date 3 May 1996, has not entered into force] 35 I.L.M. 1415, as amended by 2010 Protocol to the International Convention on Liability and Compensation for Damages in Connection with the Carriage of Hazardous and Noxious Substances by Sea [adopted date 30 April 2010, has not entered into force] IMO Doc. LEG/CONF.17/10.
[26] Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 (n 1) Article 18 paragraph 1.
[27] The World Bank, 'Panama: General Overview' <http://www.bancomundial.org/es/country/panama/overview>.

depending on the tonnage of the ship and covered by compulsory insurance, with the sole intention to fill an important gap in the global liability and compensation framework; thus the exclusion of such claims must be considered, as the maritime sector is increasing the demand of such ships, and the occurrence of an event can be catastrophic and with a wide impact to a country such as Panama. Whose economy has been one of the fastest growing economies in the world, with a forecast of annual growth of 5.4 percent for the year 2018, based on the additional movements generated by the expansion of the Panama Canal, and the others maritime services offered relating to transport and logistics.[27]

The exclusion is recommend to be applied after the adoption by Panama of the HNS Convention, in order to avoid that shipowners and salvors are exposed to unlimited liability.

2. **Amendments of Article 584 of Section 2ª of Chapter I of the Law No. 8 of March 30, 1982.**
   - Article 584 is amended by deleting the words "~~…paragraph 4, 5…~~", and it shall only refer to "….paragraph 6…".

3. **Amendments of Article 585 of Section 2ª of Chapter I of the Law No. 8 of March 30, 1982.**
   - Paragraph 1 of Article 585 is amended by replacing the words "~~***1. Claims for salvage or contribution in general average;***~~" with the words "***1. 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;***".
   - After paragraph 5 of Article 585, paragraph 6 which states ***"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 the Panamanian Law.***" shall be added.

4. **Amendments of Article 588 of Section 1ª of Chapter II of the Law No. 8 of March 30, 1982.**

   - Paragraph 1(a) of Article 588 is amended by replacing the words "***~~333,000 Units of Account for a ship with a tonnage not exceeding 500 tons~~***", with the words "***3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons***".
   - Paragraph 1(b) of Article 588 is amended by deleting the words "***~~for each ton from 501 to 3,000 tons, 500 Units of Account~~***", and by replacing the words "***~~for each ton from 3,001 to 30,000 tons, 333 Units of Account~~***", with the words "***for each ton from 2,001 to 30,000 tons, 1,208 Units of Account***"; "***~~250 Units of Account~~***", with the words "***906 Units of Account***"; and "***~~167 Units of Account~~***", with the words "***604 Units of Account***".
   - Paragraph 2(a) of Article 588 is amended by replacing the words "***~~167,000 Units of Account for a ship with a tonnage not exceeding 500 tons,~~***", with the words "***1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,***".
   - Paragraph 2(b) of Article 588 is amended by replacing the words "***~~for each ton 501 to 30,000 tons, 167 Units of Accounts;~~***", with the words "***for each ton 2,001 to 30,000 tons, 604 Units of Accounts;***"; "***~~125 Units of Account~~***", with the words "***453 Units of Account***"; and "***~~83 Units of Account~~***", with the words "***302 Units of Account***".
   - Article 588 is amended by adding a second paragraph which states "***Notwithstanding, the previous paragraph the limit of liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage.***"

Additionally, it is recommended that Panama makes use of the option in Article 15 paragraph 2(b) of the 1996 LLMC Convention, as amended, to regulate by national law the system of limitation of liability to be applied to ships of less than 300 gross tonnage. For this reason, it is considered that the limits of liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage.

5. **Amendments of Article 590 of Section 1ª of Chapter II of the Law No. 8 of March 30, 1982.**
   - Article 590 is amended by replacing the words "~~***Without prejudice to the right of claims for loss of life or personal injury according to paragraph 2, a State Party may provide in its national 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) as is provided by that law.***~~", with the words "***Without prejudice to the right of claims for loss of life or personal injury according to Article 589, claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 2 of Article 588.***"

Furthermore, it is proposed that Panama makes use of the option contained in Article 6(3) of the 1996 LLMC Convention, as amended, by providing in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation would have priority over claims other than personal claims. This will provide mayor financial protection to the Government of the Republic of Panama, in those events where the damage occurred affects the economic interest of the country.

