

## LIMITATION OF LIABILITY

The application of the International Conventions on Limitation of Liability for Maritime Claims 1957 and 1976 (as amended by the 1996 Protocol)



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# Contents

<b>Section:</b>	<b>Page No.</b>
Introduction	2
<b>1</b> Persons entitled to limit liability	5
<b>2</b> Conduct barring limitation	5
<b>3</b> Limitation in respect of loss of life or personal injury claims	5
<b>4</b> Limitation in respect of property claims	6
<b>5</b> Limitation in respect of passenger claims	6
<b>6</b> Limitation in respect of claim for both property and loss of life/personal injury claims	6
<b>7</b> Claims subject to limitation	7
<b>8</b> Claims excluded from the Convention	7
<b>9</b> Place of constitution of limitation fund	7
<b>10</b> Arrest and release	7
<b>11</b> Burden of proof	8
<b>12</b> Governing law	8
<b>13</b> Tonnage Calculation	8
<b>14</b> Powers of exclusion	8
The Country List - "Which Convention Applies"	9
APPENDIX	18

## Introduction

The ability of a Shipowner to limit his liability for damages caused by negligence is unique in the commercial world. The concept is centuries old but its formalisation in Europe dates from the 17th Century. It is justified on the grounds of public policy and convenience in that a shipowner can obtain adequate insurance cover for Third party claims where his insurers can calculate their maximum exposure with reasonable certainty.

### Abandonment

Limitation of liability was originally based upon the concept of “abandonment” whereby the shipowner abandoned the vessel to the claimants, so limiting his liability to the value of that vessel plus any outstanding freight. This concept still survives in some jurisdictions, notably the USA and formed the basis of the *International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels 1924*, to which a very small number of countries are still a party.

The modern system of limitation of liability is based upon 19th Century British legislation which used the tonnage of the ship to determine the limit of liability.

### International Convention Relating to the Limitation of the Liability of Owners of Sea-going Ships, 1957

This Convention provided for a specific sum in Gold Francs to be multiplied by the ship’s net tonnage to produce the limitation fund figure. Limitation under this Convention is not available “where the occurrence giving rise to the claim resulted from the actual fault or privity of the owner” himself (Art. 1<sup>(1)</sup>). The burden of proof is upon the shipowner to establish this. In 1979, a Protocol to the Convention replaced the Gold Franc standard with Special Drawing Rights (SDR).

### Convention on Limitation of Liability for Maritime Claims 1976 (London Convention)

This Convention raised the levels of limitation significantly and introduced tonnage “bands” with different SDR rates per ton, but made it easier for the shipowner to limit liability by substituting the “actual fault or privity” test with the provision that “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 (Art. 4). This Convention is now widely adopted.

<sup>(1)</sup> Gaskell, Nicholas “New Limits for passengers and others in the United Kingdom” in the LMCLQ 1998, page 315.

## 1996 Protocol to Amend the Convention on Limitation of Liability for Maritime Claims 1976

### Principle

In May 1996, the terms of a Protocol to the 1976 Convention were agreed at a Diplomatic Conference at the IMO Headquarters in London. The need for an update of the 1976 Convention was considered essential as the 1976 limits had been seriously eroded by inflation. According to one article, the average purchasing power of the SDR had fallen 59% between 1976 and 1996.

### Rates

The 1996 Protocol was therefore drafted to increase the 1976 limits. It also includes a provision for the further amendment of the limits as set out in the Protocol, upon the request of at least 3 (but no less than 6) of the States who are party to the Protocol. The Protocol, however, prohibits increase of the limits within the first five years of the Protocol being in force, and thereafter, restricts increases to no more than 6% per annum up to a maximum of 300% of the 1996 limits.

The new limits under the 1996 Protocol are approximately 250% higher than those under the 1976 Convention. By way of example, the limits for a property claim for a vessel of 18,433 tons is 3,161,811 SDRs under the 1976 Convention, but 7,573,200 SDRs under the 1996 Protocol.

### Example: Vessel of 18,433 tons

#### Property Claim

Limitation under the 1976 Convention		Limitation under the 1996 Protocol	
1-500 tons	= 167,000 SDRs	1-2000 tons	= 1,000,000 SDRs
+17,933 tons * 167/ton	= 2,994,811 SDRs	+ 16,433 tons * 400/ton	= 6,573,200 SDRs
<b>Total Limitation</b>	<b>=3,161,811 SDRs</b>	<b>Total Limitation</b>	<b>= 7,573,200 SDRs</b>

## Personal Injury Claim

Limitation under the 1976 Convention		Limitation under the 1996 Protocol	
1-500 tons	= 333,000 SDRs	1-2000 tons	= 2,000,000 SDRs
+ 2,500 tons* 500/ton	= 1,250,000 SDRs	+ 16,433 tons* 800/ton	= 13,146,400 SDRs
15,433 tons* 333/ton	= 5,139,189 SDRs		
Total Limitation	= 6,722,189 SDRs	Total Limitation	= 15,146,400 SDRs
	=US\$8,518,828.25		=US\$ 19,194,577.87

**Coming into Force**

The Protocol will come into force 90 days after it has been ratified by 10 states. At the time of going to press, 8 states are party to the Protocol. Once the 1996 Protocol is in force, the UK is expected to denounce the 1976 Convention, but other states are likely to remain parties to it. Thus, where there is a choice of jurisdiction, the three main limitation regimes (four, if the system in the United States is taken into account) will need to be considered.

For the sake of clarity, the 1957 and 1976 Conventions are set out in tabular form side by side on the following pages, whilst at page 18, the reader will find the provisions of the 1976 Convention as amended by the 1996 Protocol.

The tables in this guide set out the general position under the 1957 and 1976 Conventions. This guide has been written on the basis of English law, and where the UK government has not implemented various sections, the reader's attention is drawn to this fact. A brief summary of those sections is given and the reader is advised to check the domestic legislation of the country in question.

