



IMO
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MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY) AMENDMENT ACT

**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**

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Table of Contents

A. Explanatory Note.....	3-15
1. Introduction.....	3
2. The Bahamas Ship Registry	3
3. The 1976 LLMC Convention, The 1996 LLMC Protocol and The New Limits	5
I. <u>The LLMC Convention</u>	5
II. <u>The 1996 LLMC Protocol</u>	7
(a) The Changes Brought About by the Protocol	8
III. <u>The New Limits of Liability</u>	14
4. Importance of Incorporating the 1996 Protocol for the Convention on Limitation of Liability for Maritime Claims into the Laws of the Bahamas.....	15
B. Draft Legislation.....	19-25
C. Appendix.....	26
Appendix 1	27
Appendix 2	30

A. EXPLANATORY NOTE

1. Introduction

The purpose of this drafting project is to provide an amendment to the Merchant Shipping (Maritime Claims Limitation of Liability) Act of the Bahamas, 1989, which incorporated the 1976 Convention on Limitation of Liability for Maritime Claims (LLMC Convention). The incorporation of the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (1996 LLMC Protocol) will be done through this proposed amendment.

It is noteworthy to mention that the limits of the LLMC Convention were greatly increased by the 1996 LLMC Protocol, and in addition to enhancing the limits of liability the 1996 LLMC Protocol introduced a tacit amendment procedure. Based on this tacit amendment procedure through the Resolution LEG.5(99) in 2012 the limits of liability were further increased and they will enter into force on 8 June 2015. Therefore, the proposed draft will automatically refer to the 2012 limits of liability.

2. The Bahamas Ship Registry

The Bahamas is an archipelago with a rich maritime heritage. The first ship was registered in the Bahamas more than thirty years ago, and surprisingly, the fleet grew to its current position as one of the world's largest ship Registers, with over 50 million gross tonnage of ships flying the Bahamas flag in every corner of the globe.¹

¹ The Birth of The Bahamas Register<<http://www.bahamasmaritime.com/index.php?page=1>> 20th January, 2015.

By the early 1990's, the Register rapidly increased; this clearly highlighted the fact that there was need for a new arrangement for the management of the international fleet. This gave rise to The Bahamas Maritime Authority (BMA), which was established in July, 1995.² The functions of the Authority include things such as registering of vessels, enforcement of ship safety requirements and monitoring and improving standards. Additionally, the BMA represented The Bahamas at the International Maritime Organization (IMO) and other international bodies; such as the European Commission and the United States Coast Guard.

The policy of the BMA is that it believes that there must not be a sacrifice of standards in order to attract tonnage. In fact, the regulations of the BMA are that if the ships do not comply with the international standards they are not accepted onto the register. This is illustrated in their Mission Statement,

“To administer the registration and regulation of Bahamas ships, adopting international standards of safety, security and environmental protection to ensure a fleet of the highest quality.”³

In performing their duties, the BMA has provided many reasons why the Bahamas has become a tempting prospect for the shipping industry. The Bahamas has an open registry, which is an attraction all by itself. Being an open registry is one of the major reasons for the registration of a vessel under the Bahamas flag. It provides for the fact that the owners and crewmembers of a ship do not need to be Bahamian nationals. The BMA has a wide network of Nautical Inspectors who are internationally available to advise captains and crewmembers of vessels registered under the Bahamian flag is another benefit of registering under a Bahamian flag.⁴ Additionally, registration of annual fees and taxes are low and competitive.⁵ Another advantage is that the Bahamas is an active member of the

² Ibid.

³ The Birth of The Bahamas Register<<http://www.bahamasmaritime.com/index.php?page=1>> 20th January, 2015.

⁴ The Bahamas Flag<<http://www.bahamas.gov.bs/wps/portal/public/Guide%20f>> 20th January, 2015

⁵ Shipping Industry Increasingly Drawn to Bahamas' Vibrant Maritime Scene<<http://www.parriswhittaker.com/news/entry/shipping-industry-increasingly-drawn-to-bahamas-vibrant-maritime-scene>> 20th January, 2015.

IMO Council. Additionally, and very importantly, the BMA listens to the voices of its shipowners and reflects their interests through the work of the Authority.

Given that the Bahamas is in 6th position with regard to the world's largest ship registries,⁶ it is important to implement the latest rules and regulations with regard to limitation of liability.⁷

3. The 1976 LLMC Convention, The 1996 LLMC Protocol and The New Limits

I. The LLMC Convention

The concept of limitation of liability allows the ship owner to limit his financial exposure for maritime claims up to a maximum sum regardless of the actual amount of the claims brought against him.⁸ Once an incident has occurred the vital issue is how to limit the extent of one's liability. The limit of liability is determined based on the tonnage (size) of the ship that is involved in the incident. Ways to limit the liability of a party can be found in the charter agreement that was made between the parties. However, the issue arises when there is a third party that is involved. It is where third parties are affected that the LLMC Convention is consulted by the owner, and other entitled parties, to limit their liabilities. The right of limitation under the LLMC Convention is available to shipowners and salvors. The LLMC Convention sets out a wide definition of parties qualifying as a "shipowner", not only including owners but also charterers, managers and operators of a sea-going ship.⁹

The LLMC Convention provides a rigorous regime for the system for limiting liability. This was done by imposing on the party challenging the right to limit the burden of proving that the loss resulted from the ship owner's "personal act of omission, committed

⁶ Flag State: Top 10 Ship Registries<<http://info.lloydslistintelligence.com/flag-state-top-10-ship-registry/>> 20th January, 2015.

⁷ Ibid.

⁸ Martinez, Norman A.; *New Global Limits of Liability for Maritime Claims*, Routledge Publishers, 2013, p. 341.

⁹ Article 1 of the LLMC Convention.

with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.”¹⁰ However, there have been cases where this rigorous regime has been broken; for example, in the case of **THE SAINT JACQUES II**.¹¹ In this case it was stated that the right to limit is not unbreakable at all. Gross J denied an application for summary judgment in the limitation action that arose out of a collision between the *Saint Jacques II* and the *Gudermes*, since he considered that there was a real prospect of succeeding at a trial in proving that Article 4 of the Convention applied due to the reckless navigation of the vessel across the Traffic Separation Scheme and the obviousness of the risk of collision.¹² Gross J, in affirming that the limits of the LLMC Convention can be broken, held that,

“...it simply cannot be assumed of a man sufficiently reckless to navigate in the manner described that he could not have done so with knowledge that a collision would probably result; a sensible, prudent mariner is unlikely to have navigated as the first claimant did in the first place [...] I am satisfied that the first defendants have a real prospect of demonstrating at trial that what was involved here was the taking of a “reckless maneuver...by a non-suicidal” mariner sufficient to bring the matter within art 4.”¹³

Although there was a fierce attempt to make the limits unbreakable, it was not successful. Because despite the fact these limits are hard to break, it can be done.

The LLMC Convention applies to personal claims (such as injury and loss of life) as well as property damage claims (such as damage to other ships, property or harbor works). The unit of measurement for monetary liability used under this LLMC Convention is the Special Drawing Right (SDR), which is an interest-bearing international reserve asset.¹⁴ As between personal injury claims and property claims, the limits were much higher in

¹⁰ Article 4 of the LLMC Convention.

¹¹ Martinez, Norman A.; *Limitation of Liability in International Maritime Convention*, Martinus Nijhoff Publishers, 2011, p. 75.

¹² Ibid.

¹³ Ibid.

¹⁴ Increased limits of liability enters into force in 2015

<<http://www.gard.no/ikbViewer/web/updates/content/20741048/increased-limits-of-liability-enters-into-force-in-2015>> 7th February, 2015.

relation to limits adopted for personal injury claims. The limits provided will be discussed under Part 3(II) of this Explanatory Note.

Limitation of liability for passenger claims is also another important factor of the LLMC Convention; this is covered in **Article 7** of the LLMC Convention. One of the issues of the twenty-eighth session of IMCO Legal Committee was whether it was necessary to establish a separate fund for passenger claims, or whether such claims can fall within the general fund established for loss of life and personal injuries.¹⁵ The decision of the Committee was that there should be a separate fund established for claims for loss of life or personal injuries for passengers, and the basis for limitation was based on passenger capacity.¹⁶ The limitation provided under **Article 7** is calculated based on the number of passengers that the ship is authorized to carry. The figure under **Article 7** was set at 46,666 SDRs, and this figure is to be “multiplied by the number of passengers which the ship is authorized to carry according to the ship’s certificate”.¹⁷ Regardless of the amount of the calculation the amount cannot exceed 25,000,000 SDRs.

This Convention intended to provide a harmonization of the arena of limitation of liability.