6. **Amendments of Article 593 of Section 2ª of Chapter II of the Law No. 8 of March 30, 1982.**
   - Article 593 is amended by replacing the words "~~***46,666 Units of Account***~~", with the words "***175,000 Units of Account***"; and deleting the words "~~***…but not exceeding 25 million Units of Account***~~."
   - Article 593 is amended by adding a second paragraph which states "***Notwithstanding, the previous paragraph it shall not apply for seagoing vessels, as the limit of liability for such claims under national law will be based on the provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, as incorporated in Law No. 96 of November 07, 2013.***"

Finally, it is recommended that Panama makes use of the option contained in Article 15 (3bis) of the 1996 LLMC Convention, as amended, by providing in its national law a different system

of limitation of liability to be applied to claims for loss of life or personal injury to passengers of a ship. To this effect, the national law in the Republic of Panama will not apply to claims covered by the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

The above mentioned amendments included in the drafting project, will enter into force from the date of publication in the Official Gazette, unless otherwise agreed.

After their introduction into national legislation, Panama must accede to the Protocol of 1996, as amended, by an instrument of accession duly deposited with the IMO, which is attached herein as **Appendix 2**.

3. Conclusions

Taking into consideration all above stated, and the rationale behind the operation of an open registry, such as Panama, where the services are based on the economic benefits provided to shipowners, the benefits that they may receive are an opportunity to be globally protected with a global limitation of liability scheme, and provide to the parties a certainty of the compensation to be paid, which is more adequate according the worldwide reality and inflation.

Panama's primary competitors such as Liberia, Marshall Islands, and Hong Kong, as well as the fifty Three (53) State Parties to the LLMC Convention and fifty five (55) State Parties to the Protocol of 1996, are covered by global limitation of liability scheme, increasing compensation for claimants to the maximum extent possible, while allowing the shipowner to maintain insurance at a reasonable cost.

Additionally, UNCTAD is encouraging with prime concern, that developed and developing countries become parties to relevant international conventions, in order to achieve a more effective enforcement of international regulations.[28]

[28] UNCTAD (n 23) 93.

PART II

LAW NO. ## OF 2018, WHEREBY THE LAW NO. 8 OF MARCH 30, 1982, IS AMENDED, TO INCORPORATE THE 1996 INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, AS AMENDED.

GOBIERNO DE LA REPÚBLICA DE PANAMÁ

Law No. ## of 2018, whereby the Law No. 8 of March 30, 1982, is amended, to incorporate the 1996 International Convention on Limitation of Liability for Maritime Claims, as amended.

Executive Summary

Panama incorporated into its domestic law the Convention on Limitation of Liability for Maritime Claims, 1976, through the Law No. 8 of 30 March 1982, without becoming party to such Convention, and this drafting project proposes the adoption of the Protocol of 1996, as amended by the Resolution LEG.5 (99) of April 19, 2012, through the modification of Law No. 8 of 30 March 1982, and their further accession by Panama to such Protocol, as amended, by an instrument of accession duly deposited with the International Maritime Organization.

Panama's primary competitors such as Liberia, Marshall Islands, and Hong Kong, as well as other fifty Three (53) State Parties of the LLMC Convention and fifty five (55) state parties of the Protocol of 1996, are covered by global limitation of liability scheme, increasing compensation for claimants to the maximum extent possible, while allowing the shipowner to maintain insurance at a reasonable cost.

The incorporation of the Convention on Limitation of Liability for Maritime Claims, 1976, into Panamanian domestic law without becoming party to such Convention, only prevents the shipowner and salvor to access to limit the limitation among other Member States jurisdictions; and reflects that other Member States are not obligated to respect such legislation, as they do not recognize it, representing a complete disadvantage to any claimants under Panamanian jurisdiction as well as to the shipowner of Panamanian vessels.

Taking into consideration all the above stated, and the rationale behind the operation of an open registry, such as Panama, where the services are based in the economic benefits provided to shipowner, the benefits to be receive with this drafting project are:

Firstly, an opportunity to be globally protected with an international virtually unbreakable and global limitation of liability scheme, where shipowner and salvor may limit their liability under

any State Member, unless if it is proved that the loss resulted from his personal care or omission, committed with the intent to cause such a loss, or reckless and with knowledge that such loss would probably result.

Secondly, it provide a limitation of liability for the listed claims; and excluded some damage that are covered by other maritime convention regimes.

Thirdly, it provide shipowner and salvor, and insurer, a certainty of the compensation to be paid is based on the gross tonnage of the ship, except for claims for loss of life or personal injury to passengers of a ship, which are more adequate according the worldwide reality and inflation; and introduce an increase in the amount of compensation payable under the Convention on Limitation of Liability for Maritime Claims, 1976.