	International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957	Convention on Limitation of Liability for Maritime Claims 1976
1. Persons entitled to limit liability	<p>Article 1(1) Owner</p> <p>Article 6 Charterer, manager and operator of ship and Master, crew and other servants acting in course of their employment. Vessel herself.</p>	<p>Article 1 Owner and salvors. Charterer, manager or operator. Any person for whose act, neglect or default the above parties are responsible. Vessel herself. Any insurer liable for a relevant claim.</p> <p><b>NB: Article 15 of the Convention (although not fully enacted in the UK) does permit State Parties to exclude persons under Article 1, who are not habitually resident in that state, who's principal place of business is not in that State, or where the ship concerned does not fly the state flag. The Claimant must therefore check under the relevant domestic legislation, to see whether these exclusions have been exercised.</b></p>
2. Conduct barring limitation	<p>Article 1(1) Actual <u>fault</u> of Owner causing claim. This includes failure by Owner to train master properly. ("The Lady Gwendolen") and failure by Owner to provide up-to-date charts ("The Marion").  Privity of the Owner (i.e. fault of another with actual knowledge and consent of the Owner).  Article 6 (3) Limitation still available where the occurrence resulted from actual fault or privity of the Master, crew or other servant acting in the course of their employment.</p>	<p>Article 4 No limitation available where loss resulted from personal act or omission committed intentionally or recklessly with knowledge that such loss would probably result.</p>
3. Limitation in respect of loss of life or personal injury claims	<p>Article 3 (1) (b) 3,100 Gold Francs/ton</p> <p>Where 1979 Protocol applies amending the 1957 Convention 206.67 SDR/ton.</p> <p>Ships of less than 300 tons shall be deemed to be 300 tons.</p>	<p>Articles 6 (1) (a), (4) Up to 500 tons                      333,000 SDR.*  Plus for each additional ton: 501-3,000 tons                      500 SDR/ton 3,001-30,000 tons                      333 SDR/ton 30,001-70,000 tons                      250 SDR/ton 70,001 tons upwards                      167 SDR/ton</p> <p>Article 6(4) The limit of liability for any Salvor not operating from any ship or operating solely on ship being salvaged shall be calculated according to a tonnage of 1,500 tons. Thus, in respect of claims for loss of life/personal injury, liability of Salvor will be limited to 833,000 SDR.</p> <p>*The SDR being the relevant Unit of Account under Article 8. The Claimant should again be aware that Article 8 makes provisions for the replacement of the SDR by states who are not members of the IMF, and so domestic legislation may again need to be checked.</p>

	International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957	Convention on Limitation of Liability for Maritime Claims 1976
4. Limitation in respect of property claims	<p>Article 3 (1) (a)</p> <p>1,000 Gold Francs/ton.</p> <p>Where 1979 Protocol applies amending the 1957 Convention</p> <p>66.67 SDR/ton</p> <p>Ships of less than 300 tons shall be deemed to be 300 tons.</p>	<p>Articles 6 (1) (b), (4)</p> <p>Up to 500 tons                      167,000 SDR</p> <p>Plus for each additional ton:</p> <p>501-30,000 tons                      167 SDR/ton  30,001-70,000 tons                      125 SDR/ton  70,001 tons upward                      83 SDR/ton</p> <p>Salvor not operating from any ship or operating solely on ship being salvaged:  334,000 SDR.</p>
5. Limitation in respect of passenger claims	<p>No special provisions. Limit as in 3.</p>	<p>Article 7</p> <p>46,666 SDR x number of passengers ship is certified to carry.</p> <p>Total fund cannot exceed 25 million SDR.</p>
6. Limitation in respect of claims for both property and loss of life/personal injury claims	<p>Article 3 (1) (c)</p> <p>3,100 Gold Francs/ton of which first portion of 2,100 Gold Francs/ton exclusively applied to loss of life/personal injury claims.</p> <p>Second portion of 1,000 SDR/ton applied to property claims.</p> <p>But where first portion not sufficient to cover all personal claims, unpaid balance ranks rateably with property claims against the second portion.</p> <p>Where 1979 Protocol applies amending the 1957 Convention</p> <p>First portion 140 SDR/ton</p> <p>Second portion 66.67 SDR/ton, so total limit 206.67 SDR/ton.</p> <p>Ships of less than 300 tons shall be deemed to be 300 tons.</p>	<p>Articles 6 (2), (4)</p> <p>Where the amount calculated in regard to PI claims (Article 6(1) (a)) is insufficient to pay all PI claims in full, the limit of liability calculated for property claims (Article 6(1) (b)) is available for payment of the unpaid balance - for both the PI and property claims.</p> <p>(1) Apply limits for PI claims first.</p> <p>(2) Apply limits for property claims to any unpaid balance of PI claims, and also to any property claims.</p> <p>(3) Total Potential Liability where both Personal and Property claims exist:</p> <p>Up to 500 tons                      500,000 SDR.</p> <p>501-3,000 tons                      667 SDR/ton.  3,001-30,000 tons                      500 SDR/ton.  30,001-70,000 tons                      375 SDR/ton.  70,001 tons upwards                      250 SDR/ton.</p> <p><u>Example:</u></p> <p>Taking the vessel of 18,433 tons set out on page 2, the limit of liability is 6,722,189 SDRs or US\$8,518,828.25 in respect of PI claims. However, Owners face US\$10,000,000 in PI claims. Owners have a limit of liability for other claims of 3,161,811 SDRs or US\$4,006,868.13. They can therefore use US\$1,481,171.72 of their property limit in respect of the PI claims, and then utilise the remaining US\$2,525,696.41 against property claims.</p> <p>Article 6(4)</p> <p>Total Potential Liability where both Personal and Property claims exist for any Salvor not operating from a ship or operating solely on ship being salvaged:  <b>1,167,000 SDR</b></p> <p><b>NB: Although not included in the UK legislation, Article 6(3) states that a Convention Party can provide under national law that claims in regard to damage to harbour works, basins and waterways and aids to navigation, shall have priority to claims under 1(b).</b></p>

