Limitation Of Liability - The 1996 Protocol Comes Into Force

March 2004

Major changes to limitation figures will take effect on 13 May 2004, when the 1996 Protocol to the London Limitation Convention 1976 comes into force. This article examines the effect of the Protocol.

At present, 41 countries, with 44% of the world's tonnage regulate the right to limit liability in accordance with the Convention on Limitation of Liability for Maritime Claims, signed in London in 1976 (the LLMC 1976). In 1996, a protocol to the LLMC 1976 was agreed, but it was not to come into force until 90 days after 10 States had agreed to be bound by it. On 15 February 2004, Malta became the tenth State to accede to the 1996 Protocol, thus triggering its coming into force on 13 May.

The LLMC 1976 as amended by the 1996 Protocol is referred to as the LLMC 1996. The principal changes which will take place when the LLMC 1996 comes into force are substantial increases in the limitation figures. In addition, States may impose their own rules in certain areas, and the UK will do so.

Application

When the LLMC 1996 comes into force, it will apply only under the law of the States which are party to it. At present, these are: Australia, Denmark, Finland, Germany, Malta, Norway, Russian Federation, Sierra Leone, Tonga and United Kingdom.

The LLMC 1996 will apply only to claims arising out of occurrences which take place after its entry into force. So if a collision occurs on 15 May, the LLMC 1996 will apply (under the law of a State party to the LLMC 1996), but if a collision occurs on 11 May, and a limitation fund is established on 15 May, the LLMC 1996 will not apply.

LLMC 1996 limitation figures

The increase in the limitation figures agreed under the LLMC 1996 is, on average, about 250%. However, for a small ship the increase will be some 600% - for non-passenger claims a ship of 500 tons would have a limit of 500,000 SDR under LLMC 1976, but a limit of 3,000,000 SDR under LLMC 1996.

The overall structure of limitation under LLMC 1976 is not changed by LLMC 1996. As in the case of LLMC 1976, the limits under LLMC 1996 are the overall limits, there may also be limits applicable to the specific kind of claim (for example, the Athens Convention 1974 for passenger claims or the Hague-Visby Rules for cargo claims).

Passenger claims (Art 7)

So far as claims for loss of life or personal injury to passengers of a ship are concerned, the limit under the LLMC 1976 is 46,666 SDR multiplied by the number of passengers which the ship is authorised to carry according to the ship's certificate, up to an absolute maximum of 25 million SDR.

Under LLMC 1996, these figures will be increased to 175,000 SDR multiplied by the number of passengers which the ship is authorised to carry. The 25 million SDR absolute maximum will be abolished; as the example below demonstrates, this will have a significant effect on larger passenger vessels. If a passenger's claims are not satisfied because of the Article 7 limits, he cannot seek to share in the Article 6 fund relating to the passenger ship (but may share in the Article 6 fund of a vessel which collides with the passenger ship).

Examples:

<table>
<thead>
<tr>
<th>Authorised Passenger Numbers</th>
<th>LLMC 1976 (SDR)</th>
<th>LLMC 1996 (SDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>50</td>
<td>2,333,300</td>
<td>8,750,000</td>
</tr>
<tr>
<td>200</td>
<td>9,333,200</td>
<td>35,000,000</td>
</tr>
<tr>
<td>550</td>
<td>25,000,000</td>
<td>96,250,000</td>
</tr>
<tr>
<td>1,000</td>
<td>25,000,000</td>
<td>175,000,000</td>
</tr>
</tbody>
</table>

General limits (Art 6)

The general limits apply to all claims other than for loss of life or personal injury to passengers. They are divided into two types of claim: (a) claims for loss of life or personal injury (eg injuries to crew, stevedores, or passengers on another ship) and (b) claims other than loss of life or personal injury. Where the amount available for (a) is insufficient to pay in full claims falling under that head, the claims under (b) will include the unpaid balance under (a), ranking ratably with other claims under (b).

The comparative figures are as follows:

(a) Claims for loss of life or personal injury

<table>
<thead>
<tr>
<th>LLMC 1976</th>
<th>LLMC 1996</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 500 tons - 333,300 SDR, plus:</td>
<td>Up to 2,000 tons - 2,000,000 SDR, plus:</td>
</tr>
</tbody>
</table>
for each ton from 601 to 3,000 tons, 500 SDR; plus
for each ton from 3,001 to 30,000 tons, 333 SDR; plus
for each ton from 30,001 to 70,000 tons, 250 SDR; plus
for each ton in excess of 70,000 tons, 167 SDR.