Fourth, it included the tacit acceptance procedure, whereby future amendments to the limits of liability are adopted and automatically take effect for a State Party unless a specify number of State Parties objects within a specified time period. However, such Protocol must be considered amending in nature and cannot be understand in its own, so it will not replace the Convention on Limitation of Liability for Maritime Claims, 1976, but it will complement each other.

While implementing the 1996 Convention on Limitation of Liability for Maritime Claims, 1976, as amended, among the modification required to be made, it is suggested to adopt the following reservations or options provided under such Protocol:

1. Exclusion to the application of Article 2 paragraph 1 (d) and (e) of the Convention, related to wreck and cargo removal, in order to prevent that our National Government have to pay elevate costs for dealing with problems of wrecked or cargo removal of abandoned ships closed to shore or in internal waters, and to avoid further risks in the maritime safety and security, and the protection to the environment;
2. Exclusion of 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, after the entry into force of such Convention in Panama. It is suggest that the exclusion is applied after the entry in force of such Convention, in order to prevent a gap in the global liability and compensation framework exposing to unlimited liability to

shipowners and salvors, as well representing to Panama that in the occurrence of an event can be catastrophic for a small country such as Panama, and were the economic can be affected if this damages after the Panama Canal, or any other of our maritime industries.

3. Make use of the option contained in Article 15 paragraph 2(b) of the Convention, by limiting the liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage.
4. Make use of the option contained in Article 6(3) of the Convention, as amended, by providing in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation would have priority over claims other than personal claims. This will provide mayor financial protection to the Government of the Republic of Panama, in those events where the damage occurred affects the economic interest of the country.
5. Make use of the option contained in Article 15 (3bis) of the Convention, as amended, by providing in its national law a different system of limitation of liability to be applied to claims for loss of life or personal injury to passengers of a ship. To this effect, the national law in the Republic of Panama will not apply to claims covered by the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

LAW NO. XX

of Month XX, 2018

Whereby the **1996 INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, AS AMENDED**, is approved, and modifications and additions are included into the Law No. 8 of March 30, 1982, whereby the maritime courts and dictated rules of maritime procedure are established.

NATIONAL ASSEMBLY

DECREES:

Article 1. The **1996 INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, AS AMENDED** by the Resolution Leg.5 (99) of the IMO Legal Committee, adopted on April 19, 2012, is hereby approved in its entirety.

Article 2. Article 583 of Law No. 8 of March 30, 1982, shall be replaced with the following text:

> "**Article 583.** Subject to Sections 3 and 4 of the present Title, the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:
>
> 1. 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;
> 2. Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
> 3. 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; and
> 4. 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."

Article 3. Article 584 of the Law No. 8 of March 30, 1982, shall be replaced with the following text:

"**Article 584.** Claims set out in Article 583 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 4 of Article 583 shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable."

Article 4. Article 585 of the Law No. 8 of March 30, 1982, shall be replaced with the following text:

"**Article 585.** The rules of the present Title shall not apply to:

1. 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;
2. 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;
3. Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
4. Claims against the shipowner of a nuclear ship for nuclear damage;
5. 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 the Section 1ª, Chapter II of this Title.
6. 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 the Panamanian Law."

Article 5. Article 588 of the Law No. 8 of March 30, 1982, shall be replaced with the following text:

"**Article 588.** The limits of liability for claims other than those mentioned in Section 2a of the present Title, arising on any distinct occasion, shall be calculated as follows:

1. In respect of claims for loss of life or personal injury:
   a. 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons.
   b. For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
   - 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, 302 Units of Account.
2. In respect of any other claims:
   a. 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
   b. For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
   - 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.

Notwithstanding, the previous paragraph the limit of liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage."

Article 6. Article 590 of the Law No. 8 of March 30, 1982, shall be replaced with the following text:

"**Article 590.** Without prejudice to the right of claims for loss of life or personal injury according to Article 589, claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 2 of Article 588."

Article 7. Article 593 of the Law No. 8 of March 30, 1982, shall be replaced with the following text:

> "**Article 593.** 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 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.
>
> Notwithstanding, the previous paragraph it shall not apply for seagoing vessels, as the limit of liability for such claims under national law will be based on the provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, as incorporated in Law No. 96 of November 07, 2013."