II. The 1996 LLMC Protocol

The limits that were enunciated in the LLMC Convention were considered to be a landmark development for the law of limitation of liability, as they were seen to be sufficient to provide compensation to claimants, while safeguarding the right of limitation of liability.¹⁸ However, years after the LLMC Convention came into force it was noticed, that there was a need for further revision. It was noticed that the limits of liability that were provided under the LLMC Convention had been gravely depreciated by inflation and were no longer capable of providing satisfaction for the maritime claims.¹⁹

¹⁵ Martinez, Norman A.; Footnote 11, p. 85.

¹⁶ Ibid.

¹⁷ Article 7(1) of the LLMC Convention.

¹⁸ Martinez, Norman A.; Footnote 8 p. 342.

¹⁹ Martinez, Norman A.; Footnote 11, p. 103.

To counteract the problem, the Legal Committee had its sixty-eighth session to commence revision of the LLMC Convention. Consequently, the UK tendered a Draft Protocol to the LLMC Convention to the Legal Committee.²⁰ The Protocol was adopted at the IMO Headquarters between 15th April and 3rd May, 1996.²¹

(a) The Changes Brought About by the Protocol

As explained above, the 1996 LLMC Protocol arose twenty years after the birth of the LLMC Convention because the LLMC Convention was no longer capable of satisfying the possible maritime claims.²² It provided some important changes that were needed to assist the LLMC Convention in the management of maritime claims. The changes explored are the general limits, the claims excepted from limitation, the limitation of liability of passenger claims and amendment of limits.

Firstly, it must be noted that the 1996 LLMC Protocol did not make any changes to the list of persons that were entitled to limit liability. Therefore, the list of persons entitled to liability remained stipulated in **Article 1** of the LLMC Convention.

(i) The General Limits of Liability

The 1996 LLMC Protocol has provided a substantial increase on the limits of liability with regard to general liability. The LLMC Convention lays out specified limits of liability for two claims; namely claims for loss of life or personal injury and property claims (such as damage to other ships or damage cause to the harbors).²³

²⁰ Ibid.

²¹ Limitation of Liability- The 1996 Protocol Comes Into Force
<http://www.steamshipmutual.com/publications/Articles/Articles/LLMC_96Prot_SH0304.asp> 20th January, 2015.

²² Martinez, Norman A.; Footnote 11, p. 103.

²³ Liability Limits Increased Under LLMC 96: IMO Bulletin<www.ukpandi.com>21st January, 2015.

Article 6(1) of the LLMC Convention is replaced by figures in **Article 6(1)** of the 1996 LLMC Protocol in respect of claims for loss of life and personal injury. For clarification purposes, the table below demonstrates the significant difference between the two.

LLMC Convention		1996 LLMC Protocol	
Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships Less than 500 tons	333,000 SDRs ²⁴	Ships less than 2,000 tons	3.02 million SDRs
From 501 to 3,000 tons	500 SDRs per ton		
From 3,001 to 30,000 tons	333 SDRs per ton	From 2,001 to 30,000 tons	1,208 SDRs per ton
From 30,001 to 70,000 tons	250 SDRs per ton	From 30,001 to 70,000 tons	906 SDRs per ton
From 70,001 tons and above	167 SDRs per ton	From 70,001 tons and above	604 SDRs per ton

From the above table it can be seen that there was a sizeable increase in the limits of liability under the 1996 LLMC Protocol. An example of this increase is shown by observing the category of ships from 3,001 to 30,000 tons under both the LLMC Convention and the 1996 LLMC Protocol. Under the LLMC Convention the limit for liability is to be calculated based on 333 SDRs per ton; whereas under the 1996 LLMC Protocol, the liability of the same vessel is to be calculated based on 906 SDRs per ton. The same can be said for ships from 70,001 tons and above; under the LLMC Convention the calculation is based on 167 SDRs per ton; whereas, under the 1996 LLMC Protocol the number has been largely increased to 604 SDRs per ton. Another noted difference provided in the above table is that the minimum tonnage was raised from 500 tons to 2,000 tons.

Another table will be used to illustrate the amendments made in relation to limits of liability for other claims.²⁵

1976 LLMC Convention	The 1996 LLMC Protocol
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²⁴ Special Drawing Rights.

²⁵ Martinez, Norman A.; Footnote 11, p. 108.

Tonnage	Limits of Liability	Tonnage	Limits of Liability
Ships Less than 500 tons	167,000 SDRs ²⁶	Ships less than 2,000 tons	1.51 million SDRs
From 501 to 30,000 tons	167 SDRs per ton	From 2,001 to 30,000 tons	604 SDRs per ton
From 30,001 to 70,000 tons	125 SDRs per ton	From 30,001 to 70,000 tons	453 SDRs per ton
From 70,001 tons and above	83 SDRs per ton	From 70,001 tons and above	302 SDRs per ton

The same can be said as explained above. With the introduction of the Amended Protocol there is a clear visual that not only has the limit of liability increased; but there has also been a raise in the minimum tonnage from 501 tons to 2,001 tons.

(ii) Claims Exempted from Limitation

In regard to claims that are exempt from limitation, the 1996 LLMC Protocol provided a modification to **Articles 3 and 18**. For **Article 3**, the 1996 LLMC Protocol has made an amendment to an automatic exclusion of the LLMC Convention. The change that emerges from this is in relation to special compensation to be provided for salvage. **Article 3** of the Amended Protocol makes reference to **Article 14(1) of the Salvage Convention**²⁷, which provides that where salvage operations are carried out for a vessel that has threatened damage to the environment and has failed to earn a reward under **Article 13** of the International Convention on Salvage,²⁸ he shall be entitled to special compensation from the owner of that vessel.

The view of the Diplomatic Conference, in the implementation of the Amended Protocol, was that claims for special compensation, such as those provided for in **Article 14(1)** of the Salvage Convention, are those for which no limitation of liability should be

²⁶ Special Drawing Rights.

²⁷ IMO, International Convention on Salvage 1989

<<http://www.jus.uio.no/lm/imo.salvage.convention.1989/doc.html>> 21st January, 2015.

²⁸ (London, UK, 28 April, 1989, entered into force 14 July 1996) 1953 UNTS 193 (Salvage Convention).

available.²⁹ However, a limitation to this modification is that it was only applicable to those to whom the Protocol applied; particularly, the Parties to it.

The other modification that was made was to **Article 18**, this exclusion is an optional exclusion. Under the LLMC Convention States have the right to make reservations for those claims that are subject to limitation (**Article 2**); more specifically, **articles 2(1)(d) and (e)**. However, the 1996 LLMC Protocol provides for an additional reservation. Under **Article 18(1)(b)** States may reserve the right,

“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...”³⁰

It is noteworthy that Griggs, Williams and Farr were surprised that it was mentioned under **Article 18** (optional exclusions) rather than **Article 3** (automatic exclusions); but Martínez Gutiérrez points out that this was because of “a question of taste” by the Chairman of the Committee of the Conference, and it could have been done the alternative way as well.³¹

(iii) The Limit of Liability For Passenger Claims

Another increase of limitation the 1996 LLMC Protocol has provided is the limit of liability for passenger claims. Under the LLMC Convention the limit of liability for passenger claims was 46,666 SDRs; and this figure is to be multiplied by the number of passengers, which the ship is authorized to carry according to the ships certificate. This figure, however, is capped at 25 million. The limit under the 1996 LLMC Protocol was increased to 175,000 SDRs; and this figure is to be multiplied by the number of passengers, which the ship is authorized to carry according to the ships certificate. A distinct difference between the two is that there is no longer a cap on this. Martínez Gutiérrez expressed this by saying,

²⁹ Martínez, Norman A.; Footnote 11, p. 104.

³⁰ Martínez, Norman A.; Footnote 11, p. 105.

³¹ Ibid.

“The LLMC Convention’s cap of 25,000,000 SDRs was abolished by the 1996 Protocol.”³²

(iv) “Opt Out” Clause

An additional modification is the “opt out” clause, which is found in **Article 15(3)(bis)**. It is noteworthy that notwithstanding the agreement to the amendment of **Article 7** of the LLMC Convention, there were States that retained a policy of unlimited liability for passenger claims and pressed for the inclusion of an opt-out clause in the 1996 LLMC Protocol.

The Japanese delegation put forward proposals during the seventy-first and seventy-second sessions of the Committee. Of the proposals made, most delegations expressed their support for their second proposal that was made, considering that this would allow States to set higher limits than those in the Protocol; however, it would prevent States from setting lower limits.³³ The Diplomatic Conference embraced the proposed amendment, which is now codified in the 1996 LLMC Protocol, and reads:

“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 life or personal injury to passengers of a ship, provided that the limit is not lower than that prescribed in paragraph 1 of Article 7. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.”³⁴

The significance of this provision is that by allowing States to impose higher limits of liability, the 1996 LLMC Protocol departs from the aim of international unification of the law regarding limitation of liability.³⁵ This allows for States to regulate the amount of limitation of liability.