	International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957	Convention on Limitation of Liability for Maritime Claims 1976
7. Claims subject to limitation	<p><b>Article (1)</b></p> <p>Loss of life/personal injury to any person carried on board and loss of or damage to property carried on board.</p> <p>Infringement of any right, loss of life/personal injury or damage to property whether on land or on water. Infringement must either be caused by the fault of any person on board the ship for whose act the Owner is liable or, if fault of person not on board, the fault must occur in the navigation or management of the ship or in the loading, carriage or discharge of cargo or passengers.</p> <p>Any legal liability for dealing with a wrecked, sunken, stranded or abandoned ship or its cargo, or liability for damage to harbours, basins or navigable waterways.</p>	<p><b>Article 2</b></p> <p>Loss of life/personal injury or loss of damage to property occurring on board the ship or in direct connection with its operation or with salvage operations.</p> <p>Infringement of any non-contractual right.</p> <p>Loss due to delay in carriage of cargo, passengers or their luggage.</p> <p>Dealing with a wrecked, sunken, stranded or abandoned ship or its cargo.</p> <p>Measures taken by any person, other than the person liable, to minimise or avert losses covered by the Convention.</p> <p><b>NB: Article 18 allows states to reserve the right to exclude claims in regard to the raising/removal/rendering harmless of wrecked, sunken, stranded or abandoned ship or cargo, and the relevant domestic legislation should therefore be checked.</b></p>
8. Claims excluded from the Convention	<p><b>Article 1 (4)</b></p> <p>Salvage award or contribution in General Average.</p> <p>Claims by the Master, members of the crew or servants of the Owner where statute or the contract of service does not allow Owner to limit his liability.</p>	<p><b>Article 3</b></p> <p>Salvage award or contribution in General Average.</p> <p>Oil pollution damage as defined by the CLC.</p> <p>Claims subject to any International or National law governing liability for nuclear damage.</p> <p>Claims against a nuclear ship for nuclear damage.</p> <p>Claims by servants of Owner or salvor where statute or the contract of service does not allow Owner to limit his liability.</p>
9. Place of constitution of limitation fund	<p><b>Article 4</b></p> <p>Governed by the national law of the State in which the fund is constituted.</p> <p>See Article 5.</p>	<p><b>Article 11</b></p> <p>State in which legal proceedings are instituted.</p> <p>See Article 13.</p>
10. Arrest and release	<p><b>Article 5</b></p> <p>Where the shipowner is entitled to limit his liability, any property which has been arrested within the jurisdiction of a State Party, may be released by an order of the Court if it is established that the shipowner has already given satisfactory bail or security in a sum equal to the full limit of his liability and that the bail or other security so given is available for the benefit of the claimant in accordance with his rights.</p> <p>The Court shall order the release of the property, where bail or other security has been given:</p> <p>(a) at the port where the accident giving rise to the claim occurred; or</p> <p>(b) at the first port of call after the accident if the accident did not occur in a port; or</p> <p>(c) at the port of disembarkation or discharge if the claim is a personal injury claim or relates to damage to cargo.</p>	<p><b>Article 13</b></p> <p>After the limitation fund has been constituted, any property which has been arrested within the jurisdiction of a State Party for a claim which may be raised against the fund may be released by order of the court of such State.</p> <p>Such release shall always be ordered if the limitation fund has been constituted:</p> <p>(a) at the port where the occurrence took place, or if it took place out of port, at the first port of call; or</p> <p>(b) at the port of disembarkation in respect of claims for loss of life or personal injury; or</p> <p>(c) at the port of discharge in respect of damage to cargo; or</p> <p>(d) in the State where the arrest was made.</p>

	International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships 1957	Convention on Limitation of Liability for Maritime Claims 1976
<b>11. Burden of proof</b>	<p>Article 1(6)</p> <p>Burden of proving that claim was caused by actual fault or privity of Owner is determined by the national law of the State in which the action takes place.</p>	<p>No provision determining how burden of proof is to be decided but Article 4 has been taken to imply that the party challenging the right to limit must prove conduct barring limitation.</p>
<b>12. Governing law</b>	<p>Articles 4, 5(5)</p> <p>National law of State in which action takes place.</p>	<p>Article 14</p> <p>Constitution and distribution of limitation fund and all rules of procedure governed by the national law of State in which fund is constituted.</p>
<b>13. Tonnage Calculation</b>	<p>Article 3(7)</p> <p>Net tonnage plus any deductions made for engine room space.</p>	<p>Article 6(5)</p> <p>GRT as defined by International Convention on Tonnage Measurement 1969.</p>
<b>14. Powers of exclusion</b>		<p>Article 15</p> <p>In addition to the exclusions which may be exercised under Article 15 mentioned at "1" above, further scope to vary the application of the Convention is available under Article 15, and in particular in regard to excluding the following:</p> <ol style="list-style-type: none"> <li>(1) vessels intended for inland waterways;</li> <li>(2) ships less than 300 tons;</li> <li>(3) cases where only nationals of the State Party are involved; and</li> <li>(4) drill ships, air cushion vessels and floating platforms.</li> </ol> <p>The relevant national legislation must be checked to see whether these rights have been invoked.</p>

## The Country List - "Which Convention Applies?"

Set out below and on the following pages is an extensive list of the limitation regimes existing in countries across the world. The list is not complete, nor does it give a detailed explanation of the application of the limitation regimes in each individual country. In each case, the reader should check the following information against the relevant domestic legislation. To the best of our knowledge, the information set out below is correct at the time of going to press. Should the reader know of any changes which should be reflected in this guide, we will be grateful to receive and incorporate such advice.

