

IMO INTERNATIONAL MARITIME LAW INSTITUTE

LEGISLATION DRAFTING PROJECT

LIMITATION OF LIABILITY FOR MARITIME CLAIMS ACT NO. OF 2006.

[A LEGISLATION TO INTRODUCE THE INTERNATIONAL CONVENTION ON
LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 AS AMENDED BY THE
PROTOCOL OF 1996]

A LEGISLATION DRAFTING PROJECT SUBMITTED IN PARTIAL FULFILMENT OF
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTER OF LAWS
(LL.M.)

2005/2006

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EXPLANATORY NOTE

A LEGISLATION TO INTRODUCE THE INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 AS AMENDED BY THE PROTOCOL OF 1996

History and General Description of the Law relating to Limitation of Liability for Maritime Claims

Limitation of liability has a long history in the sphere of maritime law. It stems from the importance of maritime trade and reflects the desire to protect shipowners and others involved in the operation of the ship, from bearing the brunt of potentially crippling financial effects of legal claims.

There has always been therefore the need to strike a balance between the desire to ensure that a successful claimant should be adequately compensated for any loss or injury sustained by him to his person or property and the need to permit ship owners, for public policy reasons, to limit their liability to an amount which was readily insurable at a reasonable premium.¹

Based on this premise and also due to the existence of different national laws, the need for international unification of maritime law on the subject was necessitated. As such several international conferences have been held leading to the adoption of International Conventions in the field of limitation of liability for maritime claims.

The first such conference was held in Brussels in 1924. This resulted in the adoption of the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Sea Going Ships, on 25th August 1924.

¹ Griggs, Patrick-Williams, Richard-Farr, Jeremy, *Limitation of Liability for Maritime Claims*, LLP, Fourth Edition, 2005, page 3.

This was followed by the International Convention Relating to the Limitation of the Liability of Owners of Sea Going Ships, which was also adopted in Brussels, on 10th October 1957.

With the passage of time it was generally accepted that the rules relating to limitation of liability for maritime claims enshrined in the 1924 and 1957 Limitation Conventions required updating. This was more so due to the rapid developments of the 1960's, the depreciation of monetary values, increases in the size of ships and the need to protect other categories of operators as well.²

This led the Comite Maritime International (CMI) to embark on a further review of the limitation regime, in conjunction with the Legal Committee of the International Maritime Organization (IMO).

The result was the convening of the International Conference on the Limitation of Liability for Maritime Claims, which took place in London in November 1976, under the auspices of the IMO.

It was agreed at this Conference that the limitation figures contained in the 1957 Convention needed to be increased and that the new limitation figures should be accompanied by a mechanism to accommodate the problems of inflation. It was also agreed that the circumstances in which the right to limit should be forfeited needed to be reviewed.³

The solution which was finally arrived at to resolve the competing requirements of the claimants and the shipowners was

- (i) The establishment of a limitation fund which was as high as a shipowner could cover by insurance at a reasonable premium, and
- (ii) The creation of a virtually unbreakable right to limit liability. The right to so limit is lost only where it is proved by the claimant that the loss resulted from the personal act or omission of the person seeking to limit liability, committed

² *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996*-a publication of the Comite Maritime International, page ix.

³ Griggs, Patrick and others page 3.

with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result.⁴

The International Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC 1976), which was adopted at this Conference, on 19th November 1976, therefore represents a compromise. The Convention entered into force on 1st December 1986.

Another important feature of the said Convention is that liability limits were set at appropriate levels, or on a scaled approach, based on tonnage. This must be contrasted with the 1924 Limitation Convention which limited the liability of the shipowner to an amount equivalent to the value of the vessel, the freight, and the accessories of the vessel, and the 1957 Convention which was based on a fixed value per tonne.

At a Diplomatic Conference held at the IMO Headquarters in London, a Protocol to the 1976 Limitation Convention was adopted, on 2nd May 1996. The Protocol entered into force internationally on 13th May 2004.