³² Martinez, Norman A.; Footnote 11, p. 109.

³³ Martinez, Norman A.; Footnote 11, p. 109.

³⁴ Martinez, Norman A.; Footnote 11, p. 110.

³⁵ Ibid.

It is the view of Martínez Gutiérrez that when it comes to passenger claims, it has always been the intention to maintain a relation between the sums set out in the LLMC Convention and those in the Athens Convention Relating to the Carriage of Passengers and Their Luggage By Sea.³⁶ Considering this, it can be noted that the 1996 LLMC Protocol is falling behind after the Athens Convention 2002 was adopted.³⁷ For this reason the suggestion has been made that the limits of liability for passenger claims set out in the 1996 LLMC Protocol should be increased to match those of the Athens Convention (2002). Failing this amount, it has been argued that the limits should at least be increased to match the “strict liability” amount and the required “compulsory insurance” amount of 250,000 units of account.³⁸

After the Protocol entered into force it provided for an approximate 250% rise in regard to limitation than limitation under the LLMC Convention.³⁹ However, these limits were still not adequate to fulfill the needs of the shipping industry. This highlighted an important feature of the Protocol, which was the tacit amendment procedure. This procedure was introduced as in effort to promote expediency and efficiency in the system of updating the limits of liability.⁴⁰ Using this procedure means that any amendment adopted shall be deemed to have been accepted at the end of an eighteen month period, once there are no objections to the proposed amendment. This period begins after the date of notification to all contracting States and shall enter into force eighteen months after its acceptance (a total of 36 months). Consequently, the limits of liability that will be dealt with under Part 4 of this Explanatory Note are the limits provided under the Amended Protocol.

³⁶ (London, UK, 1 November 2002, entered into force 23 April 2014) 147 ILM 945 (Athens Convention).

³⁷ Martínez, Norman A.; Footnote 8, p. 354.

³⁸ Martínez, Norman A.; Footnote 8, p. 355.

³⁹ Increased limits of liability enters into force in 2015

<<http://www.gard.no/ikbViewer/web/updates/content/20741048/increased-limits-of-liability-enters-into-force-in-2015>> 7th February, 2015.

⁴⁰ Martínez, Norman A.; Footnote 8, p. 341.

III. The New Limits of Liability

On 19 April 2012 the IMO announced new limits to take effect on 8 June 2015, in accordance with the tacit acceptance procedure.⁴¹ These limits were brought about resulting from the fact that the limits expressed under the 1996 LLMC Protocol fell short of the cost of responding to the incident in **THE PACIFIC ADVENTURER**.⁴² In this case the ship, *The Pacific Adventurer* lost 31 cargo containers during bad weather conditions. Resulting from this loss approximately 270 tons of oil washed ashore the eastern side of Cape Moreton, Queensland. The clean up operations included 2,500 people to clean up over 3,000 tons of sand and continued for about 2 months. The clean up operations cost about US \$25 million; however, the limitation of liability of a ship this size was 7,556,400 SDRs (which worked out to about US \$11,708,490).

It was for this reason that the new proposed limits had to be something that was justifiable. This case expressed the need to “ensure that any increases are at a justifiable level that will be insurable at reasonable cost and to avoid setting a precedent for arbitrary increases in the future.”⁴³ The Committee, during their ninety-seventh session, supported the moderate proposal made by Japan, which resulted in an increase of 51% to the 1996 Protocol’s limits. It therefore adopted Resolution LEG.5(99) on the Adoption of Amendments of the Limitation Amounts in the Protocol of 1996 to the Convention on Limitation of Liability for Maritime Claims.⁴⁴

With the tacit acceptance procedure that was introduced by the 1996 LLMC Protocol the new limits of **Article 6(1)** of the 1996 LLMC Protocol are 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,

⁴¹ Increased limits of liability entered into force in 2015
<<http://www.gard.no/ikbViewer/web/updates/content/20741048/increased-limits-of-liability-enters-into-force-in-2015>> 7th February, 2015.

⁴² Martinez, Norman A.; Footnote 8, p. 345.

⁴³ Martinez, Norman A.; Footnote 8, p. 357.

⁴⁴ Ibid.

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

It is noteworthy to mention that considering that as of 8 June 2015 the 2012 limits of liability will be automatically applied in relation to the 1996 LLMC Protocol, by acceding to the incorporation of the 1996 LLMC Protocol the Bahamas would have immediately incorporated the 1996 LLMC Protocol which has the new limits. Consequently, there is no need to refer to the Protocol as amended.

4. Importance of Incorporating the 1996 Protocol for the Convention on Limitation of Liability for Maritime Claims into the Laws of the Bahamas

The Bahamas is placed at number six in the world with regard to the size of its ship registry; and it is for this reason that its important to be up to date with the more recent ways to limit liability with regard to maritime claims. Consequently, there is a need for effective regulation of international and domestic regulations in the shipping industry.

The Bahamas is a party to the LLMC Convention, being a party to this Convention, it provided a uniform regime for the limitation of liability of general maritime claims against shipowners and salvors such as claims for personal injury, death and property damage. An advantage of adopting the 1996 LLMC Protocol means that it will provide for substantial increase in the amount of compensation payable under the Convention.

The tacit acceptance procedure is also an advantage of incorporating the 1996 LLMC Protocol into the laws of the Bahamas. This procedure will eradicate the tenuous procedure involved with making amendments to laws. The result of this is that amendments will come into force merely by virtue of passage of a period of time.

Another consideration for the implementation of the 1996 LLMC Protocol in the Bahamas is the fact that the number one industry in the Bahamas is Tourism, and if there is an incident that damages our pristine beaches it will be detrimental. Under the 1976 Convention there were limits provided; but it was clear that these limits were not sufficient. Another consideration is that the Bahamas has many cruise liners that come to our shores; therefore, the new limits provided under the 1996 LLMC Protocol are essential.

Providing an opt out clause in the 1996 LLMC Protocol opens the door to whatever the Bahamas desires to use a figure for limitation of liability in regard to passenger claims. However, this position moves in favor of the State's interest rather than the uniformity that is provided under the Convention. If there is a continuous increase in the limits of

liability it would eventually make the Convention void. The importance of this for The Bahamas is that if the limits of liability are increased, the ticket prices for cruises will be increased because of the premiums that the ship owner must pay are now higher. The higher it is for tickets for cruises the less people will be able to go on them. This is a grave hamper on our number one industry, the tourism industry, since cruise liners bring thousands of tourists to our islands on a daily basis. Therefore, while the opt out clause is an option available under the Convention, it would be beneficial for the Bahamas if it does not avail itself of such an option because the Convention provides a reasonable limit and would be in the interest of the Bahamas as a whole to maintain the limit provided.

Another option that is afforded under the Convention is a reservation in regard to Hazardous and Noxious Substances. The reservation that will be made is that occurrences of carriage of hazardous and noxious substances which take place if and when the coming into force of the Convention or Protocol to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea⁴⁵ will be excluded from the liability.

An additional alteration that is made is under the claims that are subject to limitation. Under Part II of the Interpretation of the Act will not only cover wreck under Section 3(1) of the Act; but, will cover both wreck and cargo. The rationale for this is that in principle, reading Article 2, read as a whole, would seem that a State excluding wreck and cargo

⁴⁵ 35 ILM 1415 (HNS Convention).

removal claims would also have excluded any consequential recourse claims.⁴⁶ Although there are not as yet any decisive laws in this area, it is submitted that a reservation under Article 18 should not be deemed to have also excluded recourse claims.⁴⁷

To make the 1996 LLMC Protocol apart of the laws of the Bahamas an instrument of accession must be provided to the IMO. This instrument can be found in Appendix 1 of this Drafting Project.

Consequently, with the introduction of the 1996 LLMC Protocol, it allows for a greater increase of the limits, which will be beneficial for the Bahamas, as they would be the only one that is responsible for costs affiliated with the incident. The Protocol substantially increases the amount of compensation payable in the event of an incident causing damage or loss. Therefore, with greater limits the burden is less for the coastal State to bear. Moreover, if the Protocol is adopted, the new limits, which arise by virtue of tacit acceptance procedure, would also be a positive consideration for the Bahamas.

⁴⁶ Martinez, Norman A.; *Limitation of Liability in International Maritime Conventions*, Routledge 2011, p. 99.

⁴⁷ *Ibid.*

B. DRAFT LEGISLATION

1. **The Incorporation of the 1996 LLMC Protocol into the Laws of the Bahamas.**

In incorporating this Protocol into the laws of the Bahamas amendments will be made to the Merchant Shipping (Maritime Claims Limitation of Liability) Act of the Bahamas. In doing this the following amendments will be made and dealt with in accordance with the provisions of the Act.