<b>Algeria</b>	1957 Convention
<b>Anguilla</b>	1976 Convention
<b>Argentina</b>	<p>No Conventions apply - the provisions on limitation are found in the Argentine Navigation Act No.20.094. In general, liability is limited to ship's value at the end of the voyage in question or alternatively by abandonment, plus freight, passage money and other remunerations pending. If this value is insufficient to cover the payment of claims connected with loss of life or Personal Injury, then a further fund must be constituted calculated on 13 Gold Pesos per ton - the value of gold in international free markets being changed to current money.</p> <p>Statute also applies maximum tonnage limits as per 1957 Convention.</p> <p>Limit may be invoked by shipowner, or disponent owner, the carrier, manager, Master and crew, but is not available for claims arising from salvage or general average, or for claims by master or crew under contracts of employment or other employees rendering services to the vessel.</p>
<b>Armenia</b>	No Conventions apply. No limitation regime.
<b>Aruba</b>	1957 Convention *
<b>Australia</b>	1976 Convention.
<b>Bahamas</b>	1976 Convention.
<b>Barbados</b>	1976 Convention.
<b>Belgium</b>	1976 Convention with the following reservation: - Exclusion of Articles (2) 1(d) and (e) which apply Convention to claims in respect of raising, removal, destruction, or rendering harmless of ship and/or cargo which is sunk, wrecked, stranded or abandoned.
<b>Belize</b>	1976 Convention with reservations as UK. Application only provisional because UK declared Convention to be effective before Independence. Belize has not since ratified as an independent country.
<b>Benin</b>	1976 Convention.
<b>Bermuda</b>	1976 Convention with reservations as UK.
<b>Brazil</b>	<p>1924 Convention but only applies where shipowner's country also a party to the 1924 Convention. If his country is a party to the 1957 or 1976 Conventions then he cannot limit. However, may limit by liberatory abandonment.</p> <p>Only the <u>shipowner</u> can limit.</p> <p>No limitation of liability for death or personal injury.</p>

<b>British Antarctic Territories</b>	1976 Convention with reservations as UK.
<b>British Indian Ocean Territories</b>	1976 Convention
<b>British Virgin Islands</b>	1976 Convention with reservations as UK.
<b>Bulgaria</b>	1924 Convention reproduced in national law. Principle of abandonment but if ship's value exceeds a maximum figure for tonnage liability applied by national law, tonnage maximum will apply instead.
<b>Canada</b>	<p>Has signed the 1996 Protocol but subject to ratification, therefore until the Royal Assent is received, liability will be founded under national law based on 1957 Convention.</p> <p>Persons entitled to limit their liability include the owner, charterer, manager or operator, and also the owner of a dock, canal or port or any other person for whose act the owner of the dock, canal or port is responsible.</p> <p>Pursuant to Article 15(2) of the 1976 Convention, Canada has limited the liability for vessels under 300 tons to Canadian \$1million in respect of claims for loss of life/personal injury, and \$500,000 for all other claims.</p> <p>Basis for conversion is SDR/Canadian \$ exchange rate.</p>
<b>Cayman Islands</b>	1976 Convention with reservations as UK.
<b>Chile</b>	<p>No Conventions apply, although claims subject to limitation inspired by the 1957 Convention, and as regards the amount of the limitation fund, the Commercial Code of Chile follows the 1976 Convention.</p> <p>The Shipowner, and his subordinates, the proprietor, operator or charterer of the vessel and their subordinates, the Captain, the crew and liability insurers are all entitled to limit their liability.</p> <p>Claims excepted from limitation include claims for salvage or contributions in general average, and claims by the Master or any subordinate of the proprietor or owner whose functions relate with her service and derive from labour rights.</p> <p>The separate "Navigation Law" regulates limitation of liability relating to refloating, removal, destruction or elimination of the dangers represented by sunken, shipwrecked, stranded vessels and includes damage to the environment. The limit for damages caused by spillage of hydrocarbons is based on 2,000 francs per ton with a maximum of 210 million francs (1 SDR equivalent to 15 Francs).</p>
<b>China</b>	<p>New maritime code largely reproduces the 1976 Convention with the following reservations:</p> <ul style="list-style-type: none"> <li>- Exclusion of Articles 2 (1) (d) and (e) (see Belgium).</li> </ul> <p>The limit for coastal ships is 50% of that for international ships.</p> <ul style="list-style-type: none"> <li>- For loss of life/personal injury claims, ships of 20 or 21 GRT may limit to 54,000 SDR. Between 22 GRT and 300 GRT, the limit is 1,000 SDR per ton in excess of 21 tons plus 54,000 SDR. For ships between 301 and 500 tons, the limit is 333,000 SDR.</li> <li>- For property claims, ships of 20 or 21 GRT may limit to 27,500 SDR. Between 22 GRT and 300 GRT, the limit is 500 SDR per ton in excess of 21 tons plus 27,500 SDR. For ships between 301 and 500 tons, the limit is 167,000 SDR.</li> </ul> <p>Ships or craft used for military or public service or of less than 20 tons are not covered by the code.</p>
<b>Columbia</b>	<p>No Conventions apply. However, national law similar to 1924 Convention.</p> <p>Limitation can be invoked by the shipowner, disponent owner, time charterer and sub-charterer, demise charterer and lessee of the vessel.</p> <p>Maximum liability for loss of life/personal injury of 15 grams of gold per ton. Colombian law will apply if the collision takes place in the territorial waters of Columbia or on the high seas if a Columbian vessel is involved.</p>
<b>Croatia</b>	1976 Convention.
<b>Cyprus</b>	<p>Pre-1958 regime applies, i.e. the Merchant Shipping Act 1894.</p> <p>"Fault or privity" test of Owners' conduct .</p> <p>Limit for loss of life/personal injury is 15 Cyprus Pounds per ton.</p> <p>Limit for property claims is 8 Cyprus Pounds per ton.</p> <p>Tonnage is gross tonnage without deduction for engine room spares.</p> <p>1976 Convention applies to UK Sovereign Base Areas of Akrotiri and Dhekelia with the same reservations as UK.</p>