Article 8. The present Law modifies paragraph 6 of the Article 583, Article 584, paragraph 1 of the Article 585, paragraph 1(a), 1(b), 2(a), and 2(b) of the Article 588, Article 590, and Article 593; added a paragraph on the Article 585, a paragraph on the Article 588, and a paragraph on the Article 593; and repeals paragraph 4 and paragraph 5 of the Article 583.

Article 9. This Law shall enter into force on the date of its publication.

TO BE PUBLISHED AND COMPLIED WITH

Project No. of 20XX approved after three debates at the Justo Arosemena Assembly, Panama City, on the XX day of the month of Two Thousand and Eight.

The President

The Secretary General

NATIONAL EXECUTIVE BRANCH, PRESIDENCY OF THE REPUBLIC OF PANAMA. PANAMA, REPUBLIC OF PANAMA, MONTH, DAY, OF TWO THOUSAND AND EIGHT.

President of the Republic of Panama

Minister of the Presidency

APPENDIX 1

Consolidated text of the 1996 International Convention on Limitation of Liability for Maritime Claims, as amended, included under Title VIII "Complementary Provisions" of the Law No. 8 of 30 March 1982

Title VIII

Complementary Provisions

Chapter I

Substantive Rules that regulate the Owner's Limitation of Liability

Section 1ª.

Persons entitled to Limitation of Liability

Article 576. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the claims set out in the Section 2ª of this Chapter, under the provision of this Title.

Article 577. The term shipowner shall mean the owner, charterer, manager and operator of a seagoing ship.

Article 578. Salvor shall mean any person rendering services in direct connexion with salvage operations.

These operations will also include those referred to in Article 583 paragraph 4 and 6.

Article 579. If any claims set out in Chapter II 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 Title.

Article 580. In the present Law the liability of a shipowner shall include liability in an action brought against the vessel itself.

Article 581. An insurer of liability for claims subject to limitation in accordance with the rules of the present Law shall be entitled to the benefits of this Law to the same extent as the assured himself.

Article 582. The act of invoking limitation of liability shall not constitute an admission of liability.

Section 2ª.

Claims subject to limitation

Article 583. Subject to Sections 3ª and 4ª of this Chapter the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

1. 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;
2. Claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
3. 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; and
4. 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.

Article 584. Claims set out in Article 583 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 6 of Article 583 shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Section 3ª.

Claims excepted from limitation

Article 585. The rules of the present Title shall not apply to:

1. 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;
2. 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;

3. Claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
4. Claims against the shipowner of a nuclear ship for nuclear damage;
5. 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 the Section 1ª, Chapter II of this Title.
6. 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 the Panamanian Law shall be excluded from the Convention.

Section 4ª.

Conduct barring limitation

Article 586. 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.

Section 5ª.

Counterclaims

Article 587. Where a person entitled to limitation of liability under the rules of this present Title 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 present Title shall only apply to the balance, if any.

Chapter II

Limitation of Liability

Section 1ª.

The general limits

Article 588. The limits of liability for claims other than those mentioned in Section 2a of this Chapter, arising on any distinct occasion, shall be calculated as follows:

1. In respect of claims for loss of life or personal injury:
   a. 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons.
   b. For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
   - 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, 302 Units of Account.
2. In respect of any other claims:
   a. 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
   b. For a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (a):
   - 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.

Notwithstanding, the previous paragraph the limit of liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage.

Article 589. Where the amount calculated in accordance with paragraph 1 of Article 588 is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 2 of such article, shall be available for payment of the unpaid balance of claims under paragraph 1 of this same such unpaid balance shall rank rateably with claims mentioned under paragraph 2.

Article 590. Without prejudice to the right of claims for loss of life or personal injury according to Article 589, claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 2 of Article 588.

Article 591. 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 592. For the purpose of this present Chapter 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, adopted by the Law 6 of 27 October 1977.

Section 2ª.

The limit for passenger claims

Article 593. 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 175,000 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate.

Notwithstanding, the previous paragraph it shall not apply for seagoing vessels, as the limit of liability for such claims under national law will be based on the provisions of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002, as incorporated in Law No. 96 of November 07, 2013.

Article 594. For the purpose of this Section, 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 or on behalf of them, who travel:

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.

Section 3ª.

Unit of Account

Article 595. The Unit of Account referred to in the Section 1ª and 2ª of this Chapter is the "Special Drawing Right", as defined by the International Monetary Fund. The amounts mentioned in Section 1ª and 2ª of this Chapter 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.

Section 4ª.

Aggregation of claims

Article 596. The limits of liability determined in accordance with the Section 1ª shall apply to the aggregate of all claims which arise on any distinct occasion:

1. Against the person or persons mentioned in the Section 1ª of Chapter I and any person for whose act, neglect or default he or they are responsible; or
2. Against the shipowner 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
3. 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.