An amended Act has been attached to this Explanatory Note as Appendix 2.

CHAPTER 281

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)
AMENDMENT ACT

ARRANGEMENT OF SECTIONS

An Act to Amend the Merchant Shipping (Maritime Claims Limitation of Liability) Act.

1. The short title of this Act is the Limitation of Liability for Maritime Claims (Amendment) Act, 2015, and this Act shall be read and construed as one with the Merchant Shipping (Maritime Claims Limitation of Liability) Act, 1989, hereinafter referred to as “the principal Act”.

Short Title.

2. Section 3 of the principle Act shall be amended as follows:

Amendment of
Section 3 of the
Principal Act.

(a) in paragraph (1) the words, “and the Protocol thereto”, shall be added between the number “1976” and the word “as”.

(b) in paragraph (2) of the principle Act the words, “as Amended by the Protocol thereto”, shall be added between the words “Convention” and “and”.

3. In paragraph (3) of Section 4 of the principal Act the words, “as amended by the Protocol thereto”, shall be added between the words, “Convention” and “in”.

Amendment of
Article 4 of the
Principal Act.

4. The Heading of the Second Schedule of the principal Act shall be amended as follows:

Amendment of
the Second
Schedule of the
Principal Act.

(a) the words, “AS AMENDED BY THE 1996 PROTOCOL THERETO” shall be added after the number, “1976”.

(b) the words, “CONSOLIDATED TEXT OF THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS AND THE 1996 PROTOCOL THERETO”, shall substitute the words, “TEXT OF CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS”.

5. In Article 3(a) of the Second Schedule of the principal Act the phrase, “, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended,” shall be added between the words, “salvage” and “or”.

Amendment of
Article 3 of the
Second Schedule of
the
Principal Act.

6. Article 6 of the Second Schedule of the principal Act shall be amended as follows:

Amendment of
Article 6 of the
Second Schedule of
the
Principal Act.

(a) sub-article 1(a)(i) shall be substituted with the following,
“3.2 million Units of Accounts for a ship without a tonnage not exceeding 2,000 tons.”

**CH.281 – 2] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION
OF LIABILITY) AMENDMENT ACT**

- (b) sub-article 1(a)(ii) shall be substituted with the following,
“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 in excess of 70,000 tons, 604 Units of Account,”
- (c) sub-article 1(b)(i) shall be substituted with the following,
“1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,”
- (d) sub-article 1(b)(ii) shall be substituted with the following,
“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 in excess of 70,000 tons, 302 Units of Account,”
- (e) After sub-paragraph (2), and before sub-paragraph (4), the following will be added,
“(3) However, 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 harbor 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.”
- (f) After sub-paragraph (4) the following will be added,
“ 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.

7. Article 7(1) of the Second Schedule of the principal Act shall be substituted with the following:

“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 ship owner 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.”

Amendment of
Article 8 of the
Second Schedule of
the
Principal Act.

8. Article 8 of the Second Schedule of the principal Act shall be substituted with the following:

“1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of Special Drawing Right, of a State Party which is a member of the International Monetary Fund, 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. The value of a national currency in terms of the Special Drawing Right, a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph (1) may, at the time of signature without reservation as to ratification, acceptance, approval and or accession or at anytime thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- (a) in respect of Article 6, paragraph 1(a) at an amount of
 - (i) 30 million monetary units 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, 12,000 monetary units; for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and for each ton in excess of 70,000 tons, 6,000 units; and
- (b) in respect of Article 6, paragraph 1 (b), at an amount of
 - (i) 15 million monetary units 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, 6,000 monetary units; for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and for each ton in excess of 70,000 tons, 3,000 monetary units; and

**CH.281 – 4] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION
OF LIABILITY) AMENDMENT ACT**

- (c) In respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to the certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depository the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either.”

9. Article 15 of the Second Schedule of the principal Act shall be substituted with the following:

“1. This Convention shall apply whenever any person referred to in Article I 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. 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.

2. 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
(b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depository of the limits of liability adopted in its national legislation or of the fact that there are none.

Amendment of
Article 15 of the
Second Schedule of
the
Principal Act.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

3bis. 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. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

4. The Courts of a State Party shall not apply this 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 ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention 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.

10. After Article 15 of Part II of the Second Schedule; but, before the Subtitle of "PART II PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION" the following will be added,

“
ARTICLE 18
Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
- (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 or any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.”

Amendment of
Section 3 of
Part II of the Second
Schedule of the
Principal Act.

11. In Section 3 of Part II of the Second Schedule of the principal Act the words, “and i(e)” shall be added between the words, “(d)” and “of”.

12. In Section 4 of Part II of the Second Schedule of the principal Act the following sub-paragraph shall be added,

Amendment of
Section 4 of
Part II of the Second
Schedule of the
Principal Act.

“ (3) 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 to that Convention, which arise for occurrences which take place after the coming into force of that Convention as part of the Laws of The Bahamas shall be excluded from the Convention.”

13. Article 5 of Part II of the Second Schedule of the principal Act shall be amended as follows:

Amendment of
Section 5 of
Part II of the Second
Schedule of the
Principal Act.

(a) sub-article 1(a) shall be substituted with the following:

“paragraph (a)(i) referred to 3.2 million Units of Account; and

(b) sub-article 1(b) shall be substituted with the following:

“paragraph (b)(i) referred to 1.5 million Units of Account.

C. APPENDIX

APPENDIX 1



INSTRUMENT OF ACCESSION

BY THE COMMONWEALTH OF THE BAHAMAS

**TO THE PROTOCOL OF THE 1996 TO AMEND THE CONVENTION ON
LIMITATION OF LIABILITY FOR MARITIME CLAIMS, 1976**

NOTING that, on the 7th day of June 1983 The Commonwealth of the Bahamas acceded to the Convention on Limitation of Liability for Maritime Claims, 1976.

WHEREAS the 1996 Protocol to the LLMC Convention was adopted to provide higher limits of compensation it is necessary for the Bahamas to keep up to date with the provisions.

NOW THEREFORE the Government of the Bahamas, having considered the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, undertakes to faithfully observe all provisions and to carry out the stipulations therein contained: **SUBJECT TO THE FOLLOWING RESERVATIONS:**

“...pursuant to paragraph 1 of Article 18 of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol of 1996, the Commonwealth of the Bahamas hereby excludes:

- (1) the application of sub-paragraphs (d) and (e) of Article 2 of the Convention on Limitation of Liability for Maritime Claims, 1976.
- (2) claims for damage within the meaning of the International Convention on Liability and Compensation for damage in Connection with the with the Carriage of Hazardous and Noxious Substances by Sea, 1996, or any amendment or Protocol to that

Convention, which arise for occurrences which take place after the coming into force of that Convention.

I, PERRY GLADSTONE CHRISTIE, PRIME MINISTER OF THE COMMONWEALTH OF THE BAHAMAS, by virtue of this present document, confirm that the Bahamas accedes to the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, on the day of2015.

IN WITNESS WHEREOF, I have signed this instrument of accession and have affixed herewith the seal of the Commonwealth of the Bahamas.

DONE AT NASSAU, BAHAMAS, THIS.....DAY OF.....2015.

.....
PERRY GLADSTONE CHRISTIE

PRIME MINISTER OF THE COMMONWEALTH OF THE BAHAMAS

APPENDIX 2

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION

CH.281-1

OF LIABILITY)

CHAPTER 281

**MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)
AMENDMENT ACT**

ARRANGEMENT OF SECTIONS

SECTION

1. Short Title.
2. Scheduled Convention and 1996 Protocol thereto to have effect subject to provisions of Part II of the First Schedule.
3. Limitation of liability.
4. Exclusion of Liability.
5. Act to bind the Crown.
6. Construction of Act

FIRST SCHEDULE- Convention relating to the Carriage of Passengers and their Luggage by Sea (1974 Protocol, as amended in consequence of the Protocol of the 19th November, 1976).

SECOND SCHEDULE – Convention on Limitation of Liability for Maritime Claims, 1976 (as amended by the 1996 Protocol thereto).

OF LIABILITY)

CHAPTER 281

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY) AMENDMENT ACT

An Act to make amendments to the law relating to carriage by sea and liability of ship owners and salvors.

17 of 1989
3 of 1991

*[Assent 17th August, 1989]
[Commencement 1 November, 1989]*

1. This Act may be cited at the Merchant Shipping (Maritime Claims Limitation of Liability) Amendment Act, 1989.

Short Title

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

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

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

(3) On and after the date when this subsection and Part III⁴⁸ of the First Schedule shall have the force of law in The Bahamas with the modifications in the said Part III.