<b>Denmark</b>	1976 Convention. Has signed 1996 Protocol subject to ratification
<b>Dominica</b>	1976 Convention.
<b>Dominican Republic</b>	1957 Convention. <sup>■</sup>
<b>Egypt</b>	1976 Convention.
<b>Equatorial Guinea</b>	1976 Convention.
<b>Estonia</b>	1976 Convention.
<b>Falkland Islands</b>	1976 Convention with reservations as UK.
<b>Faroe Islands</b>	Reservation of application by 1996 Protocol by Denmark
<b>Fiji</b>	1957 Convention. <sup>■</sup>
<b>Finland</b>	1976 Convention. 1996 Protocol subject to ratification
<b>France</b>	1976 Convention with the following reservations: - Exclusion of Articles 2 (1) (d) and (e) (see Belgium). - No limitation for vessels navigating on internal waterways. - Limit for ships under 300 tons is half amount stipulated by Convention for ships under 500 tons i.e. 166,500 SDR for loss of life/personal injury claims or 83,500 SDR for other claims. 1996 Protocol subject to ratification
<b>Georgia</b>	1976 Convention.
<b>Germany</b>	1976 Convention with the following reservations: - Exclusion of Articles 2 (1) (d) and (e) (see Belgium). - Ships intended for navigation on internal waterways regulated by private law on inland navigation. - Limit for claims other than for loss of life/personal injury in respect of ships up to 250 tons is half amount stipulated by Convention for ships under 500 tons, i.e. 83,500 SDR. 1996 Protocol subject to ratification
<b>Ghana</b>	1957 Convention. <sup>■</sup>
<b>Gibraltar</b>	1976 Convention with the following reservations: - Exclusion of Articles 2 (1) (d) and (e) (see Belgium). - Limit for claims in respect of ships under 300 tons of 166,677 SDR for loss of life/personal injury and 83,333 SDR for other claims.
<b>Greece</b>	1976 Convention.
<b>Greenland</b>	Reservation of application of 1996 Protocol by Denmark
<b>Grenada</b>	1957 Convention. <sup>■</sup>
<b>Guernsey</b>	1976 Convention with reservations as UK.
<b>Guyana</b>	1976 Convention. <sup>■</sup>
<b>Hong Kong</b>	1976 Convention with reservations as UK.
<b>Holy See</b>	No conventions apply
<b>Hungary</b>	1924 Convention.
<b>Iceland</b>	1957 Convention with the following reservation: - Limit for claims in respect of ships under 300 tons specified by national law.

<b>India</b>	1957 Convention. <sup>■</sup> Accession to 1976 Convention on 20th August 2002.
<b>Indonesia</b>	No conventions apply. The right to limit liability is provided by Art. 474 of the Commercial Code. Only shipowners or bareboat charters are entitled to limit liability Limitation was calculated as 50 florins per cubic metre of vessel's net volume, but now Indonesian Courts calculate the amount in units of fifty roepiahs.
<b>Iran</b>	1957 Convention. <sup>■</sup>
<b>Ireland</b>	1976 Convention with exclusion of Article 2(1) (d) and (e)
<b>Isle of Man</b>	1976 Convention with reservations as UK.
<b>Israel</b>	1957 Convention. <sup>■</sup>
<b>Italy</b>	No Conventions apply. Article 275 of Maritime Code, principle of abandonment based on the value of the ship at the end of the voyage and includes freight. However, fund must still be no less than a fifth, nor more than two fifths of the sound value of the vessel at the beginning of her voyage. Limitation invoked by the operator of the vessel and calculated per voyage rather than per accident. Right of limitation governed by the national law of the State of the vessel's nationality.
<b>Japan</b>	1976 Convention with the following reservation: - Exclusion of Articles 2 1 (d) and (e) (see Belgium). One-year time limit.
<b>Jersey</b>	1976 Convention with reservations as UK.
<b>Kiribati</b>	1957 Convention. <sup>■</sup>
<b>Republic of Korea/ South Korea</b>	1976 Convention but in respect of claims based on tort, governing law is law of place of occurrence. ("Place of occurrence" includes place where harm was incurred). Article 2(1) (d) and (e) excluded Shipowner may limit where his crew, agent or pilot caused the harm by recklessness, but not where the owner himself was reckless. For vessels under 300 tons, personal injury fund for non-passengers is 167,000 SDRs and the property fund 83,000 SDRs. Pursuant to an Amendment to the Conflict of Laws Act, however, the Korean courts now apply the law of the flag country of the vessel rather than the law of the place where the tort was committed or the Korean law (i.e., <i>lex fori</i> ).
<b>Latvia</b>	1976 Convention
<b>Lebanon</b>	1957 Convention.
<b>Liberia</b>	1976 Convention.
<b>Libyan Arab Jamahiriya</b>	No Convention.
<b>Luxembourg</b>	1957 Convention plus 1979 Protocol.
<b>Macao</b>	1957 Convention <sup>■</sup>
<b>Madagascar</b>	1957 Convention
<b>Malagasy Republic</b>	1957 Convention plus 1979 Protocol.

