



An historic day dawns on a dramatic rise in limits of liability

It has never been more important for shipowners, charterers, operators and their insurers to know their limitations, write James Wilson and Faz Peermohamed

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AS from tomorrow, 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 dramatically.

This is the day on which the 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims, 1976 (1996 Protocol) will come into force.

Its effect will be to increase substantially the limits of liability for all categories and sizes of ship whenever they are involved in a maritime incident. The new limits of liability are based on the following increases in the method of calculating a vessel's limitation fund for different types of claim (see charts below).

The Convention allows individual states to make their own regulations in respect of vessels of less than 300 tons. In the UK, for example, the limits for such vessels has been set at SDR500,000 for property damage and SDR1,000,000 for personal injury and death claims — an increase of some 300% of the previous limits.

The new limits are substantially higher. The impact can best be seen from the following comparison, in dollar for dollar terms, of the limits of liability for various sizes of ships under the old and new regimes (see charts on the right).

The Protocol also dramatically increases the limits under the 1976 Convention in respect of passenger claims, from SDR46,666 to SDR175,000 — about US\$258,825 — per passenger. Importantly, the previous upper cap per vessel of SDR25m has been abolished.

From May onwards, a passenger vessel's limit for passenger claims will be calculated by multiplying SDR175,000 by the number of passengers that the vessel is authorised to carry.

For a large passenger vessel, such as the new Queen Mary 2, which is authorised to carry some 2,620 passengers, the limit for passenger claims will now be some US\$675,000,000.

To potentially make matters worse, the 1996 Protocol also provides that individual countries can now regulate through their local law the system of liability to apply to claims for loss of life or personal injury to passengers, provided that the limit is not lower than that prescribed in the Protocol; this will effectively give free rein to individual legislatures.

Where the Athens Convention applies, the old limit of SDR46,666 per passenger will continue to apply — at least until the 2002 Protocol to that convention comes into force increasing the limit to as high as SDR400,000 per passenger.

There are also other more minor changes.

Under the 1976 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 and to contributions in general average. Individual states will also be able to elect to exclude limitation in respect of claims arising in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention 1996).

The impact of the changes will be made all the more interesting by the fact that, at the moment, only 10 countries have ratified the new limits under the 1996 Protocol (and it is far from clear that all of those countries have yet incorporated the changes into their local legislation).

Those countries are: Australia, Denmark, Finland, Germany, Malta, Norway, Russia, Sierra Leone, Tonga and the UK.

A degree of international uniformity had previously been established under the 1976 Limitation Convention which has been adopted in some 42 countries around the world — although there are still some countries which operate even lower limits under the older 1957 Limitation Convention and other countries, such as the US, where an entirely separate concept of limitation is applied based not on the vessel's tonnage but on its residual value.

Undoubtedly, a good number of the 1976 countries will sign up to the 1996 Protocol in time but, as that rolling process continues, the position will remain fluid and more diverse than before.

What will be the practical implications? We will surely see a repeat of what occurred following the introduction of the 1976 Convention itself.

In the immediate aftermath of an accident, such as a collision, claimants will be competing to establish jurisdiction for their claims in the new protocol regimes to take advantage of the increased limits, while defendant shipowners will be seeking to establish jurisdiction in the existing 1957 and 1976 Convention states in order to minimise their exposure.

Steps can and should be taken in the hours and days immediately after a casualty to best protect the position. Those that are alive to this will minimise their exposures or maximise their gains... it has never been more important to know your limitations!

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