

LIMITATION OF LIABILITY OF ALL MARITIME CLAIMS

Marine Liability Act S.C.2001, c.6 as amended

PART3

Limitation of Liability for Maritime Claims

Interpretation

Definitions

24 The definitions in this section apply in this Part.

Convention means the Convention on Limitation of Liability for Maritime Claims, 1976, concluded at London on November 19, 1976, as amended by the Protocol, Articles 1 to 15 of which Convention are set out in Part 1 of Schedule 1 and Article 18 of which is set out in Part 2 of that Schedule. (*Convention*)

maritime claim means a claim described in Article 2 of the Convention for which a person referred to in Article 1 of the Convention is entitled to limitation of liability. (*creance maritime*)

passenger means

- (a) a person carried on board a ship in circumstances described in paragraph 2(a) or (b) of Article 7 of the Convention;
- (b) a participant in an adventure tourism activity referred to in subsection 37.1(1);
- (c) a person carried on board a vessel propelled manually by paddles or oars and operated for a commercial or public purpose; and
- (d) a sail trainee. (*passager*)

Protocol means the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, concluded at London on May 2, 1996, Articles 8 and 9 of which are set out in Part 2 of Schedule 1. (*Protocole*)

unit of account means a special drawing right issued by the International Monetary Fund. (*unites de compte*)

- 2001, c. 6, s. 24;
- 2009, c.21, s. 1.

Extended meaning of expressions

- 25 (1) For the purposes of this Part and Articles 1 to 15 of the Convention,
 - (a) **ship** means any vessel or craft designed, used or capable of being used solely or partly for navigation, without regard to method or lack of propulsion, and includes
 - (i) a ship in the process of construction from the time that it is capable of floating, and

- (ii) a ship that has been stranded, wrecked or sunk and any part of a ship that has broken up,

but does not include an air cushion vehicle or a floating platform constructed for the purpose of exploring or exploiting the natural resources or the subsoil of the seabed;

- **(b)** the definition *shipowner* in paragraph 2 of Article 1 of the Convention shall be read without reference to the word "seagoing" and as including any person who has an interest in or possession of a ship from and including its launching; and
- **(c)** the expression "carriage by sea" in paragraph 1(b) of Article 2 of the Convention shall be read as "carriage by water".

- **Inconsistency**

(2) In the event of any inconsistency between sections 28 to 34 of this Act and Articles 1 to 15 of the Convention, those sections prevail to the extent of the inconsistency.

Application

Force of law

- **26 (1)** Subject to the other provisions of this Part, Articles 1 to 15 and 18 of the Convention and Articles 8 and 9 of the Protocol have the force of law in Canada.

Amendments to Part 3 of Schedule 1

(2) The Governor in Council may, by regulation, amend Part 3 of Schedule 1 to add or delete a reservation made by Canada under Article 18 of the Convention.

- **Exceptions**

(3) This Part does not apply to a claim that is the subject of a reservation made by Canada.

- **2001, c. 6, s. 26;**
- **2009, c. 21, s. 2.**

State Party to the Convention

27 For purposes of the application of the Convention, Canada is a State Party to the Convention.

Passenger claims

- **28 (1)** The maximum liability for maritime claims that arise on any distinct occasion for loss of life or personal injury to passengers of a ship of less than 300 gross tonnage is the greater of
 - **(a)** 2 000 000 units of account, and
 - **(b)** 175 000 units of account multiplied by
 - (i) the number of passengers that the ship is authorized to carry according to any Canadian maritime document required under the Canada Shipping Act, 2001, or

- (ii) the number of passengers on board the ship, if no Canadian maritime document is required under that Act.
- **Claims - no contract of carriage**

(2) The maximum liability for maritime claims that arise on any distinct occasion for loss of life or personal injury to persons carried on board a ship of less than 300 gross tonnage otherwise than under a contract of passenger carriage is the greater of

 - (a) 2 000 000 units of account, and
 - (b) 175 000 units of account multiplied by
 - (i) the number of passengers that the ship is authorized to carry according to any Canadian maritime document required under the Canada Shipping Act, 2001, or
 - (ii) the number of persons on board the ship, if no Canadian maritime document is required under that Act.
- **Exception**