Article 597. The limits of liability determined in accordance with the Section 2ª of this Chapter, 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 577, in respect of the ship referred to in the Section 2ª of this Chapter, and any person for whose act, neglect or default he or they are responsible.

Chapter II

Limitation Fund of the Indemnities

Section 1ª.

Constitution of the Fund

Article 598. 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 the Sections 1ª and 2ª of the Chapter II of the Title VII of this Law, 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.

Article 599. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable, and that the Court or any other competent authority consider sufficient.

Article 600. A fund constituted by one of the persons mentioned in paragraph 1, 2 and 3 of Article 596 o in the Article 597, or his insurer, shall be deemed constituted by all persons mentioned in such sections and articles.

Section 2ª.

Distribution of the fund

Article 601. Subject to the provisions in Articles 588, 589, 590, 593 and 594, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

Article 602. 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 present Title.

Article 603. The right of subrogation provided for in the Article 606 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.

Article 604. 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 the Articles 606 and 607 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.

Section 3ª.

Actions excluded

Article 605. Where a limitation fund has been constituted in accordance with in the Articles 598, 599 and 600, 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.

Article 606. After a limitation fund has been constituted in accordance with Section 1ª of this Chapter, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached for a claim which may be raised against the fund, may be released by order of the Court. However, such release shall always be ordered if the limitation fund has been constituted:

1. At the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or
2. At the port of disembarkation in respect of claims for loss of life or personal injury; or
3. At the port of discharge in respect of damage to cargo; or
4. In the State where the arrest is made.

Article 607. The provisions of the previous article 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.

APPENDIX 2
Instrument of Accession

REPUBLIC OF PANAMA
MINISTRY OF FOREIGN AFFAIRS

INSTRUMENT OF ACCESSION

Protocol of 1996 to amend the Convention on Limitation of Liability
for Maritime Claims, 1976, as amended
(1996 LLMC Convention, as amended)

WHEREAS the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, was adopted at London on 02 May 1996, as amended by the Resolution LEG.5 (99) of April 19, 2012,

AND WHEREAS the Republic of Panama, being a State entitled to become a party to the said Protocol by virtue of Article 10 thereof,

NOW THEREFORE the Government of the Republic of Panama 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,

The instrument of accession by the Republic of Panama contained the following reservation:

1. In accordance with article 18, paragraph 1, of the said Convention, the Republic of Panama hereby excludes:
   (a) The application of Article 2, paragraphs 1(d) and (e); and
   (b) 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 any amendment or protocol related thereto, which arise from occurrences which take place after the coming into force of that Convention as part of the Panamanian Law.

Furthermore, the instrument of accession by the Republic of Panama contained the following declarations:

1. Pursuant the Article 6, paragraph 3 of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, as amended, the Republic of Panama, notifies that it has provided in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over other claims under the paragraph 1(b) of Article 6 of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, as amended.
2. The Republic of Panama would make use of the option in Article 15, paragraph 2(b) of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, as amended, regulate that the limit of liability for ships not exceeding 300 gross tonnage, in respect of claims for loss of life or personal injury, and in respect to any other claims, shall be half of the liability limit applicable to a ship not exceeding 2,000 gross tonnage.
3. The Government of the Republic of Panama will also declared that would intent to make use of the option in Article 15 (3bis) of the 1996 LLMC Convention, as amended, to regulate by specific provisions of national law, the system of limitation of liability to be applied to claims for loss of life or personal injury to passengers of a ship. To this effect, the national law in the Republic of Panama will not apply to claims covered by the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002.

IN WITNESS WHEREOF I, [Name of Minister for Foreign Affairs] Minister for Foreign Affairs of the Republic of Panama have signed this Instrument of Accession and affixed [my] [the] official seal.

DONE at Panama, this XX (XX) day of XX two thousand and eighteen (2018).

(Seal) (Signature)
[Name of Minister for Foreign Affairs]
Republic of Panama
Minister for Foreign Affairs

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IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
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LAW NO. ## OF 2018, WHEREBY THE LAW NO. 8 OF MARCH 30, 1982, IS AMENDED, TO INCORPORATE THE 1996 INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS, AS AMENDED.

A Legislation Drafting Project submitted in partial fulfillment 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: Stefanie Lauren Saval Cavalli
(Republic of Panama)

Supervisor: Norman A. Martínez Gutiérrez

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