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

Limitation of liability

Second Schedule

CH.281 – 4] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)

⁴⁸ The amendments effected by Part III have been incorporated into the Convention; Part III has therefore been deleted in accordance with section 7(a)(vi) of Chapter 3. The relevant portion of that section reads as follows:

“In the preparation of a revised edition of the statute law the Commission shall have following powers, that is to say-

(a) to omit-...

(iv) all amending Acts or parts thereof where the amendments effected thereby have been embodied by the Commission in the Acts to which they relate”.

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

Exclusion
of liability

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

- (a) where any property on board the ship is lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, watches, jewels or precious stones on board the ship are lost or damaged by reason of theft, robbery or other dishonest conduct and their nature and value were not at the time of shipment declared by their owner or shipper to the owner or master of the ship in the bill of lading or otherwise in writing.

(2) Subject to subsection (3) where the loss or damage arises from anything done or omitted by any person in his capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owner of the ship, subsection (1) shall also exclude that liability of -

- (a) the master, member of the crew or servant; and
- (b) in a case where the master or member of the crew is the servant of a person whose liability would not be excluded by that subsection apart from this paragraph the person whose servant he is.

(3) This section does not exclude the liability of any person for any loss or damage resulting from any such personal act or omission of his as is mentioned in Article 2 of the Convention and the Protocol thereto in Part I of the Second Schedule.

(4) In this section "owner", in relation to a ship, includes any part owner and any charterer, manager or operator of the ship.

Act to bind the
Crown

5. This Act shall bind the Crown.

Construction of
Act
Ch. 268

6. This Act shall be construed as one with the Merchant Shipping Act.

FIRST SCHEDULE (Section 2)

**CONVENTION RELATING TO THE CARRIAGE OF
PASSENGERS AND THEIR LUGGAGE BY SEA (1974
PROTOCOL, AS AMENDED IN CONSEQUENCE OF THE
PROTOCOL OF 19TH NOVEMBER, 1976)**

**PART I
TEXT OF CONVENTION RELATING TO THE CARRIAGE OF
PASSENGERS AND THEIR LUGGAGE BY SEA**

ARTICLE 1

Definitions

In this Convention the following expressions have the meaning hereby assigned to them:

1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;
(b) “performed carrier” means a person other than the carrier, being the owner, charter or operator of the ship, who actually performs the whole or a part of the carriage.
2. “contract of carriage” means a contract made by or on behalf of a carrier for the carriage by sea of a passenger and his luggage, as the case may be;
3. “ship” means only seagoing vessel, excluding an aircushion vehicle;
4. “passenger” means any person carried in a ship:
 - (a) under a contract of carriage; or
 - (b) who, with the consent of the carrier, is accompanying a vehicle or live animals which are covered by a contract for the carriage of goods not governed by this Convention;
5. “luggage” means any article or vehicle carried by the carrier under a contract of carriage, excluding:
 - (a) articles and vehicles carried under a charter party, bill of lading or other contract primarily concerned with the carriage of goods; and
 - (b) live animals;
6. “cabin luggage” means luggage which the passenger has in his cabin or is otherwise in his possession, custody and control. Except for the application of paragraph 8 of this Article and Article 8, cabin luggage includes luggage which the passenger has in or on his vehicle;

-
7. “loss of or damage to luggage” includes pecuniary loss resulting from the luggage not having been re-delivered to the passenger within a reasonable time after the arrival of the ship on which the luggage has been or should have been carried, but does not include delays resulting from labour disputes;
 8. “carriage” covers the following periods:
 - (a) with regard to the passenger and his cabin luggage, the period during which the passenger and/or his cabin luggage are on board the ship or in the course of embarkation or disembarkation, and the period during which the passenger and his cabin luggage are transported by water from land to ship or *vice versa*, if the cost of such transport is included in the fare or if the vessel used for the purpose of auxiliary transport has been put at the disposal of the passenger by the carrier. However, with regard to the passenger, carriage does not include the period during which he is in a marine terminal or station or on a quay or in or on any other port installation;
 - (b) with regard to cabin luggage, also the period during which the passenger is in a marine terminal or station or on a quay or in or on any other port installation if that luggage has been taken over by the carrier or his servant or agent and has not been re-delivered to the passenger;
 - (c) with regard to other luggage which is not cabin luggage, the period from the time of its taking over by the carrier or his servant or agent onshore or on board until the time of its re-delivery by the carrier or his servant or agent;
 9. “international carriage” means any carriage in which, according to the contract of carriage, the place of departure and the place of destination are situated in two different States, or in a single State if, according to the contract of carriage or the scheduled itinerary, there is an intermediate port of call in another State.

ARTICLE 2

Application

1. This Convention shall apply to an international carriage if:
 - (a) the ship is flying the flag of or is registered in a State Party to this Convention, or
 - (b) the contract of carriage has been made in a State Party to this Convention, or
 - (c) the place of departure or destination, according to the contract or carriage, is a State Party to this Convention.

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY) [CH.281-7]

2. Notwithstanding paragraph 1 of this Article, this Convention shall not apply when the carriage is subject, under any other international convention concerning the carriage of passengers or luggage by another mode of transport, to a civil liability regime under the provisions of such convention, in so far as those provisions have mandatory application to carriage by sea.

ARTICLE 3

Liability of the Carrier

1. The carrier shall be liable for the damage suffered as a result of the death of or personal injury to a passenger and the loss or damage to luggage if the incident which caused the damage so suffered occurred in the course of the carriage and was due to the fault or neglect of the carrier or of his servants or agents acting within the scope of their employment.

2. The burden of proving that the incident which caused the loss or damage occurred in the course of the carriage, and the extent of the loss or damage, shall lie with the claimant.

3. Fault or neglect of the carrier or of his servants or agents acting within the scope of their employment shall be presumed, unless the contrary is proved, if the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship. In respect of loss of or damage to other luggage, such fault or neglect shall be presumed, unless the contrary is proved, irrespective of the nature of the incident which caused the loss or damage. In all other cases the burden of proving fault or neglect shall lie with the claimant.

ARTICLE 4

Performing Carrier

1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.

2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.

3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.

4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.

CH.281 – 8] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)

5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.

ARTICLE 5

Valuables

The carrier shall not be liable for the loss of or damage to monies, negotiable securities, gold, silverware, jewellery, ornaments, works of art, or other valuables, except where such valuables, have been deposited with the carrier for the agreed purpose of safekeeping in which case the carrier shall be liable up to the limit provided for in paragraph 3 of Article 8 unless a higher limit is agreed upon in accordance with paragraph 1 of Article 10.

ARTICLE 6

Contributory Fault

If the carrier proves that the death of or personal injury to a passenger or the loss of or damage to his luggage was caused or contributed to by the fault or neglect of the passenger, the court seized of the case may exonerate the carrier wholly or partly from his liability in accordance with the provisions of the law of that court.

ARTICLE 7

Limit of Liability for Personal Injury

1. The liability of the carrier for the death of or personal injury to a passenger shall in no case exceed 46,666 units of account per carriage. Where in accordance with the law of the court seized of the case damages are awarded in the form of periodical income payments, the equivalent capital value of those payments shall not exceed the said limit.

2. Notwithstanding paragraph 1 of this Article, the national law of any State Party to this Convention may fix, as far as carriers who are nationals of such State are concerned, a higher *per capita* limit of liability.

ARTICLE 8

Limit for Liability for Loss of or Damage to Luggage

1. The liability of the carrier for the loss of or damage to cabin luggage shall in no case exceed 833 units of account per passenger, per carriage.

2. The liability of the carrier for the loss of or damage to vehicles including all luggage carried in or on the vehicle shall in no case exceed 3,333 units of account per vehicle, per carriage.

3. The liability of the carrier for the loss of or damage to luggage other than that mentioned in paragraphs 1 and 2 of this Article shall in no case exceed 1,200 units of account per passenger per carriage.

4. The carrier and the passenger may agree that the liability of the carrier shall be subject to a deductible not exceeding 117 units of account in the case of damage
MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-9
OF LIABILITY)

17 of 1989, First Sch., Part III, para 1.

17 of 1989, First Sch., Part III, para 2.

17 of 1989, First Sch., Part III, para 2.

17 of 1989, First Sch., Part III, para 2.

17 of 1989, First Sch., Part III, para 2.

to a vehicle and not exceeding 13 units of account per passenger in the case of loss of or damage to other luggage, such sum to be deducted from the loss or damage.

ARTICLE 9

Unit of Account and Conversion

The Unit of Account mentioned in this Convention is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 7 and 8 shall be converted into the national currency of the State of the Court seized of the case on the basis of the value of that currency on the date of the judgment or the date agreed upon by the Parties.