(3) Subsection (2) does not apply in respect of

 - (a) the master of a ship, a member of a ship's crew - or any other person employed or engaged in any capacity on the business of a ship - when they are carried on board the ship;
 - (b) a person carried on board a ship other than a ship operated for a commercial or public purpose;
 - (c) a person carried on board a ship in pursuance of the obligation on the master to carry shipwrecked, distressed or other persons or by reason of any circumstances that neither the master nor the owner could have prevented;
 - (c.1) a stowaway, a trespasser or any other person who boards a ship without the consent or knowledge of the master or the owner; or
 - (d) a person who is a member of a class of persons prescribed under paragraph 34.1(a).
- **2001, c. 6, s. 28;**
- **2009, c. 21, s. 3.**

Other claims

29 The maximum liability for maritime claims that arise on any distinct occasion involving a ship of less than 300 gross tonnage, other than claims referred to in section 28, is

- (a) \$1,000,000 in respect of claims for loss of life or personal injury; and
- (b) \$500,000 in respect of any other claims.
- **2001, c. 6, s. 29, c. 26, s. 324;**

- 2009,c.21,s.3.

Calculation of tonnage

29.1 For the purposes of sections 28 and 29, a ship's gross tonnage shall be calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships, 1969, concluded at London on June 23, 1969, including any amendments, whenever they are made, to the Annexes or Appendix to that Convention.

- 2009, c. 21, s. 3.

Liability of Owners of Docks, Canals and Ports

Limitation of liability

- **30 (1)** The maximum liability of an owner of a dock, canal or port, for a claim that arises on any distinct occasion for loss caused to a ship, or to any cargo or other property on board a ship, is the greater of
 - **(a)** \$2,000,000, and
 - **(b)** the amount calculated by multiplying \$1,000 by the number of tons of the gross tonnage of the largest ship that is at the time of the loss, or had been within a period of five years before that time, within the area of the dock, canal or port over which the owner had control or management.

- **Calculation of tonnage**

(2) For the purposes of subsection (1), a ship's gross tonnage shall be calculated in the manner described in section 29.1.

- **Application**

(3) The maximum liability specified in subsection (1) also applies to any person for whose act or omission the owner is responsible.

- **Conduct barring limitation**

(4) This section does not apply to an owner, or a person for whose act or omission the owner is responsible, if it is proved that the loss resulted from the personal act or omission of that owner or that person, as the case may be, committed with intent to cause the loss or recklessly and with knowledge that the loss would probably result.

- **Meaning of terms**

(5) For the purposes of this section,

- **(a)** "dock" includes wet docks and basins, tidal-docks and basins, locks, cuts, entrances, dry docks, graving docks, gridirons, slips, quays, wharfs, piers, stages, landing places, jetties and synchrolifts; and
- **(b)** "owner of a dock, canal or port" includes any person or authority having the control or management of the dock, canal or port and any ship repairer using the dock, canal or port.

- **2001, c. 6, s. 30;**
- **2009, c. 21, s. 4.**

Amendment of Maximum liability

Amendment of limits

- **31 (1)** The Governor in Council may, by regulation, amend Schedule 1 to implement an amendment that is made in accordance with Article 8 of the Protocol to any of the limits of liability that are specified in paragraph 1 of Article 6 or paragraph 1 of Article 7 of the Convention.
- **Amendment of sections 28, 29 and 30**
(2) The Governor in Council may, by regulation, amend the limits of liability set out in sections 28, 29 and 30.
- 2001, c. 6, s. 31;
- 2009, c. 21, s. 4.

Procedure

Jurisdiction of Admiralty Court

- **32 (1)** The Admiralty Court has exclusive jurisdiction with respect to any matter relating to the constitution and distribution of a limitation fund under Articles 11 to 13 of the Convention.
- **Right to assert limitation defence**
(2) Where a claim is made or apprehended against a person in respect of liability that is limited by section 28, 29 or 30 of this Act or paragraph 1 of Article 6 or 7 of the Convention, that person may assert the right to limitation of liability in a defence filed, or by way of action or counterclaim for declaratory relief, in any court of competent jurisdiction in Canada.

Powers of Admiralty Court

- **33 (1)** Where a claim is made or apprehended against a person in respect of liability that is limited by section 28 or 29 of this Act or paragraph 1 of Article 6 or 7 of the Convention, the Admiralty Court, on application by that person or any other interested person, including a person who is a party to proceedings in relation to the same subject-matter before another court, tribunal or authority, may take any steps it considers appropriate, including
 - **(a)** determining the amount of the liability and providing for the constitution and distribution of a fund under Articles 11 and 12 of the Convention;
 - **(b)** joining interested persons as parties to the proceedings, excluding any claimants who do not make a claim within a certain time, requiring security from the person claiming limitation of liability or from any other interested person and requiring the payment of any costs; and
 - **(c)** enjoining any person from commencing or continuing proceedings in any court, tribunal or authority other than the Admiralty Court in relation to the same subject-matter.
- **Court may postpone distribution**

(2) In providing for the distribution of a fund under paragraph (l)(a) in relation to any liability, the Admiralty Court may, having regard to any claim that may subsequently be established before a court, tribunal or other authority outside Canada in respect of that liability, postpone the distribution of any part of the fund that it considers appropriate.

