

**GUIDELINES**  
In respect of Procedural Rules  
Relating to Limitation of Liability  
in Maritime Law

The Comité Maritime International (CMI):

1. bearing in mind its purpose, in accordance with its Constitution, “*to contribute by all appropriate means and activities to the unification of maritime law in all its aspects*”,
2. noting that international conventions in connection with limitation of liability have contributed to the unification of maritime law but there is considerable diversity procedurally in the way they are implemented and applied in various States,
3. noting that a considerable number of States have not ratified any relevant convention and that they apply national law, which is not based upon any convention, relating to the limitation of liability  
In maritime law.
4. believing that it may contribute to the harmonization of the procedures relating to the limitation of liability in maritime law by preparing procedural guidelines,

adopted at its 39<sup>th</sup> Conference, held in Athens in October 2008, the following Guidelines in respect of Procedural Rules relating to Limitation of Liability in Maritime Law.

**1. RELATIONSHIP OF GUIDELINES TO MARITIME CONVENTIONS**

These Guidelines are subject to and/or without prejudice to any specific provisions of any international convention.

**2. INTERPRETATION**

For the purposes of these Guidelines:

“Bunker Convention” means the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001

“Claim(s)” means the claims subject to the Limitation of Liability and/or, where the context so requires, claims submitted for satisfaction out of the distribution of the Fund and “Claimant” is to be construed accordingly.

“CLC” means the International Convention on Civil Liability for Oil Pollution Damage 1969 and the International Convention on Civil Liability for Oil Pollution Damage 1992 as applicable.

“Fund” means the fund established, for the purpose of Limitation of Liability, by the provision of cash, bank guarantee or other acceptable guarantee, and out of which claims subject to limitation may be satisfied

“HNS Convention” means the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious substance by Sea 1996

“Limitation of Liability” means the limitation of liability in maritime law, through the possible establishment of a fund, and does not include limitation per package or unit or per passenger nor does it relate to international compensation funds established under international conventions.

“Limitation Proceedings” means the proceedings or procedures for the Limitation of Liability including, but not limited to, the establishment of the Fund, the submission and proof of Claims, decisions as to whether a Claim is subject to limitation and the distribution of the Fund.

“Person liable” means any person seeking to limit his liability.

### 3. JURISDICTION

When the courts of a State have jurisdiction in relation to Limitation Proceedings, whether pursuant to an international convention or pursuant to national law, it is preferable that one court should have jurisdiction to deal with Limitation Proceedings. The court(s) having such jurisdiction should have the capacity to deal with complex multiparty cases. If more than one court has jurisdiction, their respective jurisdiction should be clearly delineated to avoid conflicts, and where Limitation Proceedings start in one of these courts, all related limitation proceedings should be referred to that court.

### 4. LIMITATION OF LIABILITY WITHOUT THE CONSTITUTION OF A FUND

(a) If a person liable may limit his liability without the establishment of a Fund, the court should:

(i) judge each Claim for its full proven amount (provided that all the requirements for the adjudication of the Claim have been satisfied) and,

(ii) declare the right of the person liable to limit his liability and, for the purpose of enforcement, the amount of limitation applicable to the respective Claim.

(b) If Limitation of Liability is invoked without the establishment of a Fund, assets arrested or other security provided should not be released but the security may be reduced to the amount of limitation judged applicable to all respective Claims.

## 5. TIME LIMIT FOR STARTING LIMITATION PROCEEDINGS

States should in their national law take into account that:

(a) Without prejudice (i) to the right to start Limitation Proceedings in respect of other Claims and (ii) to any rules concerning subrogation, Limitation of Liability may not be invoked against a Claim after its satisfaction through enforcement or otherwise.

(b) Limitation may be invoked in pending proceedings up to the time allowed by the procedural rules of the court where the proceedings are pending.

(c) Subject to paragraph (a) above, no other time limit seems to be necessary for the commencement of Limitation Proceedings.

(d) Where the prior approval of a court is required for the establishment of the Fund, it is advisable that States provide in their national law a time limit for such establishment or that such a time limit be fixed by the court after such approval has been given.

## 6. PROCEDURE FOR THE ESTABLISHMENT OF THE FUND AND EVIDENCE

States should in their national law:

(a) provide an expeditious procedure for the establishment of the Fund.

(b) specify when exactly the Fund is deemed to be established.