17 of 1989, First Sch., Part III, para 3.

ARTICLE 10

Supplementary Provisions on Limits of Liability

1. The carrier and the passenger may agree, expressly and in writing, to higher limits of liability than those prescribed in Articles 7 and 8.
2. Interest on damages and legal costs shall not be included in the limits of liability prescribed in Articles 7 and 8.

ARTICLE 11

Defences and Limits for Carriers' Servants

If an action is brought against a servant or agent of the carrier or of the performing carrier arising out of damage covered by this Convention, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the defences and limits of liability which the carrier or the performing carrier is entitled to invoke under this Convention.

ARTICLE 12

Aggregation of Claims

1. Where the limits of liability prescribed in Articles 7 and 8 take effect, they shall apply to the aggregate of the amounts recoverable in all claims arising out of the death of or personal injury to any one passenger or the loss of or damage to his luggage.
2. In relation to the carriage performed by a performing carrier, the aggregate of the amounts recoverable from the carrier and the performing carrier and from their servants and agents acting within the scope of their employment shall not exceed the highest amount which could be awarded against either the carrier or the performing carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.
3. In any case where a servant or agent of the carrier or of the performing carrier is entitled under Article 11 of this Convention to avail himself of the limits of liability prescribed in Articles 7 and 8, the aggregate of the amounts

CH.281 – 10] **MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)**

recoverable from the carrier, or the performing carrier as the case may be, and from that servant or agent, shall not exceed those limits.

ARTICLE 13

Loss of Right to Limit Liability

1. The carrier shall not be entitled to the benefit of the limits of liability prescribed in Articles 7 and 8 and paragraph 1 of Article 10, if it is proved that the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

2. The servant or agent of the carrier or of the performing carrier shall not be entitled to the benefit of those limits if it is proved that the damage resulted from an act or omission of that servant or agent done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

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 15

Notice of Loss or Damage to Luggage

1. The passenger shall give written notice to the carrier or his agent:
- (a) in the case of apparent damage to luggage:
 - (i) for cabin luggage, before or at the time of disembarkation of the passenger;
 - (ii) for all other luggage, before or at the time of its re-delivery;
 - (b) in the case of damage to luggage which is not apparent, or loss of luggage, within fifteen days from the date of disembarkation or re-delivery or from the time when such re-delivery should have taken place.

2. If the passenger fails to comply with this Article, he shall be presumed, unless the contrary is proved, to have received the luggage undamaged.

3. The notice in writing need not be given if the condition of the luggage has at the time of its receipt been the subject of joint survey or inspection.

ARTICLE 16

Time-bar for Actions

1. Any action for damages arising out of the death of or personal injury to a passenger or for the loss of or damage to luggage shall be time-barred after a period of two years.

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-11
OF LIABILITY)

2. The limitation period shall be calculated as follows:
- (a) in the case of personal injury, from the date of disembarkation of the passenger;
 - (b) in the case of death occurring during carriage, from the date when the passenger should have disembarked, and in the case of personal injury occurring during carriage and resulting in the death of the passenger after disembarkation, from the date of death, provided that this period shall not exceed three years from the date of disembarkation;
 - (c) in the case of loss of or damage to luggage, from the date of disembarkation or from the date when disembarkation should have taken place, whichever is later.

3. The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods, but in no case shall an action under this Convention be brought after the expiration of a period of three years from the date of disembarkation of the passenger or from the date when disembarkation should have taken place, whichever is later.

4. Notwithstanding paragraphs 1, 2 and 3 of this Article, the period of limitation may be extended by a declaration of the carrier or by agreement of the parties after the cause of action has arisen. The declaration or agreement shall be in writing.

ARTICLE 17

Competent Jurisdiction

1. An action arising under this Convention shall, at the option of the claimant, be brought before one of the courts listed below, provided that the court is located in a State Party to this Convention:

- (a) the court of the place of permanent residence or principal place of business of the defendant, or
- (b) the court of the place of departure or that of the destination according to the contract of carriage; or
- (c) a court of the State of the domicile or permanent residence of the claimant, if the defendant has a place of business and is subject to jurisdiction in that State, or
- (d) a court of the State where the contract of carriage was made, if the defendant has a place of business and is subject to jurisdiction in that State.

2. After the occurrence of the incident which has caused the damage, the parties may agree that the claim for damages shall be submitted to any jurisdiction or to arbitration.

ARTICLE 18

Invalidity of Contractual Provisions

Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of 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.

ARTICLE 20

Nuclear Damage

No liability shall arise under this Convention for damage caused by a nuclear incident:

- (a) if the operator of a nuclear installation is liable for such damage under either the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy as amended by its Additional Protocol of 28 January 1964, or the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage, or
- (b) if the operator of a nuclear installation is liable for such damage by virtue of a national law governing the liability for such damage, provided that such law is in all respects as favorable to persons who may suffer damage as either the Paris or the Vienna Conventions.

ARTICLE 21

Commercial Carriage by Public Authorities

This Convention shall apply to commercial carriage undertaken by States or Public Authorities under contracts of carriage within the meaning of Article 1.

PART II
PROVISIONS HAVING EFFECT IN CONNECTION
WITH CONVENTION

Interpretation

1. In this Part of this Schedule any reference to a numbered Article is a reference to the article of the Convention which is so numbered and any expression to which a meaning is assigned by Article 1 of the Convention has that meaning.

*Provisions Adapting or Supplementing Specified Articles of
the Convention*

2. For the purposes of paragraph 2 of Article 2, provisions of such an international convention as is mentioned in that paragraph which apart from this paragraph do not have mandatory application to carriage by sea shall be treated as having mandatory application to carriage by sea if it is stated in the contract of carriage for the carriage in question that those provisions are to apply in connection with the carriage.

3. The reference to the law of the court in Article 6 shall be construed as a reference to the Contributory Negligence Act Chapter 75 of the Laws of The Bahamas.

4. The Minister may by order provide that, in relation to a carrier whose principal place of business is in The Bahamas, paragraph 1 of Article 7 shall have effect with the substitution for the limit for the time being specified in that paragraph of a different limit specified in the order (which shall not be lower than the limit specified in that paragraph at the passing of this Act or, if paragraph 1 of Part III⁴⁹ of this Schedule has come into force, specified in paragraph 1 of Article 7 as amended by paragraph 1 of that Part).

5. (1) For the purpose of converting from special drawing rights into dollars the amounts mentioned in Articles 7 and 8 of the Convention in respect of which a judgment is given, one special drawing right shall be treated as equal to such a sum in dollars as the International Monetary Fund have fixed as being the equivalent of one special drawing right for —

- (a) the day on which the judgment is given; or
- (b) if no sum has been so fixed for that day, the last day before that day for which a sum has been so fixed.

**CH.281 – 14] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION
OF LIABILITY)**

⁴⁹ The amendments effected by Part III have been incorporated into the Convention; Part III has therefore been deleted in accordance with section 7(a)(vi) of Chapter 3. The relevant portion of that section reads as follows:

“In the preparation of a revised edition of the statute law the Commission shall have the following powers, that is to say –

- (a) to omit - ...
- (vi) all amending Acts or parts thereof where the amendments effected thereby have been embodied by the Commission in the Acts to which they relate”.

-
- (2) A certificate given by or on behalf of the Central Bank stating —
- (a) that a particular sum in dollars has been fixed as mentioned in the preceding subparagraph for a particular day; or
 - (b) that no sum has been so fixed for that day and a particular sum in dollars has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,

shall be conclusive evidence of those matters for the purposes of Articles 7 to 9 of the Convention; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

6. It is hereby declared that by virtue of Article 12 the limitations on liability there mentioned in respect of a passenger or his luggage apply to the aggregate liabilities of the persons in question in all proceedings for enforcing the liabilities or any of them which may be brought whether in The Bahamas or elsewhere.

- 7. (a) Article 16 shall apply to an arbitration as it applies to an action.
- (b) For the purpose of Article 16, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.
- (c) Any such notice as aforesaid may be served either —
 - (i) by delivering it to the person on whom it is to be served; or
 - (ii) by leaving it at the usual or last known place of abode in The Bahamas of that person; or
 - (iii) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in The Bahamas;

as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effective at the time at which the letter would have been delivered in the ordinary course of post.

- 9. The court before which proceedings are brought in pursuance of Article 17 to enforce a liability which is limited by virtue of Article 12 may at any stage of the proceedings make such orders as appear to the court to be just and equitable in view of the provisions of Article 12 and of any other proceedings which have been or are likely to be begun in The Bahamas or elsewhere to enforce the liability in whole or in part; and without prejudice to the generality of the preceding provisions of this paragraph such a court shall, where the liability is or may be partly enforceable in other proceedings in The Bahamas or elsewhere, have
- MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-15
OF LIABILITY)

jurisdiction to award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court or to make any part of its award conditional on the results of any other proceedings.