- **Lien and other rights**

(3) No lien or other right in respect of a ship or other property affects the proportions in which a fund is distributed by the Admiralty Court.

- **Procedural matters**

(4) The Admiralty Court may

- (a) make any rule of procedure it considers appropriate with respect to proceedings before it under this section; and
- (b) determine what form of guarantee it considers to be adequate for the purposes of paragraph 2 of Article 11 of the Convention.

- **Interest**

(5) For the purposes of Article 11 of the Convention, interest is payable at the rate prescribed under the Income Tax Act for amounts payable by the Minister of National Revenue as refunds of overpayments of tax under that Act.

Release of ships, etc.

- **34 (1)** Where a ship or other property is released under paragraph 2 of Article 13 of the Convention, in any case other than one in which a fund has been constituted in a place described in paragraphs (a) to (d) of that Article, the person who applied for the release is deemed to have submitted to the jurisdiction of the court that ordered the release for the purpose of determining the claim.

- **Limitation fund in state other than Canada**

(2) In considering whether to release a ship or other property referred to in subsection (1), the court shall not have regard to a limitation fund constituted in a country other than Canada unless the court is satisfied that the country is a State Party to the Convention.

Regulations

Governor in Council

34.1 The Governor in Council may make regulations

- (a) prescribing classes of persons for the purpose of paragraph 28(3)(d); and
 - (b) Generally for carrying out the purposes and provisions of this Part.
- **2009, c. 21, s. 6.**

SCHEDULE I(Section 24 and subsections 26(2) and 31(1))

PART I

Text of Articles 1 to 15 of the 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

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 I(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 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;

- o **(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;
 - o **(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;
 - o **(e)** claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;
 - o **(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) 3.02 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 1,208 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 906 Units of Account; and
 - for each ton in excess of 70,000 tons, 604 Units of Account,
 - **(b)** in respect of any other claims,
 - (i) 1.51 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - for each ton from 2,001 to 30,000 tons, 604 Units of Account;
 - for each ton from 30,001 to 70,000 tons, 453 Units of Account; and
 - for each ton in excess of 70,000 tons, 302 Units of Account.
- **2** Where the amount calculated in accordance with paragraph 1(a) is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with paragraph 1(b) shall be available for payment of the unpaid balance of claims under paragraph 1(a) and such unpaid balance shall rank rateably with claims mentioned under paragraph 1(b).
- **3** 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 I(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 I(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:

- o **(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
 - o **(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
 - o **(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 l(a), (b) or (c) or paragraph 2 of Article 9 or his insurer shall be deemed constituted by all persons mentioned in paragraph l(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 connexion 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:

- o **(a)** when that State has established under its national legislation a higher limit of liability than that otherwise provided for in Article 6; or
- o **(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:
 - o **(a)** air-cushion vehicles;
 - o **(b)** floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof.

PART2

Text of Article 18 of the 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 of Articles 8 and 9 of that Protocol

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:
 - o **(a)** to exclude the application of article 2, paragraphs l(d) and (e);
 - o **(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 of 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 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 8