By this Protocol the amount to which a shipowner, charterer, operator or their insurers can limit their liability for losses arising out of a maritime accident will change substantially. It is said as an example that a ship of 20,000 gross tons (GRT) will have its property limitation fund increased from US\$ 5.1 million to US\$ 12.4 million.⁵

The Protocol also dramatically increases the limits of liability which were stipulated in the 1976 Convention in respect of passenger claims. The LLMC 1976 provided that 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 shall be an amount of 46,666 SDR's (Special Drawing Rights) multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate. Now a passenger vessel's limit for passenger claims will be calculated by multiplying 175,000 SDR's by the number of passengers that vessel is authorized to carry. This increase is said to be equivalent to about US\$ 258,825 per

⁴ Griggs, Patrick and others page 3.

⁵ Shipping Law Bulletin-March 2004 Edition.

passenger.⁶ Importantly the previous upper limit per vessel of 25 million SDRs has been abolished.

Under the 1976 Limitation Convention claims for salvage could not be limited. This has now been extended by the 1996 Protocol to include claims for Special Compensation under Article 14 of the International Convention on Salvage 1989.

The LLMC 1976 deals with global limitation of liability for maritime claims, although the subject of liability has also been a prominent feature of a number of other International Conventions over the years. The LLMC Convention can now therefore be seen as the global instrument for limitation of the shipowner's liability, while other treaties deal with specific types of claims-cargo claims, passenger claims, claims for oil pollution damage, claims for bunker oil pollution damage, claims for damage caused by hazardous and noxious substances (HNS) and claims for nuclear damage. Together, they comprise a comprehensive legal regime dealing with limitation of liability in the field of maritime law.

Baughen⁷ has outlined global limitation of liability as follows: "In addition to the specific package limitation given by the Hague and Hague-Visby Rules in relation to cargo claims, and by the 1974 Athens Convention in relation to claims by individual passengers, shipowners may also rely on a global limitation figure based on the vessel's tonnage. This tonnage-based figure provides the maximum financial liability of the shipowner in respect of *all* claims arising out of any one incident.

Tonnage limitation can be invoked in one of two ways. The first is by way of defence to an action brought by a particular claimant. The second is by the shipowner initiating limitation proceedings to set up a limitation fund in a particular jurisdiction. The advantage of this procedure is that the establishment of the fund will cap the shipowner's liability to *all* claimants and not just the particular claimant who has commenced proceedings against the ship owner."⁸

⁶ Ibid.

⁷ Baughen Simon, *Shipping Law*, Third Edition, 2004.

⁸ Ibid page 407.

A point of paramount importance is that by invoking limitation, the shipowner is not admitting liability in respect of the claims brought against it. It is merely claiming that *if* it is held liable, its maximum *total* liability in respect of all claims arising out of the incident will not exceed the amount of the applicable limitation figure.⁹

Existing Legal Provisions in Sri Lanka

Presently there is no domestic legislation in place in Sri Lanka which provides for or governs global limitation of liability in respect of maritime claims.

However, in terms of Section 2 of the Introduction of Law of England Ordinance No 5 of 1852 (Civil Law Ordinance), which was enacted during the time of British rule, it is provided that the law of England shall be observed in maritime matters, where there is no legal provisions or enactment in force in relation to that matter in Sri Lanka.

Section 2 of the said Ordinance reads as follows: “The law to be hereinafter administered in Sri Lanka in respect of all contracts or questions arising within the same relating to ships and to the property therein, and to the owners thereof, the behaviour of the masters and mariners, and their respective rights, duties, and liabilities, relating to the carriage of passengers and goods by ships, to stoppage in transitu, to freight, demurrage, insurance, salvage, average, collision between ships, to bills of lading, and *generally to all maritime matters*, shall be the same in respect of the same matters as, would be administered in England in the like case at the corresponding period, if the contract had been entered to or if the act in respect of which any such question shall have arisen had been done in England, unless in any case other provision is or shall be made by any enactment now in force in Sri Lanka or hereafter to be enacted”.

It is clear from the above provisions that “the law as would be administered in England in the like case at the corresponding period...” will be applicable in Sri Lanka in situations where there is a lacuna in the domestic law.

⁹ Ibid.

With regard to limitation of liability too this rationale will apply. Therefore it is pertinent to establish as to what the legal provisions in England were at the corresponding times.

The 1957 Convention on Limitation of Liability for Maritime Claims was originally given domestic effect in the United Kingdom (UK) by the Merchant Shipping (Liability of Shipowners and Others) Act 1958.