<b>Malta</b>	Provisions of 1957 Convention reproduced in national law. As to provisions to persons entitled to limit liability, the Maltese legislation extends entitlement to include such persons as shipbuilders and ship repairers in the right circumstances and a number of other persons who would otherwise not be entitled to limit their liability.
<b>Marshall Islands</b>	1976 Convention.
<b>Mauritius</b>	1976 Convention. <sup>a</sup>
<b>Mexico</b>	1976 Convention.
<b>Monaco</b>	1957 Convention. <sup>a</sup>
<b>Montserrat</b>	1976 Convention with same reservations as UK.
<b>Netherlands</b>	1976 Convention with the following reservations: - Exclusion of Articles 2 (1) (d) and (e) (see Belgium). - Application of national law of limitation to vessels intended for navigation on internal waterways, including provision that the limitation of liability for claims for loss of life/personal injury (other than those claims in respect of passengers of a ship) on any distinct occasion, shall in no case be less than 200,000 Units of Account. - The Limit of liability for claims in respect of loss of life or personal injury on inland navigation ships, will (in general) be 60,000 Units of Account multiplied by the number of passengers the ship is authorized to carry - but in no case will it be less than 720,000 Units of Account. Maximum limits of liability are also stated and are given as 3 million Units of Account for a vessel with maximum capacity of 100 passengers, 6 million Units for 180 passengers, and 12 million Units for vessels carrying more than 180 passengers. - Limit for passenger ships under 300 tons other than claims for loss of life or personal injury is 100,000 SDR. 1996 Protocol - subject to acceptance
<b>New Hebrides</b>	1957 Convention (1976?)
<b>New Zealand</b>	1976 Convention
<b>Nigeria</b>	1957 Convention incorporated in Merchant Shipping Act of 1962 Liability in respect of loss of life or personal injury is limited to a maximum of 3100 gold francs for each ton of the ship's tonnage. Liability for damage to goods, merchandise, any other property is limited to an amount not exceeding 100 gold francs for each ton of the ship's tonnage Minimum tonnage stated as 300 tons Since 1971 limitation figures are approximately Nigerian Naira 147 per ton for personal injury or loss of life, and N47 per ton for other loss or damage. Tonnage to be ascertained by measurement in accordance with 363 [2] [e] of the Nigerian Merchant Shipping Act 1962. That is: for steamships/ other mechanically propelled ships - registered tonnage + amount equal to allowance for engine-room (as deducted from gross tonnage to ascertain net tonnage), for other ships - their net tonnage
<b>Norway</b>	1976 Convention but Norwegian drilling vessels excluded. 1996 Protocol
<b>North Yemen</b>	1976 Convention
<b>Pakistan</b>	Limitation of liability governed by the Merchant Shipping Acts 1849 to 1947 as they were applicable to British India. Those entitled to limit liability include a mortgagee in possession. All claims for damage caused by a collision or loss of or damage to goods carried on the ship or on board another vessel, and claims for damage to jettys/quays etc. are subject to limitation. The owner is not liable for loss caused due to fire on board, or for loss of/damage to precious stones unless value of these was declared at the time of shipment. Liability is limited to £8 per registered ton for claims in respect of loss/damage to property, and £15 per registered ton in respect of loss of life/personal injury.
<b>Panama</b>	1976 Convention incorporated into national law with the following alterations: - law of vessel's country of registry will apply; - excludes damage to harbour works, waterways, bridges, canals, aids to navigation and installations of the Panama Canal. Such claims have priority over all claims other than loss of life/personal injury.

<b>Papua New Guinea</b>	1957 Convention. <sup>■</sup>
<b>Peru</b>	<p>No Conventions apply.</p> <p>Limitation based on the vessel's value after occurrence and voyage freight earned (principle of "abandonment"). Loss of life/personal injury claims take precedence over property claims.</p> <p>If occurrence in territorial waters, applicable law is that of place of occurrence. Otherwise, law of the flag of the ships and if different nationalities, the law of the flag most favourable to the Defendant is applicable.</p> <p>NB: Where both vessels are to blame in a collision neither shipowner may recover damages from the other. (The collision losses lie where they fall). Both vessels jointly and severally liable to cargo owners for damage caused to the cargo as a consequence of collision.</p>
<b>Philippines</b>	<p>No Conventions apply.</p> <p>Abandonment does apply - value of vessel plus freight following the events causing liability, once vessel has been abandoned to claimants. If vessel lost, insurance proceeds constitute limitation fund.</p> <p>Shipowners, co-owners or demise charterers may abandon.</p> <p>Loss of life/personal injury claims have priority. Claims by crew have separate limit.</p> <p>No limitation where claim caused by shipowner's personal fault.</p> <p>Rules only apply either to claims involving Filipino vessels or vessels in Filipino territorial waters.</p>
<b>Pitcairn</b>	1976 Convention with reservations as UK.
<b>Poland</b>	1976 Convention with notification that the SDR is calculated by the Polish National Bank by fixing the rate of exchange to the US dollar.
<b>Portugal</b>	1957 Convention <sup>■</sup> plus 1979 Protocol.
<b>Romania</b>	No Conventions apply.
<b>Russia</b>	<p>No Conventions apply.</p> <p>Principle of abandonment but if ship's value exceeds maximum tonnage liability applied by national law, tonnage maximum will apply instead.</p> <p>No limitation for claims by crew for loss of life/personal injury.</p>
<b>Russian Federation</b>	1996 Protocol with reservation of right to exclude Article 2 (1) d & e, and claims related to damage within the meaning of the HNS Convention.
<b>Serbia and Montenegro</b>	<p>Former Yugoslavia applied 1957 Convention plus the 1979 Protocol. Law of the flag applied unless Yugoslav law was stricter, in which case the law of the place of occurrence applied.</p> <p>Applicability of these rules to Serbia unclear.</p>
<b>Seychelles</b>	1957 Convention. <sup>■</sup>
<b>Siera Leone</b>	<p>1976 Convention</p> <p>1996 Protocol.</p>
<b>Singapore</b>	1957 Convention. <sup>■</sup>
<b>Solomon Islands</b>	1957 Convention. <sup>■</sup>
<b>South Africa</b>	<p>No conventions apply. No limit where harm caused with "actual fault or privity (i.e. breach of personal contractual obligation)" of owner. Charterer or owner may limit.</p> <p>Limits are as follows:</p> <ul style="list-style-type: none"> <li>i) For personal injury and loss of life - 2,635 gold francs per GRT.</li> <li>ii) Damage of property - 850 gold francs per GRT.</li> <li>iii) Both of the above - 2,635 gold francs per GRT, loss of life/personal injury claims having priority (up to 1,785 gold francs per GRT) over damage to property. Thereafter personal and property claims to rank rateably.</li> </ul> <p>The value of a gold franc is the Rand value of a fine ounce of gold on the day of determination of the fund multiplied by 0.001895286270.</p>
<b>South Georgia &amp; South Sandwich Islands</b>	1976 Convention

