

Limits of liability for shipping incidents are increased with the adoption of amendments to 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC)

Increased limits of liability enter into force in June 2015

Historically, ship owners were unable to limit their liabilities and each individual country applied its own national laws in response to maritime casualties. The idea of a uniform regime for the limitation of liability was first addressed at the Geneva Convention in 1924 and the limitation amount at that time was based on the value of the ship post-casualty i.e. 'abandonment'. Tonnage related limits were introduced at the Brussels convention in 1957 but Governments quickly felt that the limits set in 1957 were too low and out of line with inflation and in 1976 the Convention on Limitation of Liability for Maritime Claims (LLMC) set specific but increased tonnage-based limits which provided for the maximum financial liability of ship owners and salvors in respect claims arising out of maritime incidents.

When the International Maritime Organization (IMO) met in London in April 2012 they adopted certain amendments to the 1996 Protocol to the Convention on LLMC which are to take effect in June 2015 and which substantially increase the limits of liability which ship owners face. The convention relates to claims for both loss of life and personal injury, and to claims for damage to property. These increased limits were deemed necessary because the existing limitation thresholds were found to be inadequate to respond to the increasing cost of claims especially in relation to pollution and clean up costs arising from bunker spills.

For example, in March 2009, the 'Pacific Adventurer' (a general cargo vessel), ruptured her bunker tanks in Australian waters during very rough weather. 270 tons of heavy fuel oil washed up ashore. The vessel owners were able to limit their liability under the 1996 Protocol to US\$ 15.5 million when the actual clean-up costs were in the region of US\$ 27.5 million. This case highlighted the problems associated with the existing limits and this type of case was one of the triggers for the proposed increase in limits to the 1996 Protocol and the IMO Committee adopted new limits, **which are expected to enter into force in the June 2015.**

The unit of measurement for limitation purposes is known as Special Drawing Rights (SDRs) and although it is a recognised monetary unit an SDR is not a currency per se. Their value is based on a basket of international currencies comprising the US dollar, Japanese Yen, Euro and Pound Sterling.

The daily conversion rates for SDRs can be found on the International Monetary Fund IMF

website: www.imf.org

► PROPOSED INCREASES TO THE 1996 PROTOCOL

Claims for loss of life or personal injury on ships

| The new limits | 1996 Protocol | June 2015 Proposed increases |
|--------------------------------------|---------------|------------------------------|
| Not exceeding 2,000 gross tonnes | SDR2 million | SDR3.02 million |
| For each tonne from 2,0001 to 30,000 | SDR800 | SDR1,208 |
| For each tonne from 30,001 to 70,000 | SDR600 | SDR906 |
| For each tonne in excess of 70,000 | SDR400 | SDR604 |

Claims for damage to property for ships

| The new limits | 1996 Protocol | June 2015 Proposed increases |
|--------------------------------------|---------------|------------------------------|
| Not exceeding 2,000 gross tonnes | SDR1 million | SDR1.51 million |
| For each tonne from 2,0001 to 30,000 | SDR400 | SDR604 |
| For each tonne from 30,001 to 70,000 | SDR300 | SDR453 |
| For each tonne in excess of 70,000 | SDR200 | SDR302 |

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By way of example, in the case of a crew death claim involving a vessel of 1,000 GT the 1996 Protocol would be SDR 2 million equivalent to US\$ 3,017,274, however, once the increase to the 1996 Protocol is brought into force, from June 2015, the limit will be increased to SDR 3.02 million. The new limitation amount will be US\$ 4,556,084. This equates to an increase in the limit of 51%.

If the same vessel were to damage property e.g. a pipeline, the 1996 Protocol limit is SDR 1 million i.e. the equivalent to US\$1,508,637. The proposed increase in limits will see this figure rise to US\$ 2,278,042, again equivalent to a limit increase of 51%.

Thankfully, the ability to break the applicable limits under the LLMC Conventions remains very difficult and limits can only be broken in cases if it is proved that the loss resulted from a personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would result.

Although these new limits mark a significant increase in Members potential exposure we continue to believe that ability to limit liability is an extremely efficient tool at capping our Member's potential liabilities. Yet we will also need to monitor closely the impact that the increased limits will have overall on claims and the ratio of premiums applied to claims paid. The limits will not be reviewed again until 2020 and it must be noted that not all jurisdictions are signatories to the protocol.