Amendment of limits

- **1** Upon the request of at least one half, but in no case less than six, of the States Parties to this Protocol, any proposal to amend the limits specified in article 6, paragraph 1, article 7, paragraph 1 and article 8, paragraph 2 of the Convention as amended by this Protocol shall be circulated by the Secretary-General to all Members of the Organization and to all Contracting States.
- **2** Any amendment proposed and circulated as above shall be submitted to the Legal Committee of the Organization (the Legal Committee) for consideration at a date at least six months after the date of its circulation.
- **3** All Contracting States to the Convention as amended by this Protocol, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Legal Committee for the consideration and adoption of amendments.
- **4** Amendments shall be adopted by a two-thirds majority of the Contracting States to the Convention as amended by this Protocol present and voting in the Legal Committee expanded as provided for in paragraph 3, on condition that at least one half of the Contracting States to the Convention as amended by this Protocol shall be present at the time of voting.
- **5** When acting on a proposal to amend the limits, the Legal Committee shall take into account the experience of incidents and, in particular, the amount of damage resulting therefrom, changes in the monetary values and the effect of the proposed amendment on the cost of insurance.
- **6**
 - **(a)** No amendment of the limits under this article may be considered less than five years from the date on which this Protocol was opened for signature nor less than five years from the date of entry into force of a previous amendment under this article.
 - **(b)** No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol increased by six per cent per year calculated on a compound basis from the date on which this Protocol was opened for signature.
 - **(c)** No limit may be increased so as to exceed an amount which corresponds to the limit laid down in the Convention as amended by this Protocol multiplied by three.
- **7** Any amendment adopted in accordance with paragraph 4 shall be notified by the Organization to all Contracting States. The amendment shall be deemed to have been accepted at the end of a period of eighteen months after the date of notification, unless within that period not less than one-fourth of the States that were Contracting States at the time of the adoption of the amendment have communicated to the Secretary-General that they do not accept the amendment, in which case the amendment is rejected and shall have no effect.
- **8** An amendment deemed to have been accepted in accordance with paragraph 7 shall enter into force eighteen months after its acceptance.

- **9** All Contracting States shall be bound by the amendment, unless they denounce this Protocol in accordance with paragraphs 1 and 2 of article 12 at least six months before the amendment enters into force. Such denunciation shall take effect when the amendment enters into force.
- **10** When an amendment has been adopted but the eighteen-month period for its acceptance has not yet expired, a State which becomes a Contracting State during that period shall be bound by the amendment if it enters into force. A State which becomes a Contracting State after that period shall be bound by an amendment which has been accepted in accordance with paragraph 7. In the cases referred to in this paragraph, a State becomes bound by an amendment when that amendment enters into force, or when this Protocol enters into force for that State, if later.

Article 9

- **1** The Convention and this Protocol shall, as between the Parties to this Protocol, be read and interpreted together as one single instrument.
- **2** A State which is Party to this Protocol but not a Party to the Convention shall be bound by the provisions of the Convention as amended by this Protocol in relation to other States Parties hereto, but shall not be bound by the provisions of the Convention in relation to States Parties only to the Convention.
- **3** The Convention as amended by this Protocol shall apply only to claims arising out of occurrences which take place after the entry into force for each State of this Protocol.
- **4** Nothing in this Protocol shall affect the obligations of a State which is a Party both to the Convention and to this Protocol with respect to a State which is a Party to the Convention but not a Party to this Protocol.

PART3

Text of reservations made under Article 18 of the 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

- **1** Claims in respect of the raising, removal, destruction or rendering harmless of a ship that is sunk, wrecked, stranded or abandoned, including anything that is or has been on board that ship.
- 2001, c. 6, Sch. 1;
- 2009,c.21,ss. 14,15;
- SOR/2015-98.

Federal Courts Rules

SOR/98-106

Limitation of Liability

Application under s 33(1) of the Marine Liability Act

- **496 (1)** A party bringing an application under subsection 33(1) of the Marine Liability Act shall bring it as an action against those claimants whose identity is known to the party.
- **Motion for directions re service**

(2) A party referred to in subsection (1) may bring an *ex parte* motion for directions respecting service on possible claimants where the number of possible claimants is large or the identity of all possible claimants is unknown to the party.
- SOR/2004-283, s.37.

Motion to vary or add

497 A claimant who did not have notice of an action under subsection 496(1) may, within 10 days after obtaining notice of an order made under subsection 496(2), serve and file a notice of motion requesting to be added as a party to the action.

I. Signatories

Canada	subject to ratification
Denmark	subject to ratification and with reservation for application to the Fames and Greenland
Finland	subject to acceptance
France	sous reserve de ratification
Germany, Federal Republic of	subject to ratification
Netherlands	subject to acceptance
Norway	subject to ratification
Sweden	subject to ratification
United Kingdom	subject to ratification

