

CHAPTER 5.**LIMITATION OF LIABILITY FOR MARITIME CLAIMS****ARRANGEMENT OF SECTIONS****Section****PART I - RIGHT OF LIMITATION****§501.** Short title.**§502.** Persons entitled to limit liability.**§503.** Claims subject to limitation.**§504.** Claims excepted from limitation.**§505.** Conduct barring limitation.**§506.** Counterclaims.**§507-509.** Reserved.**PART II- LIMITS OF LIABILITY****§510.** The general limits.**§511.** The limit for passenger claims.**§512.** Unit of Account.**Section****§513.** Aggregation of claims.**§514-519.** Reserved.**PART III - THE LIMITATION FUND****§520.** Limitation of liability.**§521.** Constitution of the fund.**§522.** Distribution of the fund.**§523.** Bar to other actions**§524.** Governing law.**§525.** Scope of application.

[The legislation in this Chapter 5 was previously codified as Part V of 34 MIRC 3.]

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PART I - THE RIGHT OF LIMITATION**§501. Short title.**

This Chapter may be cited as the Limitation of Liability for Maritime Claims Act. [Short title supplied by Reviser during re-codification of the original Act.]

§502. Persons entitled to limit liability.

(1) Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Chapter for claims set out in Section 503 of this Chapter.

(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 connection with salvage operations. Salvage operations shall also include operations referred to in Section 503(1)(d), paragraph 1(d), (e) and (f) of this Chapter.

(4) If any claims set out in Section 503 of this Chapter 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 Chapter.

(5) In this Chapter 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 Chapter shall be entitled to the benefits of this Chapter to the same extent as the assured himself.

(7) The act of invoking limitation of liability shall not constitute an admission of liability.

(8) "Court" shall mean within the Republic the High Court, sitting in Admiralty; and without the Republic shall mean a court of competent maritime jurisdiction. [P.L. 1990-92, §118.]

§503. Claims subject to limitation.

(1) Subject to Sections 504 and 505 of this Chapter, 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 or damage to property (including damage to harbor works, basins and waterways and aids to navigation), occurring on board or in direct connection 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;

(c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection with the operation of the ship or salvage operations;

(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;

(e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

(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 Chapter, and further loss caused by such measures.

(2) Claims set out in Subsection (1) of this Section, 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 Subsections 1(d), (e) and (f) of this Section, shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable. [P.L. 1990-92, §119.]

§504. Claims excepted from limitation.

The rules of this Chapter shall not apply to:

(a) claims for salvage 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, dependents 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 Section 510. [P.L. 1990-92, §120.]

§505. 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. [P.L. 1990-92, §121.]

§506. Counterclaims.

Where a person entitled to limitation of liability under the rules of this Chapter 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 Chapter shall only apply to the balance, if any. [P.L. 1990-92, §122.]

§§ 507-509. Reserved.

PART II - LIMITS OF LIABILITY

§510. The general limits.

(1) The limits of liability for claims other than those mentioned in Section 511 of this Chapter, arising on any distinct occasion, shall be calculated as follows:

- (a) in respect of claims for loss of life or personal injury,
 - (i) 333,000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i):
 - (A) for each ton from 501 to 3,000 tons, 500 Units of Account;
 - (B) for each ton from 3,001 to 30,000 tons, 333 Units of Account;
 - (C) for each ton from 30,001 to 70,000 tons, 250 Units of Account;
- and
 - (D) for each ton in excess of 70,000 tons, 167 Units of Account;
- (b) in respect of any other claims,
 - (i) 167,000 Units of Account for a ship with a tonnage not exceeding 500 tons;
 - (ii) for a ship with a tonnage in excess thereof the following amount in addition to that mentioned in Clause (i) of this Paragraph:
 - (A) for each ton from 501 to 30,000 tons, 167 Units of Account;
 - (B) for each ton from 30,001 to 70,000 tons, 125 Units of Account;
- and
 - (C) for each ton in excess of 70,000 tons, 83 Units of Account.