Other Provisions Adapting or Supplementing the Convention

9. Any reference in The Convention to a contract of carriage excludes a contract of carriage which is not for reward.

10. If the Minister by Order declares that any State specified in the Order is a party to the Convention in respect of a particular country the Order shall, subject to the provisions of any subsequent Order made by virtue of this, paragraph, be conclusive evidence that the State is a party to the Convention in respect of that country.

11. The Minister may by order make provision —

(a) for requiring a person who is the carrier in relation to a passenger to give to the passenger, in a manner specified in the order, notice of such of the provisions of Part I of this Schedule as are so specified;

(b) for a person who fails to comply with a requirement imposed on him by the order to be guilty of an offence and liable on summary conviction to a fine of an amount not exceeding one thousand dollars.

Application of sections 3 and 4 of this Act

12. Nothing in section 4 of this Act (which among other things limits a shipowner's liability for loss or damage of goods in certain cases) shall relieve a person of any liability imposed on him by the Convention.

13. It is hereby declared that nothing in the Convention affects the operation of section 3 of this Act (which limits a shipowner's liability in certain cases of loss of life, injury or damage).

SECOND SCHEDULE (Section 3)

**CONVENTION ON LIMITATION OF LIABILITY FOR
MARITIME CLAIMS (1976, AS AMENDED BY THE 1996 PROTOCOL
THERE TO).**

PART I

**CONSOLIDATED TEXT OF THE CONVENTION ON LIMITATION OF
LIABILITY FOR MARITIME CLAIMS AND THE 1996 PROTOCOL
THERE TO.**

**CHAPTER I
THE RIGHT OF LIMITATION**

ARTICLE 1

Persons Entitled to Limit Liability

1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term “shipowner” shall mean the owner, charterer, manager or operator of a seagoing ship.

3. Salvor shall mean any person rendering services in direct connection with salvage operations. Salvage operations shall also include operations referred to in Article 2, paragraph 1(d), (e) and (f).

4. If any claims set out in Article 2 are made against any person for whose act, neglect or default the shipowner or salvor is responsible, such person shall be entitled to avail himself of the limitation of liability provided for in this Convention.

5. In this Convention the liability of a shipowner shall include liability in an action brought against the vessel herself.

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

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

ARTICLE 2

Claims Subject to Limitation

1. Subject to Articles 3 and 9 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
MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-17
OF LIABILITY)

aids to navigation,) occurring onboard or in direct connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;
- (d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimise loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures.

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

ARTICLE 3

Claims Excepted from Limitation

The rules of this Convention shall not apply to:

- (a) claims for salvage, 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 29th 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 to such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

CH.281 – 18] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)

ARTICLE 4

Conduct Barring Limitation

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

ARTICLE 5

Counterclaims

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

CHAPTER II LIMITS OF LIABILITY

ARTICLE 6

The General Limits

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury;
 - (i) 3.2 million Units of Accounts 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).

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY) [CH.281-19]

3. However, 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.

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. For the purpose of this Convention the ship's tonnage shall be the gross 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.

ARTICLE 7

The Limit for Passenger Claims

1. In respect of claims arising on any distinct occasion for loss of life or personal injury to passengers of a ship, the limit of liability of the shipowner thereof shall be an amount of 175,000 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:

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

ARTICLE 8

Unit of Account

1. The Unit of Account referred to in Articles 6 and 7 is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Articles 6 and 7 shall be converted into the national currency of the State in which limitation is sought, according to the value of that currency at the date the limitation fund shall have been constituted, payment is made, or security is given which under the law of that State is equivalent to such payment. The value of a national currency in terms of the Special Drawing Right, of a State Party which is a member of the International Monetary Fund, 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. The value of a national currency in terms of the Special Drawing Right, of a State Party which is not a member of the International Monetary Fund, shall be calculated in a manner determined by the State Party.

2. Nevertheless, those States which are not members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 may, at the time of signature without reservation as to ratification, acceptance or approval or at the time of ratification, acceptance, approval and or accession or at anytime thereafter, declare that the limits of liability provided for in this Convention to be applied in their territories shall be fixed as follows:

- (a) in respect of Article 6, paragraph 1(a), at an amount of
 - (i) 30 million monetary units 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, 12,000 monetary units; for each ton from 30,001 to 70,000 tons, 9,000 monetary units; and for each ton in excess of 70,000 tons, 6,000 monetary units; and
- (b) in respect of Article 6, paragraph 1(b), at an amount of
 - (i) 15 million monetary units 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 mention in (i):
for each ton from 2,001 to 30,000 tons, 6,000 monetary units; for each ton from 30,001 to 70,000 tons, 4,500 monetary units; and for each ton in excess of 70,000 tons, 3,000 monetary units; and
- (c) in respect of Article 7, paragraph 1, at an amount of 2,625,000 monetary units multiplied by the number of passengers which the ship is authorized to carry according to the certificate.

Paragraphs 2 and 3 of Article 6 apply correspondingly to subparagraphs (a) and (b) of this paragraph.

3. The monetary unit referred to in paragraph 2 corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. The conversion of the amounts referred to in paragraph 2 into the national currency shall be made according to the law of the State concerned.

4. The calculation mentioned in the last sentence of paragraph 1 and the conversion mentioned in paragraph 3 shall be made in such a manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 6 and 7 as is expressed there in units of account. States Parties shall communicate to the depository the manner of calculation pursuant to paragraph 1, or the result of the conversion in paragraph 3, as the case may be, at the time of the signature without reservation as to ratification, acceptance or approval, or when depositing an instrument referred to in Article 16 and whenever there is a change in either.

ARTICLE 9

Aggregation of Claims

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

- (a) against the person or persons mentioned in paragraph 2 of Article 1 and any person for whose act, neglect or default he or they are responsible; or
- (b) against the shipowner of a ship rendering 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 7 shall apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in paragraph 2 of Article 1 in respect of the ship referred to in Article 7 and any person for whose act, neglect or default he or they are, responsible.

ARTICLE 10

Limitation of Liability Without Constitution of a Limitation Fund

1. Limitation of liability may be invoked notwithstanding that a limitation fund as mentioned in Article II has not been constituted.

2. If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Article 12 shall apply correspondingly.

3. Questions of procedure arising under the rules of this Article shall be decided in accordance with the national law of the State Party in which action is brought.

CHAPTER III THE LIMITATION FUND

ARTICLE 11

Constitution of Fund

1. Any person alleged to be liable may constitute a fund with the Court or other competent authority in any State Party in which legal proceedings are instituted in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Articles 6 and 7 as are applicable to claims for which that person may be liable, together with interest thereon from the date of the occurrence giving rise to the liability until the date of the constitution of the fund. Any fund thus constituted shall be available only for the payment of claims in respect of which limitation liability can be invoked.

2. A fund may be constituted, either by depositing the sum, or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the Court or other competent authority.

3. A fund constituted by one of the persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph 1(a), (b) or (c) or paragraph 2, respectively.

ARTICLE 12

Distribution of the Fund

1. Subject to the provisions of paragraphs 1 and 2 of Article 6 and of Article 7, the fund shall be distributed among the claimants in proportion to their established claims against the fund.

2. If, before the fund is distributed, the person liable, or his insurer, has settled a claim against the fund such person shall, up to the amount he has paid, acquire by subrogation the rights which the person so compensated would have enjoyed under this Convention.

3. The right of subrogation provided for in paragraph 2 may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid, but only to the extent that such subrogation is permitted under the applicable national law.

4. Where the person liable or any other person establishes that he may be compelled to pay, at a later date, in whole or in part any such amount of compensation with regard to which such person would have enjoyed a right of subrogation pursuant to paragraphs 2 and 3 had the compensation been paid before the fund was distributed, the Court or other competent authority of the State where the fund has been constituted may order that a sufficient sum shall be provisionally set aside to enable such person at such later date to enforce his claim against the fund.

ARTICLE 13

Bar to Other Actions

1. Where a limitation fund has been constituted in accordance with Article 11, any person having made a claim against the fund shall be barred from exercising any right in respect of such a claim against any other assets of a person by or on behalf of whom the fund has been constituted.

2. After a limitation fund has been constituted in accordance with Article 11, any ship or other property, belonging to a person on behalf of whom the fund has been constituted, which has been arrested or attached within the jurisdiction of a State Party for a claim which may be raised against the fund, or any security

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-23
OF LIABILITY)

given, may be released by order of the Court or other competent authority of such State. However, such release shall always be ordered if the limitation fund has been constituted:

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

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

ARTICLE 14

Governing Law

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

CHAPTER IV SCOPE OF APPLICATION

ARTICLE 15

1. This Convention shall apply whenever any person referred to in Article I 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. 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.