II. Contracting States

	Date of signature or deposit of instrument	Date of entry into force
Albania (accession)	7 June 2004	5 September 2004
Antigua and Barbuda (accession)	12 October 2009	10 January 2010
Australia (accession)	8 October 2002	13 May 2004
Belgium (accession)	9 October 2009	7 January 2010
Bulgaria (accession)	4 July 2005	2 October 2005
Canada (ratification) ¹	9 May 2008	7 August 2008
China ⁴ (accession)	2 February 2015	3 May 2015
Comoros (accession)	1 February 2018	2 May 2018
Congo (accession)	19 May 2014	17 August 2014
Cook Islands (accession)	12 March 2007	10 June 2007
Croatia (accession) ¹	15 May 2006	13 August 2006
Cyprus (accession)	23 December 2005	23 March 2006
Denmark ^{1,3} (ratification)	12 April 2002	13 May 2004
Estonia (accession)	16 March 2011	14 June 2011
Finland (acceptance)	15 September 2000	13 May 2004
France (ratification) ¹	24 April 2007	14 July 2007
Germany (ratification) ¹	3 September 2001	13 May 2004
Greece (accession)	6 July 2009	4 October 2009
Hungary (accession)	4 July 2008	2 October 2008
Iceland (accession) ¹	17 November 2008	15 February 2009
India (accession)	23 March 2011	21 June 2011
Ireland (accession)	25 January 2012	24 April 2012
Jamaica (accession)	19 August 2005	17 November 2005
Japan (accession)	3 May 2006	1 August 2006
Latvia (accession)	18 April 2007	17 July 2007
Liberia (accession)	18 September 2008	17 December 2008
Lithuania (accession) ¹	14 September 2007	13 December 2007
Luxembourg (accession)	21 November 2005	19 February 2006
Madagascar (accession)	27 July 2017	25 October 2017
Malaysia (accession)	12 November 2008	10 February 2009
Malta (accession) ¹	13 February 2004	13 May 2004
Marshall Islands (accession)	30 January 2006	30 April 2006
Mongolia (accession)	28 September 2011	27 December 2011
Netherlands (acceptance)	23 December 2010	23 March 2011
New Zealand (accession) ¹	4 April 2014	3 July 2014
Niue (accession)	27 June 2012	25 September 2012
Norway (ratification) ¹	17 October 2000	13 May 2004
Palau (accession)	29 September 2011	28 December 2011
Poland (accession) ¹	17 November 2011	15 February 2012
Portugal (accession)	19 October 2017	17 January 2018
Kenya (accession) ¹	7 July 2015	5 October 2015
Romania (accession)	12 March 2007	10 June 2007
Russian Federation (accession) ¹	25 May 1999	13 May 2004
Saint Lucia (accession)	20 May 2004	18 August 2004
Samoa (accession)	18 May 2004	16 August 2004

Serbia (accession)	19 March 2013	17 June 2013
Sierra Leone (accession)	1 November 2001	13 May 2004
Slovenia (accession)	6 July 2015	4 October 2015
Spain (accession)	10 January 2005	10 April 2005
Sweden (accession) ¹	22 July 2004	20 October 2004
Syrian Arab Republic (accession)	2 September 2005	1 December 2005
Tonga (accession)	18 September 2003	13 May 2004
Turkey (accession) ¹	19 July 2010	17 October 2010
Tuvalu (accession)	12 January 2009	12 April 2009
United Kingdom (ratification) ^{1,2}	11 June 1999	13 May 2004

Number of Contracting States: **55**
 (the combined merchant fleets of which constitute approximately
 59.93% of the gross tonnage of the world's merchant fleet⁵)

¹ For the text of a declaration, reservation or statement, see section III.

² The Protocol was extended by the United Kingdom to the Isle of Man with effect from 13 May 2004.
 On 25 May 2012, the Secretary-General received a notification from the Foreign and Commonwealth Office, informing him that the reservation and declaration made by the United Kingdom (see section III) are now applicable to the Isle of Man.

The Protocol was further extended by the United Kingdom to the following UK territories:

the Island of Jersey from 14 December 2009;

the Cayman Islands from 31 January 2011;

Isle of Man from 25 May 2012;

the Bailiwick of Guernsey from 11 June 2013; and

Gibraltar from 25 February 2014,

declaring that the reservations made by the Government of the United Kingdom of Great Britain and Northern Ireland upon ratification with respect to articles 18(1)(a) and (b), 2(1)(d) and (e), 15(2)(b), 6(1)(a)(i) and (l)(b)(i), and 15(3bis) of the 1976 Convention as amended by the Protocol of 1996 will apply in respect of the above-listed UK territories.

³ Denmark extended the Protocol to Greenland with effect from 13 May 2004.

⁴ Applies only to the Hong Kong Special Administrative Region.

⁵ Please note that the figure differs from the one in GISIS, which automatically includes the tonnage for China. China acceded to LLMC PROT 1996 only for the Hong Kong territory.