The earlier legislation in the UK relating to limitation of liability for maritime claims was drawn together in Section 503 of the Merchant Shipping Act 1894. The UK was a signatory to the 1924 and 1957 Limitation Conventions and adopted many of the provisions of those Conventions. This was done not by incorporating the Conventions en-bloc into domestic legislation but by amending Section 503 of the 1894 Act. Thus, the Merchant Shipping (Liability of Shipowners and Others) Act 1958 incorporated into the UK law many of the provisions of the 1957 Limitation Convention and that was achieved by amending Section 503 of the Merchant Shipping Act 1894.

The 1976 Limitation Convention came into force in the UK in accordance with the provisions of Section 17 of the Merchant Shipping Act 1979 on 1st December 1986. By virtue of Section 19(4) of the said Act the new limitation regime applies to liability arising out of post 1st December 1986 occurrences.

Presently, by virtue of Section 185 of the Merchant Shipping Act 1995, the 1976 Limitation Convention applies in the UK – as set out in Schedule 7, Part I, of the Act subject to the reservations contained in Part II of the said Schedule.

The Protocol of 1996 to amend the LLMC 1976 entered into force internationally and in the U.K. on 13th May 2004, but has so far only been adopted by 18 countries, of which the United Kingdom is one.¹⁰

For the greater understanding of the legal regime dealing with limitation of liability it is important to consider how the provisions of the 1976 Limitation Convention relates to the

¹⁰ Griggs, Patrick and others page 4,

limitations provisions contained in two other specific areas of maritime law. These are namely the Athens Convention Relating to the Carriage of Passengers and Luggage by Sea, 1974, and the Hague and Hague-Visby Rules. The former Convention deals with passenger claims while the latter with cargo claims.

The 1974 Athens Convention¹¹ was originally given domestic effect in the UK by virtue of Section 14 of the Merchant Shipping Act 1979 which came into force in the UK on the 30th April 1987.

Now, by virtue of Section 183 of the Merchant Shipping Act 1995 the Convention as set out in Schedule 6, Part I, shall have the force of law in the UK, subject to the provisions of Part II of the same Schedule.

It is worth mentioning that at a Diplomatic Conference held at the IMO Headquarters in London, in November 2002, the text of a Protocol of 2002 to the Athens Convention was agreed.¹² The Protocol is not yet in force.

Sri Lanka is not a party to the Athens Convention, nor has it ratified same up to date. Neither is there domestic legislation in place dealing with this matter. As such, the law as is administered in England is applicable in Sri Lanka in this field.

The Hague Rules of 1924¹³ were given domestic effect in the UK, primarily in relation to exports, by the Carriage of Goods by Sea Act 1924. This Act was repealed by the Carriage of Goods by Sea Act of 1971, which gave instead the force of law to the Hague-Visby Rules of 1968¹⁴ in the UK.

Even in Sri Lanka the Hague Rules were given domestic effect by the Carriage of Goods by Sea Ordinance 18 of 1926. The Hague-Visby Rules were given domestic effect in the country by the enactment of the Carriage of Goods by Sea Act No. 21 of 1982. As it would be seen therefore, there is domestic legislation in place in the area of carriage of goods by sea.

¹¹ Adopted on 13th December 1974, entered into force on 28th April 1987.

¹² Adopted on 1st November 2002.

¹³ Adopted on 25th August 1924, entered into force on 2nd June 1931.

¹⁴ Adopted on 23rd February 1968, entered into force 23rd June 1977.

Need for new legislation

As mentioned above, where there is a lacuna in a particular sphere of maritime law in Sri Lanka, the English law is resorted to. This has led to situations where, an International Convention which has not been ratified by Sri Lanka, but has been ratified and given domestic effect in the UK, is in effect applicable in Sri Lanka. This is clearly so in the area of Limitation of Liability for Maritime Claims as well.

Sri Lanka is not a signatory, nor has it ratified the International Convention on Limitation of Liability for Maritime Claims, 1976 or the 1996 Protocol thereto up-to-date. The ratification of a Convention or Protocol is a matter for the Executive Branch of the Sri Lankan government. The primary aim of this Drafting Project therefore is to persuade the Sri Lankan government to ratify the said Convention as amended by the Protocol and to give effect to same by way of domestic legislation.

In several Articles of the 1976 Limitation Convention and the Protocol thereto, it is provided that a State Party may provide in its national law for certain specific situations. Since Sri Lanka is not a State Party to the said Convention nor the Protocol the country is dependant on the applicable legal provisions in the UK in such circumstances.