(c) specify that the right of Limitation of Liability becomes provisionally effective at the time of the establishment of the Fund.

(d) specify the evidence that proves the Fund is established.

(e) provide the person liable with appropriate confirmation of the establishment of the Fund, preferably through a court decision, thus facilitating the recognition of such establishment in other States.

## 7. CHALLENGING THE RIGHT OF LIMITATION

(a) States should in their national law make provision for the entitlement of Claimants to challenge the right of the person liable to limit his liability before the Court where the Fund is established or Limitation Proceedings are pending.

(b) The procedure for challenging the right of limitation referred to in paragraph (a) above] should not automatically stay or cause delay to the establishment of the Fund and its effects.

(c) Without prejudice to the final determination of the whether or not the right to limit liability exists the court referred to in paragraph (a) above, and until such determination is made or recognized in another State where security is sought or security has been obtained by arrest of vessels or attachment of other assets or otherwise, States should consider requirements and procedures for the granting and/or the release and/or retention of such security

## 8. CONSEQUENCES OF LIMITATION

States should:

(a) Provide in their national law procedures for the recognition or non recognition of the effects of the establishment of the Fund in another State; and

(b) In the event of recognition, provide procedures for the release of attached assets, following the establishment of the Fund.

## 9. LOSS OF RIGHT TO LIMITATION OF LIABILITY

(a) States should provide in their national law that if it is determined after the establishment of the Fund [and the effective date of provisional right of Limitation of Liability] that some or all the persons liable are not entitled to limit their liability then:

(i) The Fund shall nevertheless remain in place and be distributed among the Claimants pursuant to the Limitation Proceedings.

(ii) The Claims shall be verified and/or adjudicated in the same manner and in the same procedure, as if the right of limitation had not been lost.

(iii) The Claimants, however, shall be entitled to immediately seek security from other assets of the person liable and to enforce the balance of their adjudicated verified claims on other assets of the person liable.

(b) In case the right to limit liability has been lost, the consequences of bringing Claims in the Limitation Proceedings, including protection of the limitation of time (time bar), will remain in full effect.

(c) States should provide in their national law that Claims which are not subject to limitation shall be pursued independently from the Limitation Proceedings.

## 10. INFORMATION AND DOCUMENTS TO BE PROVIDED BY THE PERSON INVOKING THE BENEFIT OF LIMITATION

States should specify in their national law what information and documents must be provided by the person invoking the benefit of limitation, such as:

- (a) The identity of the person invoking the right of Limitation of Liability.
- (b) The name of the vessel involved.
- (c) A copy of the relevant measurement certificate of the ship or any other document required for the calculation of the limitation amount.
- (d) A list with the names and addresses, to the extent they are known, of the persons that may have Claims subject to the Limitation of Liability.
- (e) Evidence of the appropriate deposit of the amount of the Fund or a bank guarantee or other acceptable guarantee equal to the amount of the Fund.

## 11. ISSUES RELATING TO THE FUND

States should provide in their national law appropriate and clear rules relating to:

- a) The sum that must be added to the amount of limitation for interest from the time of the incident up to the establishment of the Fund.
- b) The sum that may be added to the Fund in respect of the costs of administration of the Fund.
- c) The location and standing of the bank that may provide a guarantee.
- d) The guarantees that are acceptable other than bank guarantees.
- e) The duty of the court to verify expeditiously the calculation of the amount of limitation.
- f) The transfer of the amounts distributed by the Fund to the Claimants from the State in question without any restriction.

## 12. TIME LIMITS IN LIMITATION PROCEEDINGS

(a) States should set in their national law a time limit, or give their courts the power to set such time limit, for the following actions by Claimants:

- (i) challenging the right of the person liable to invoke the benefit of Limitation of Liability,

- (ii) requesting a review of the amount of the Fund,
- (iii) submitting Claims in the Limitation Proceedings.

(b) In setting these time limits special attention should be paid to the relevant provisions of international conventions, including in particular the CLC, the HNS Convention and the Bunker Convention or any other applicable convention. In making interim and final distributions, due consideration shall be given to the possibility of damage arising after such distribution.

(c) States should specify in their national law the point of time at which these time limits commence. The time limit for the participation of the Claimants in the Limitation Proceedings must not commence before Claimants are notified of the establishment of the Fund either individually, if their names and addresses are known, or through publications which have reasonably broad exposure.