<b>Spain (including the Canary Islands)</b>	Has adopted all three Limitation Conventions (1924 Convention, 1957 Convention as amended by the 1979 Protocol and the 1976 Convention) without renouncing any preceding Convention.  However, the 1976 Convention is thought to apply, but restrictively.
<b>St. Helena &amp; Dependencies</b>	1976 Convention with reservations as UK.
<b>St. Lucia</b>	1957 Convention. <sup>■</sup>
<b>St. Vincent and the Grenadines</b>	1957 Convention. <sup>■</sup>
<b>Sweden</b>	1976 Convention with the reservation that national legislation provides for a higher rate for limitation of liability for drilling vessels.  1996 Protocol - subject to ratification
<b>Switzerland</b>	1976 Convention with the following reservations:  - Limitation fund calculated by the Swiss National Bank in relation to a mean SDR rate linked to the US dollar.  - National law applies to inland waterway vessels and includes provision that in respect of claims for loss of life or personal injury, the maximum limit of liability is fixed at 200,000 Units of Account.
<b>Syrian Arab Republic</b>	1957 Convention plus 1979 Protocol.
<b>Taiwan</b>	No conventions apply.
<b>Tonga</b>	1957 Convention. <sup>■</sup>
<b>Tokelau</b>	1976 Convention is expressly stated not to be applied.
<b>Trinidad &amp; Tobago</b>	1976 Convention
<b>Turkey</b>	1976 Convention.
<b>Turks &amp; Caicos Islands</b>	1976 Convention with same reservations as UK.
<b>Tuvalu</b>	1957 Convention. <sup>■</sup>
<b>United Arab Emirates</b>	1976 Convention
<b>United Arab Republic</b>	1957 Convention <sup>■</sup>
<b>United Kingdom</b>	1976 Convention with the following reservations:  - Exclusion of Article 2 (1) (d) (see Belgium).  - Limit for ships under 300 tons of 166,677 SDR for loss of life/personal injury and 83,333 SDR for other claims.  1996 Protocol **
<b>USA</b>	No Conventions apply. The right to limit is governed by the "Limitation of Vessel Owner's Liability Act" which applies the principle of abandonment.  The Shipowner can limit his liability for casualties occurring on "navigable waters", and when facing claims from third parties, he is entitled to commence court proceedings for exoneration or limitation. The prosecution of any other claims against the owner will be enjoined with that action so that all matters are dealt with promptly and economically.  "Owner" includes any person or entity who/which may be liable because of an ownership interest in the vessel. Whilst the definition extends to demise charterers, Insurers cannot limit.  Limit calculated according to value of vessel and freight pending at conclusion of voyage. In regard to death and personal injury claimants, if the amount of the fund is insufficient to meet all claims in full, it must be increased to either the amount of the claims for death or personal injury, or to \$420 per gross ton of the vessel - whichever is the lesser. However, this supplemental provision is only applicable to "seagoing vessels", which as defined does not include: "pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self propelled lighters, nondescript self propelled vessels, canal boats, scows, car floats, barges, lighters, or non descript non -self propelled vessels."  Limitation only available upon proof that the fault causing the loss occurred without the privity or knowledge of the Owner.  <i>cont'd...</i>

	<p>Limitation extends to loss/damage to cargo, claims for personal injury and death, debts and liabilities of the shipowner, and any other loss resulting from a marine casualty but various exceptions exist, including claims for wages, claims for loss caused by an unreasonable deviation and damages for pollution under both state and Federal legislation. Section 182 of the Act gives complete exoneration for cargo loss or damage due to fire, if it occurred on the vessel without the "design or neglect" of the Shipowner.</p> <p>Shipowner may not limit claims arising from his personal obligations. In loss of life/personal injury claims, Master's obligations are deemed to be shipowner's personal obligations</p> <p>Foreign shipowners may use US Law to limit in US Courts. However foreign law may be applied if it governs the claim at issue and limitation is considered as a "substantive right" under that law. Additionally, a limitation action in the US can be dismissed on the ground of "Forum Non Conveniens" if it is shown that foreign law is applicable and that the balance of the private interests of the litigants/ interest of the public, is in favour of the defendant.</p>
<b>Vanuatu</b>	1976 Convention
<b>Venezuela</b>	<p>No Conventions apply. Venezuelan limitation of liability follows the "Abandonment System".</p> <p>In general, only the registered owner will be entitled to limit his liability, and only as regards personal acts of Master and crew.</p> <p>Under Venezuelan law, injuries to passengers are governed by the tort rules of the Civil Code, but it is valid for non-responsibility or limitation clauses to be included in the contracts for transport. Clauses stating that relations will be ruled by the Athens Convention 1974 are also acceptable, and limitation rules can therefore be incorporated in that way.</p>
<b>Vietnam</b>	<p>No Conventions apply.</p> <p>Those entitled to limit liability are not only the registered shipowners but also ship-operators, ship-managers, professional salvors.</p> <p>According to Vietnamese Maritime Code, article 196, limits are as follows:</p> <ul style="list-style-type: none"> <li>i) For personal injury and loss of life - 3,100 poincare francs per GRT.</li> <li>ii) Damage of property – 1,000 poincare francs per GRT.</li> <li>iii) Both of the above – 3,100 poincare francs per GRT, loss of life/personal injury claims having priority (up to 2,100 poincare francs per GRT) over damage to property.</li> </ul> <p>GRT= NRT + tonnage of engine room space (if self propelled) or NRT where not self propelled. The limitation as determined in poincare francs is to be converted into the Vietnamese currency according to the official exchange rate announced by the State Bank of Vietnam at the time of payment (Art. 197/3).</p>
<b>Yemen</b>	1976 Convention.
<b>Zaire</b>	1957 Convention.

▪ **The following reservations apply:**

- 1) Exclusion of Article 1(1)(c) which applies the Convention to “any obligation or liability imposed by any law relating to the removal of wreck and arising from or in connection with raising, removal, or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship) and any obligation or liability arising out of damage caused to harbour works, basins and navigable waterways”.
- 2) Application of national law to vessels under 300 tons.