By having domestic legislation in place, this anomaly will be redressed and certainty and uniformity will be provided for in the law.

Furthermore, being an island nation, Sri Lanka is working towards converting the Colombo Port to a hub Port in Asia. The country should therefore take the lead in the international foray in maritime related affairs. By providing for a definite legal regime in the area of limitation of liability for maritime claims in its domestic laws, Sri Lanka's status in the sphere of global maritime law will no doubt be further enhanced.

Explanation on the draft text of the law

The consolidated version of the International Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the 1996 Protocol, has been added as a Schedule to the draft legislation. In the draft text the said schedule is referred to as “the rules”, and by virtue of Section 3 the said rules have been given the force of law.

In consolidating the Convention as amended by the Protocol, the ‘Final Clauses’, of both the Convention and the Protocol, have been omitted. Final Clauses represent the contract made with other State Parties and are those matters which are procedural in nature and are not, therefore, relevant in domestic law.

The Preambles of both the Convention and the Protocol have been omitted from the consolidated version. However, provisions contained therein have been incorporated into the preamble of the draft text of the legislation.

For sake of clarity the definitions of “Convention”, “Organization” and “Secretary-General” as found in Article 1 of the Protocol, have been incorporated into Section 12 of the draft text, which deals with the interpretation of certain essential terms.

Certain modifications have been made to the rules in the draft legislation.

The term shipowner as is found in Article 1(2) of the rules has been extended to include the owner of any ship whether seagoing or not.

In terms of Section 5 of the draft text, the claims in terms of paragraphs 1(d) and 1(e) of Article 2 have been specifically excluded from the claims that are subject to limitation in terms of the said Article. It must be mentioned that in terms of the 1996 Protocol a State was granted the right to make a reservation in this regard.

The claims which are excepted from liability under Article 3, have been further extended to include the claims as set out in Section 6 of the draft text. It is important to note that in

respect of the claims set out in Section 6(b)- which are claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious substances by Sea, 1996 or of any amendment or Protocol thereto- a State was granted the option in terms of the 1996 Protocol of reserving their right to exclude such claims from limitation.

The option given to a State Party to make specific provisions of national law in respect of ships of less than 300 tons has been given effect to in Section 7 of the draft text. This has been done making use of the limits of liability that were applicable for ships not exceeding 500 tons, in terms of the LLMC 1976.

Article 6(3) of the rules stipulates that a State Party may provide in its national law that certain claims, such as claims in respect of damage to harbour works, basins and waterways and aids to navigation, be given priority over others. This option has been specifically given effect to in Section 8 of the draft text.

The manner in which the Unit of Account (Special Drawing Rights) is to be converted into Sri Lankan rupees is provided for in Section 9 of the draft text.

The option granted to a State Party in terms of Article 10 of the rules, so as to prevent the invoking of limitation of liability without constitution of a limitation fund, has been given effect to as per Section 10 of the draft legislation.

It is provided for in Section 11 of the draft text that the Minister may make regulations relating to the constitution and distribution of the limitation fund and all rules of procedure in connection therewith.

The jurisdiction to hear and determine any matter as stipulated in the Act has been vested in the High Court of Sri Lanka exercising admiralty jurisdiction in terms of the Admiralty Jurisdiction Act, No. 40 of 1983. The rules of procedure relating to such matters will be governed by those rules which have been promulgated by way of Gazette Notifications and are already in place.

Certain options granted to State Parties as per the rules, have not been given effect to in terms of the draft text.

1. The option given in Article 15 to exclude wholly or partially from the application of the rules persons entitled to limit liability under Article 1.
2. The option to make specific provisions in respect of certain vessels as provided for in Article 15(2)(a) of the rules. This is due to the fact that there are no inland waters suitable for navigation in Sri Lanka.
3. The option to make specific provisions in terms of Article 15(3), for limitation of liability to be applied to claims in cases in which interests of persons who are nationals of other State Parties are in no way involved.
4. The option given to make specific provisions in terms of Article 15(3)bis. This option has not been given effect to as it is felt that the limits of liability for passenger claims, as provided for in Article 7(1), are quite substantial.