### 13. CONSEQUENCES OF LATE PARTICIPATION

Subject to any related provisions in applicable international conventions, States should adopt provisions in relation to the following consequences of late participation of Claimants in the Limitation Proceedings:

- (a) The right (or exclusion thereof) to challenge the right of the person liable to invoke the benefit of limitation or to seek review of the amount of the Fund.
- (b) The right (or exclusion thereof) to participate in the interim and final distribution of the Fund.

### 14. VERIFICATION OF CLAIMS

States should provide in their national law procedures for the verification of Claims in the Limitation Proceedings including procedures for:

- (a) the submission of the Claims and related evidence,
- (b) preparation of a first list of Claimants and Claims either by the Fund administrator, or by the appointed judge or by the court, and for notification of this list to the Claimants,
- (c) the time limit within which the list of Claimants and Claims may be challenged (either by Claimants or by the person liable, unless prevented from doing so by *res judicata* or by the specific provisions of any applicable international convention),
- (d) the procedure for the resolution of disputes concerning the list, and
- (e) the finalization of the list and the distribution of the Fund.

## 15. CHALLENGE OF CLAIMANTS' CLAIMS

(a) Subject to the rules of *res judicata* States should, in the context of Limitation Proceedings and the procedure for the verification of claims, give the person liable the possibility to challenge the Claims and the Claimants the possibility to challenge the Claims of other Claimants provided however that a claim or the amount of a claim accepted following consideration on the merits by a court in another State competent under the CLC, the HNS Convention, the Bunker Conventions or any other applicable convention in a judgment which should be recognised under the applicable convention, in other Contracting States, may not be challenged in the Limitation Proceedings.

(b) The challenge of a Claim should not delay the interim distribution of the Fund to other Claimants. National law may provide for challenges to be tried collectively, provided this does not delay the interim distribution of the Fund

(c) Any amount released by the rejection from the list of a Claim challenged should be distributed to all the Claimants on the list pro rata and in proportion to their respective Claims as a supplementary distribution.

## 16. RELATION BETWEEN LIMITATION PROCEEDINGS AND PROCEEDINGS ON THE MERITS OF THE CLAIMS

Subject to any specific provisions in the applicable international conventions, States should provide in their national law procedures for the recognition or non recognition of judgments issued on the merits of Claims by other courts having jurisdiction recognised by that State on the merits of these Claims.

## 17. MORE THAN ONE PERSON LIABLE

(a) Where more than one person liable exists (and is entitled to limit his liability) and unless a relevant convention provides otherwise and/or unless any such person has lost his right to limit his liability as a result of any provision, including provisions concerning his conduct, the establishment of the Fund and the Limitation of Liability by any of them shall benefit all such persons vis-à-vis third party Claimants.

(b) States should include in their national law provisions; regulating the right of subrogation and the apportionment of liability among the persons liable, an expeditious procedure for such purpose and that give effect to the subrogation provisions, if any, of the relevant convention or national law.

## 18. MORE THAN ONE SHIP LIABLE

(a) Unless any applicable convention provides otherwise, where Claims arise from an incident involving more than one ship, the persons liable in relation to each ship may limit their liability separately and independently of the persons liable in relation to any other ship.

(b) Any Claimants having Claims against persons liable in relation to more than one ship may participate in any of the Limitation Proceedings commenced with regard to any ship involved and may submit their Claims to each of the relevant Funds for the total amount of their respective Claims.

(c) The subrogation provisions of any applicable convention apply in the relations between the persons liable in relation to the various ships and States that are not parties to the relevant conventions should enact similar provisions.

## 19. SUBROGATION

States should, to the extent that this is a matter left to national law by any applicable convention, provide in their national law procedures concerning subrogation of rights

States should provide in their national law that:

(a) Unless any applicable convention provides otherwise, counterclaims of the person liable may be raised and set off against Claims in accordance with the law applicable to such set off, in which case these Claims participate in the distribution of the Fund for the balance, if any, and

(b) If the applicable convention provides for compulsory set off of certain counter claims, the issue of set off may be raised by any Claimant participating to the distribution vis-à-vis any other Claimant(s).

## 21. PARTLY PAID CLAIMS

If a Claimant entitled to participate in the distribution of a particular Fund has been partially paid for his Claim outside of the Limitation Proceedings, then he will participate in the distribution in respect of the unpaid balance of his Claim.