\*\* **Ratification of the 1996 Protocol carried out on following basis:**

- 1) The United Kingdom has reserved its right to exclude Articles 2 (1) (d) and (e) (claims in respect of raising, removal, destruction or rendering harmless of sunken, wrecked, stranded, abandoned ship or cargo) and claims for damage within the meaning of the HNS Convention.
- 2) It has also stated its intention to make use of Art. 15(2) (b) of 1976 Convention as amended by the 1996 Protocol to regulate by national law the limitation of liability for ships under 300 tons. Art. 6 will have effect as if 6(1)(a)(i) referred to 1,000,000 units of account and 6(1)(b)(i) - 500,000 units of account (see below).
- 3) Further, the UK has signified its intention to make use of Article 15 (3bis) - to regulate by provisions of national law the system of limitation of liability applying to passengers. The UK national law implementing the 1996 Protocol will not provide a limit for claims arising from loss of life/personal injury to passengers of a ship. However, limits may still apply to such claims under national law based on the Convention relating to Carriage of Passengers and their Luggage by Sea.
- 4) Only after the UK's denunciation of the 1976 Convention has been extended to its Overseas Territories, will the ratification of the 1996 Protocol be extended to them.

## APPENDIX 1

The following table sets out how the 1976 Convention will change, when the 1996 Protocol comes into force. Those provisions that will not change are not mentioned, and the reader should refer to pages 5 to 12 of this Guide. The Article numbers on the right refer to the Article numbers in the 1976 Convention.

Those States who have accepted the 1996 Protocol will have their limitation of liability calculated on the basis set out below. It will be likely that many States will remain Parties to the 1976 Convention despite the 1996 Protocol coming into effect, and therefore both the table below and the preceding tables will need to be consulted.

Convention on Limitation of Liability for Maritime Claims 1976									
<b>1. Persons entitled to limit liability.</b>	<p><b>Article 1</b></p> <p><b>Whilst the note in relation to Article 15 of the 1976 Convention is still applicable to Article 1, the 1996 Protocol has introduced a new section "15.3bis" which allows a State Party to make special provisions in respect of claims for loss of life/personal injury (as to which see box 8 below).</b></p>								
<b>2. Limitation in respect of loss of life or personal injury claims.</b>	<p><b>Articles 6 (1) (a)</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Up to 2,000 tons</td> <td style="padding: 5px; text-align: right;">2,000,000 SDR*</td> </tr> </table> <p><i>Plus for each additional ton:</i></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">2001-30,000 tons</td> <td style="padding: 5px; text-align: right;">800 SDR/ton.</td> </tr> <tr> <td style="padding: 5px;">30,001-70,000 tons</td> <td style="padding: 5px; text-align: right;">600 SDR/ton.</td> </tr> <tr> <td style="padding: 5px;">70,001 tons upwards</td> <td style="padding: 5px; text-align: right;">400 SDR/ton.</td> </tr> </table> <p><b>The note to Article 6 (1) above will again apply but the limits will now of course have changed in accordance with the 1996 Protocol. Domestic legislation should again be checked.</b></p>	Up to 2,000 tons	2,000,000 SDR*	2001-30,000 tons	800 SDR/ton.	30,001-70,000 tons	600 SDR/ton.	70,001 tons upwards	400 SDR/ton.
Up to 2,000 tons	2,000,000 SDR*								
2001-30,000 tons	800 SDR/ton.								
30,001-70,000 tons	600 SDR/ton.								
70,001 tons upwards	400 SDR/ton.								

	Convention on Limitation of Liability for Maritime Claims 1976
3. Limitation in respect of any other claims.	<p><b>Articles 6 (1) (b)</b></p> <p>Up to 2000 tons                      1,000,000 SDR</p> <p><i>Plus for each additional ton</i></p> <p>2001-30,000 tons                      400 SDR/ton.  30,001-70,000 tons                      300 SDR/ton.  70,001 tons upward                      200SDR/ton.</p>
4. Limitation in respect of passenger claims.	<p><b>Article 7 (1)</b></p> <p>175,000 SDR x number of passengers ship is certified to carry.</p>
5. Limitation in respect of claims for both property and loss of life/personal injury claims.	<p><b>Article 6 (2)</b></p> <p><b>Where the amount calculated in regard to Personal Injury claims (Article 6 (1)(a)) is insufficient to pay all Personal Injury claims in full, the right to apply the limits for other claims (Article 6 (1)(b)) will again apply (see Article 6 (2),(4) of the 1976 Convention above), but note that the Total Potential Liability where both Personal Injury and Property claims exist will now be as follows:</b></p> <p>Up to 2000 tons                      3,000,000 SDR.</p> <p>2,001-30,000 tons                      1,200 SDR/ton.  30,001-70,000 tons                      900 SDR/ton.  70,001 tons upwards                      600 SDR/ton.</p>
6. Claims subject to limitation.	<p><b>Article 2</b></p> <p><b>NB: In addition to the rights of a state party to exclude certain claims (see note on Article 18 (in relation to Article 2 )of the 1976 Convention above) the 1996 Protocol provides that a State can exclude claims for damages within the meaning of the HNS Convention - the relevant domestic legislation should again be checked.</b></p>

Convention on Limitation of Liability for Maritime Claims 1976	
<b>7. Claims excepted from limitation.</b>	<p><b>Article 3</b></p> <p><b>Claims for salvage (including claims for special compensation under Art. 14 International Convention on Salvage as amended) or contribution in General Average.</b></p> <p>Oil pollution damage as defined by the CLC or any amendment/Protocol thereof.</p> <p>Claims subject to any International or National law governing liability for nuclear damage.</p> <p>Claims against a nuclear ship for nuclear damage.</p> <p>Claims by servants of Owner or salvor where statute or the contract of service does not allow Owner to limit his liability, or where by such law liability can only be limited to an amount greater than provided under Art.6.</p>
<b>8. Powers of exclusion</b>	<p><b>Article 15.3bis</b></p> <p>Under the 1996 Protocol, a new provision has been introduced which allows a State Party to regulate by special provisions of national law, the system of liability to be applied to claims for loss of life/personal injury for passengers on a ship - provided that such amended limit is not lower than that prescribed in Article 7 of the 1976 Convention as amended by the 1996 Protocol.</p>

## Notes





## About Hill Dickinson

Hill Dickinson LLP offers a comprehensive range of legal services from offices in Liverpool, Manchester, London, Chester and Greece. The firm has 143 partners and a complement of more than 900 staff.

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