In conclusion it must be said that the definition of a ship as provided for in Section 12 of the draft text, is very similar to the definition of a ship as provided for in the Merchant Shipping Act of Sri Lanka No.52 of 1971. It is identical to the definition of a ship as found in the Piracy Act, No.9 of 2001, which is a recent piece of legislation in the country.

Limitation of Liability for Maritime Claims Act, No. _____ of

2006

AN ACT TO PROVIDE FOR THE LIMITATION OF LIABILITY FOR MARITIME CLAIMS; TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 AS AMENDED BY THE PROTOCOL OF 1996 TO AMEND THE CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 AND TO PROVIDE FOR ALL MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS, at the International Conference on the Limitation of Liability for Maritime Claims held in London, in November, 1976, under the auspices of the International Maritime Organization (IMO), the delegates at the Conference having recognized the desirability of determining by agreement certain uniform rules relating to the Limitation of Liability for Maritime Claims, adopted on 19th November 1976, the Convention on the Limitation of Liability for Maritime Claims, 1976:

AND WHEREAS at a Diplomatic Conference held at the Head Quarters of the IMO in London, in April/May 1996, the delegates at the Conference considering that it is desirable to amend the Convention on the Limitation of Liability for Maritime Claims, done at London on 19th November 1976, to provide for enhanced compensation and to establish a simplified procedure for updating the limitation amounts, adopted the Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976:

<p>AND WHEREAS it is expedient that the said rules so adopted as set out in the Schedule to this Act shall be given the force of law:</p> <p>Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-</p> <p>1. This Act may be cited as the Limitation of Liability for Maritime Claims Act No. of 2006.</p> <p>2. The provisions of this Act shall come into operation on such a date as the Minister may appoint by order published in the <i>Gazette</i> (hereinafter referred to as the “appointed date”).</p> <p>3. (1) The provisions of the rules as set out in the Schedule to this Act shall have the force of law, subject to the provisions set out in this Act.</p> <p>(2) The provisions of this Act shall apply only to claims arising out of occurrences which take place after the appointed date.</p> <p>4. The right to limit liability under the rules 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.</p> <p>5. The claims in terms of paragraphs 1(d) and 1(e) of Article 2 shall not be subject to limitation, and the said Article shall be construed accordingly.</p> <p>6. The claims excepted from limitation in Article 3 shall be extended to include-</p> <p>(a) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution</p>	<p>Short title</p> <p>Date of operation</p> <p>Scope of application</p> <p>Persons entitled to limit liability.</p> <p>Claims subject to limitation.</p> <p>Claims excepted from liability.</p>
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<p>Damage, dated 27 November 1992 or of any amendment or Protocol thereto which is in force;</p> <p>(b) claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, dated 3 May 1996 or of any amendment or Protocol thereto which is in force;</p> <p>7. In the application of Article 6 to a ship with a tonnage less than 300 tons, the following limits of liability shall apply-</p> <p>(a) in respect of claims for loss of life or personal injury, 333,000 Units of Account, and</p> <p>(b) in respect of other claims, 167,000 Units of Account</p> <p>The said Article shall be construed accordingly.</p> <p>8. Claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have priority over any other claims which are provided for in paragraph 1(b) of Article 6, and the said Article shall be construed accordingly.</p> <p>9. (1) For the purpose of converting the amounts mentioned in Articles 6 and 7 from Special Drawing Rights into Sri Lankan rupees one Special Drawing Right shall be treated as equal to such a sum in Sri Lankan rupees as the International Monetary Fund have fixed as being the equivalent of one Special Drawing Right for-</p> <p>(a) the relevant date under paragraph 1 of Article 8; or</p> <p>(b) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.</p> <p>(2) A certificate given by or on behalf of the Secretary to the Treasury stating-</p> <p>(a) that a particular sum in Sri Lankan rupees has been fixed</p>	<p>The general limits of liability in respect of ships of less than 300 tons.</p> <p>Claims in respect of damage to harbour works etc.</p> <p>Units of Account.</p>
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<p>as mentioned in sub-paragraph (1) above for a particular date; or</p> <p>(b) that no sum has been so fixed for that date and that a particular sum in Sri Lankan rupees has been so fixed for a date which is the last preceding date for which a sum has been so fixed,</p> <p>shall be conclusive evidence of those matters for the purposes of those Articles; and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.</p> <p>10. Where an action is brought to enforce a claim subject to limitation, a person liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of the rules or is constituted when the right to limit liability is invoked.</p> <p>11. The Minister may make regulations relating to the constitution of a limitation fund and the distribution of the fund, as provided for respectively in Articles 11 and 12, and all rules of procedure in connection therewith.</p> <p>12. (1) The jurisdiction to hear and determine any matter as stipulated in this Act vests with the High Court of Sri Lanka exercising the admiralty jurisdiction in terms of the Admiralty Jurisdiction Act, No 40 of 1983.</p> <p>(2) Any reference to the word “court” in the rules as set out in the Schedule shall mean the High Court of Sri Lanka exercising the admiralty jurisdiction in terms of the Admiralty Jurisdiction Act, No 40 of 1983.</p> <p>13. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.</p>	<p>Limitation of liability without constitution of a limitation fund.</p> <p>Regulations.</p> <p>Jurisdiction.</p> <p>Sinhala text to prevail in cases of inconsistency.</p>
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<p>14. In this Act, unless the context otherwise requires-</p> <p>“Article” means the Articles of the rules as set out in the Schedule hereto.</p> <p>“competent authority” means any such person or authority appointed by the Minister.</p> <p>“Convention” means the International Convention on Limitation of Liability for Maritime Claims, 1976.</p> <p>“legal proceedings” means proceedings in terms of the Admiralty Jurisdiction Act, No 40 of 1983.</p> <p>“limitation fund” shall mean the fund as constituted in terms of Article 11 of the rules.</p> <p>“Minister” means the Minister in charge of the subject of shipping and related matters.</p> <p>“national law” means the domestic laws of Sri Lanka.</p> <p>“Organization” means the International Maritime Organization.</p> <p>“Protocol” means the Protocol of 1996 to amend the International Convention on Limitation of Liability for Maritime Claims, 1976.</p> <p>“Secretary-General” means the Secretary-General of the Organization.</p> <p>“ship” means every description of ship or vessel or boat, or any</p>	<p>Interpretation.</p>
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other description of vessel used in navigation and includes all equipment, apparel and appurtenances (excluding supplies for sustenance) which are necessary for the navigation and conduct of the business of the ship.