Examples:

<table>
<thead>
<tr>
<th>Tonnage (GT)</th>
<th>LLMC 1976 (SDR)</th>
<th>LLMC 1996 (SDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>333,000</td>
<td>2,000,000</td>
</tr>
<tr>
<td>3,000</td>
<td>1,563,000</td>
<td>2,800,000</td>
</tr>
<tr>
<td>15,000</td>
<td>5,579,000</td>
<td>12,400,000</td>
</tr>
<tr>
<td>40,000</td>
<td>13,074,000</td>
<td>30,400,000</td>
</tr>
</tbody>
</table>

(b) Claims other than loss of life of personal injury

**LLMC 1976**
Up to 500 tons - 167,000 SDR, plus:
for each ton from 501 to 3,000 tons, 167 SDR, plus
for each ton from 3,001 to 70,000 tons, 125 SDR; plus
for each ton in excess of 70,000 tons, 83 SDR.

**LLMC 1996**
Up to 2,000 tons - 1,000,000 SDR, plus:
for each ton from 2,001 to 3,000 tons, 400 SDR; plus
for each ton from 3,001 to 70,000 tons, 300 SDR, plus
for each ton in excess of 70,000 tons, 200 SDR.

Examples:

<table>
<thead>
<tr>
<th>TONNAGE (GT)</th>
<th>LLMC 1976 (SDR)</th>
<th>LLMC 1996 (SDR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>500</td>
<td>167,000</td>
<td>1,000,000</td>
</tr>
<tr>
<td>3,000</td>
<td>584,500</td>
<td>1,400,000</td>
</tr>
<tr>
<td>15,000</td>
<td>2,588,500</td>
<td>6,200,000</td>
</tr>
<tr>
<td>40,000</td>
<td>6,343,500</td>
<td>15,200,000</td>
</tr>
</tbody>
</table>

**Article 14 claims**

Another change made by LLMC 1996 relates to salvage claims. The right to limit liability under LLMC 1976 does not apply to claims for salvage or contribution in general average; see Article 3(a). The policy reasons for this are readily apparent. Under LLMC 1996, Article 3(a) is amended to make it clear that the exclusion for salvage claims extends to claims for special compensation under Article 14 of the Salvage Convention. Accordingly, a claim for special compensation will not be subject to limitation.

**UK provisions**

For the UK, effect was given to the LLMC 1976 by the Merchant Shipping Act 1995, which sets out the text of the Convention in Sch 7, Part I.


The LLMC 1996 permits any State party to make its own provisions for vessels intended for navigation on inland waterways, for ships less than 300 tons, and also for passenger claims (provided the figures are not lower than the LLMC 1996 figures). The UK has taken advantage of these measures, as noted below. The 1996 Order implements the provisions which will have effect in the UK in connection with the LLMC 1996; they are set out in Merchant Shipping Act 1995, Sch 7, Part II as amended.

The 1998 Order conveniently sets out in a Schedule the complete text of Sch 7 to the 1995 Act as amended by LLMC 1996.

**Non-seagoing ships**

The LLMC 1996 applies to “seagoing ships”. The 1998 Order applies the LLMC 1996 provisions to any ship, whether seagoing or not (Part II, Art 2A). However, as noted below, special provisions apply to passenger claims.

**Passenger claims**

The passenger claim limits will not apply at all to seagoing ships (Part II, Art 6). So shipowners will only be entitled to limit liability per passenger in accordance with the Athens Convention. (The Athens Convention per capita limit is at present 46,666 SDR, except that in its application to a carrier whose principal place of business is in the UK it is 300,000 SDR.)

The passenger claim limits will apply to non-seagoing ships, but the limit of liability in respect of each passenger will be 175,000 SDR (Part II, Art 6). (There is no per ship limit, so if only one passenger is injured, the limit is still 175,000 SDR.)

**General limits - small ships**

Under UK law, the general (i.e. non-passenger) limits for ships of less than 300 tons will be 1,000,000 SDR in respect of claims for loss of life or personal injury and 500,000 SDR in respect of any other claims. (Part II, Art 5).
With thanks to Stephenson Harwood for preparing this article.

IMO Briefing on LLMC 1996

*Standard Drawing Right. At present, 1 SDR = $1.51

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