2. 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
- (b) ships of less than 300 tons.

A State Party which makes use of the option provided for in this paragraph shall inform the depositary of the limits of liability adopted in its national legislation or

**CH.281 – 24] MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION
OF LIABILITY)**

of the fact that there are none.

3. A State Party may regulate by specific provisions of national law the system of limitation of liability to be applied to claims arising in cases in which interests of persons who are nationals of other States Parties are in no way involved.

3bis 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. A State Party which makes use of the option provided for in this paragraph shall inform the Secretary-General of the limits of liability adopted or of the fact that there are none.

4. The Courts of a State Party shall not apply this 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 ships.

In a case to which sub-paragraph (a) applies that State Party shall inform the depositary accordingly.

5. This Convention 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.

CHAPTER V FINAL CLAUSES

ARTICLE 16

Signature, ratification and accession

1. This Convention shall be open for signature by all States at the Headquarters of the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as "the Organization") from 1 February 1977 until 31 December 1977 and shall thereafter remain open for accession.

2. All States may become parties to this Convention by:

- (a) signature without reservation as to ratification, acceptance or approval; or
- (b) signature subject to ratification, acceptance or approval followed by ratification, acceptance or approval; or
- (c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the
MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-25
OF LIABILITY)

deposit of a formal instrument to that effect with the Secretary-General of the

Organization (hereinafter referred to as “the Secretary-General”).

ARTICLE 17

Entry into force

1. This Convention shall enter into force on the first day of the month following one year after the date on which twelve States have either signed it without reservation as to ratification, acceptance or approval or have deposited the requisite instruments of ratification, acceptance, approval or accession.

2. For a State which deposits an instrument of ratification, acceptance, approval or accession, or signs without reservation as to ratification, acceptance or approval, in respect of this Convention after the requirements for entry into force have been met but prior to the date of entry into force, the ratification, acceptance, approval or accession or the signature without reservation as to ratification, acceptance or approval, shall take effect on the date of entry into force of the Convention or on the first day of the month following the ninetieth day after the date of the signature or the deposit of the instrument, whichever is the later date.

3. For any State which subsequently becomes a Party to this Convention, the Convention shall enter into force on the first day of the month following the expiration of ninety days after the date when such State deposited its instrument.

4. In respect of the relations between States which ratify, accept, or approve this Convention or accede to it, this Convention shall replace and abrogate the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships, done at Brussels on 10 October 1957, and the International Convention for the Unification of certain Rules relating to the Limitation of Liability of the Owners of Sea-going Vessels, signed at Brussels on 25 August 1924.

ARTICLE 18

Reservations

1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

- (a) to exclude the application of Article 2, paragraphs 1(d) and (e);
- (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 or any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention.

2. Reservations made at the time of signature are subject to confirmation upon ratification, acceptance or approval.

3. Any State which has made a reservation to this Convention may

CH.281 – 26] **MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION OF LIABILITY)**

withdraw it at any time by means of a notification addressed to the Secretary-General. Such withdrawal shall take effect on the date the notification is received. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date the notification is received by the Secretary-General, the withdrawal shall take effect on such later date.

ARTICLE 19

Denunciation

1. This Convention may be denounced by a State Party at any time one year from the date on which the Convention entered into force for that Party.
2. Denunciation shall be effected by the deposit of an instrument with the Secretary-General.
3. Denunciation shall take effect on the first day of the month following the expiration of one year after the date of deposit of the instrument, or after such longer period as may be specified in the instrument.

ARTICLE 20

Revision and amendment

1. A Conference for the purpose of revising or amending this Convention may be convened by the Organization.
2. The Organization shall convene a Conference of the States Parties to this Convention for revising or amending it at the request of not less than one-third of the Parties.
3. After the date of the entry into force of an amendment to this Convention, any instrument of ratification, acceptance, approval or accession deposited shall be deemed to apply to the Convention as amended, unless a contrary intention is expressed in the instrument.

ARTICLE 21

Revision of the limitation amounts and of Unit of Account or monetary unit

1. Notwithstanding the provisions of Article 20, a Conference only for the purposes of altering the amounts specified in Articles 6 and 7 and in Article 8, paragraph 2, or of substituting either or both of the Units defined in Article 8, paragraphs 1 and 2, by other units shall be convened by the Organization in accordance with paragraphs 2 and 3 of this Article. An alteration of the amounts shall be made only because of a significant change in their real value.
 2. The Organization shall convene such a Conference at the request of not less than one fourth of the States Parties.
 3. A decision to alter the amounts or to substitute the Units by other units of account shall be taken by a two-thirds majority of the States Parties present and voting in such Conference.
 4. Any State depositing its instrument of ratification, acceptance, approval
- MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-27
OF LIABILITY)

or accession to the Convention, after entry into force of an amendment, shall

apply the Convention as amended.

ARTICLE 22

Depositary

1. This Convention shall be deposited with the Secretary-General.
2. The Secretary-General shall:
 - (a) transmit certified true copies of this Convention to all States which were invited to attend the Conference on Limitation of Liability for Maritime Claims and to any other States which accede to this Convention;
 - (b) inform all States which have signed or acceded to this Convention of:
 - (i) each new signature and each deposit of an instrument and any reservation thereto together with the date thereof;
 - (ii) the date of entry into force of this Convention or any amendment thereto;
 - (iii) any denunciation of this Convention and the date on which it takes effect;
 - (iv) any amendment adopted in conformity with Articles 20 or 21;
 - (v) any communication called for by any Article of this Convention.
3. Upon entry into force of this Convention, a certified true copy thereof shall be transmitted by the Secretary-General to the Secretariat of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations.

ARTICLE 23

Languages

This Convention is established in a single original in the English, French, Russian and Spanish languages, each text being equally authentic.

PART II

PROVISIONS HAVING EFFECT IN CONNECTION WITH CONVENTION

Interpretation

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

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

*Right to Limit
Liability*

3. (1) Paragraph 1(d) and (e) of Article 2 shall not apply unless provision has been made by an order of the Minister for the setting up and management of a fund to be used for the making to harbour or conservancy authorities of payments needed to compensate them for the reduction, in consequence of the said

*Claims subject to
Limitation*

CH.281 – 28] **MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION
OF LIABILITY)**

paragraph 1(d), of amounts recoverable by them in claims of the kind there

mentioned, and to be maintained by contributions from such authorities raised and collected by them in respect of vessels in like manner as other sums so raised by them.

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

Claims excluded from limitation

4. (1) The claims excluded from the Convention by paragraph (b) of Article 3 are claims in respect of any liability incurred under section 20 of the Merchant Shipping (Oil Pollution) Act, Chapter 275.

(2) The claims excluded from the Convention by paragraph (c) of Article 3 are claims made by virtue of either of sections 10 and 11 of the Nuclear Installations Act 1965 (U.K.) as extended to The Bahamas by the Nuclear Installations (Bahamas) Order, 1972, modified and adapted as in the Schedule thereto.

(3) 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 to that Convention, which arise for occurrences which take place after the coming into force of that Convention as part of the Laws of The Bahamas shall be excluded from the Convention.

5. (1) In the application of Article 6 to a ship with a tonnage less than 2,000 tons that Article shall have effect as if —

The General Limits

- (a) paragraph (a)(i) referred to 3.2 million Units of Account; and
- (b) paragraph (b)(i) referred to 1.5 million Units of Account.

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

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

Limit for passenger claim

Ch 268

6. (1) In the case of a passenger steamer within the meaning of Part IV of the Merchant Shipping Act, the ship's certificate mentioned in paragraph 1 of article 7 shall be the certificate issued under section 16 of that Act.

(2) In paragraph 2 of Article 7 the reference to claims brought on behalf of a person. Includes a reference to any claim in respect of the death of a person under the Fatal Accidents Act Chapter 71 of the Laws of The Bahamas.

Units of Account

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

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

MERCHANT SHIPPING (MARITIME CLAIMS LIMITATION [CH.281-29 OF LIABILITY)

for which a sum has been so fixed.

- (2) A certificate given by or on behalf of the Central Bank stating -
- (a) that a particular sum in dollars has been fixed as mentioned in the preceding subparagraph for a particular date; or
 - (b) that no sum has been so fixed for that date and that a particular sum in dollars has been so fixed for a date which is the last preceding date for which a sum has been so fixed,

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

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

Constitution of fund

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

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

Distribution of fund

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

Bar to other actions

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

Meaning of "court"

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

Meaning of "ship"

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

Meaning of "State Party" 3 of 1991, s.2