“State Party” means a party to the Protocol.

“the rules” means the provisions of the Convention as amended by the Protocol, and set out in the Schedule hereto.

SCHEDULE

CONSOLIDATED VERSION OF THE INTERNATIONAL CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 AS AMENDED BY THE PROTOCOL OF 1996.

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 and operator of a seagoing ship.
3. Salvor shall mean any person rendering services in direct connexion 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 itself.
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 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

(a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;

(b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;

(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;

(d) claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship;

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

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

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 29 November 1969 or of any amendment or Protocol thereto which is in force;

(c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;

(d) claims against the shipowner of a nuclear ship for nuclear damage;

(e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6.

Article 4

Conduct barring limitation

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

Article 5

Counterclaims

Where a person entitled to limitation of liability under the rules of this Convention has a claim against the claimant arising out of the same occurrence, their respective claims shall be set 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) 2 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, 800 Units of Account;

for each ton from 30,001 to 70,000 tons, 600 Units of Account; and

for each ton in excess of 70,000 tons, 400 Units of Account,

(b) in respect of any other claims,

(i) 1 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, 400 Units of Account;

for each ton from 30,001 to 70,000 tons, 300 Units of Account; and

for each ton in excess of 70,000 tons, 200 Units of Account.

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

3. 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 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 that 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 or accession or at any time 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 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

(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 its 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 depositary 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 11 has not been constituted. However, a State Party may provide in its national law that, where an action is brought in its Courts to enforce a claim subject to limitation, a person

liable may only invoke the right to limit liability if a limitation fund has been constituted in accordance with the provisions of this Convention or is constituted when the right to limit liability is invoked.

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 the 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 of 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, 2 and 3 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 claim against any other assets of a person by or on behalf of whom the fund has been constituted.

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

(a) at the port where the occurrence took place, or, if it took place out of port, at the first port of call thereafter; or

(b) at the port of disembarkation in respect of claims for loss of life or personal injury; or

(c) at the port of discharge in respect of damage to cargo; or

(d) in the State where the arrest is made.

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

Article 14

Governing law

Subject to the provisions of this Chapter the rules relating to the constitution and distribution of a limitation fund, 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 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. 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 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.