(2) Where the amount calculated in accordance with Subsection (1)(a) of this Section, is insufficient to pay the claims mentioned therein in full, the amount calculated in accordance with

Subsection (1)(b) of this Section, shall be available for payment of the unpaid balance of claims under Subsection (1)(a) of this Section, and such unpaid balance shall rank rateably with claims mentioned under subsection (1)(b) of this Section.

(3) 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.

(4) For the purpose of this Chapter 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, as amended. [P.L. 1990-92, §123. The format of this Section has been changed to conform as closely as possible to the format and style of this Code.]

§511. 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 46,666 Units of Account multiplied by the number of passengers which the ship is authorized to carry according to the ship's certificate, but not exceeding 25 million Units of Account.

(2) For the purpose of this Section "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. [P.L. 1990-92, §124.]

§512. Unit of Account.

The Unit of Account referred to in Sections 510 and 511 of this Chapter, is the Special Drawing Right as defined by the International Monetary Fund. The amounts mentioned in Sections 510 and 511 of this Chapter, shall be converted into the U.S. Dollar according to the value of the U.S. Dollar at the date the limitation fund shall have been constituted, payment is made, or security is given which the Court deems equivalent to such payment. The value of the U.S. Dollar in terms of the Special Drawing Right 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. [P.L. 1990-92, §125. Reference to "Dollar" has been clarified as relating to the United States Dollar.]

§513. Aggregation of claims.

(1) The limits of liability determined in accordance with Section 510 of this Chapter, shall apply to the aggregate of all claims which arise on any distinct occasion:

(a) against the person or persons mentioned in Subsection 502(2) of this Chapter, and any person for whose act, neglect or default he or they are responsible;

(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

(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 Section 510 of this Chapter, shall

apply to the aggregate of all claims subject thereto which may arise on any distinct occasion against the person or persons mentioned in Subsection 502(2) of this Chapter in respect of the ship referred to in Section 511 of this Chapter, and any person for whose act, neglect or default he or they are responsible. [P.L. 1990-92, §126.]

§§514-519. Reserved.

PART III - THE LIMITATION FUND

§520. Limitation of liability without constitution of a limitation fund.

(1) Limitation of liability may be invoked in the defense of an action notwithstanding that a limitation fund as mentioned in Section 521 of this Chapter, has not been constituted.

(2) If limitation of liability is invoked without the constitution of a limitation fund, the provisions of Section 522 of this Chapter, shall apply correspondingly.

(3) Questions of procedure shall be resolved in accordance with the *lex fori*. [P.L. 1990-92, § 127]

§521 Constitution of the fund.

(1) Any person alleged to be liable may constitute a fund with the Court in respect of claims subject to limitation. The fund shall be constituted in the sum of such of the amounts set out in Sections 510 and 511 of this Chapter, 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 considered to be adequate by the Court.

(3) A fund constituted by one of the persons mentioned in Subsection (1)(a), (b) or (c) or Subsection (2) of Section 513 of this Chapter, or his insurer shall be deemed constituted by all persons mentioned in Subsection (1)(a), (b) or (c) or Subsection (2) of that Section, respectively. [P.L. 1990-92, § 128.]

§522. Distribution of the fund.

(1) Subject to the provisions of Subsections (1), (2) and (3) of Sections 510 and 511 of this Chapter, 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 Chapter.

(3) The right of subrogation provided for in Subsection (2) of this Section, may also be exercised by persons other than those therein mentioned in respect of any amount of compensation which they may have paid.

(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 Subsections (2) and (3) of this Section, had

the compensation been paid before the fund was distributed, the Court 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. [P.L. 1990-92, §129.]

§523. Bar to other actions.

(1) Where a limitation fund has been constituted in accordance with Section 521 of this Chapter, 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 Section 521 of this Chapter, 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 Marshall Islands for a claim which may be raised against the fund, or any security given, may be released by order of the Court. 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;
- (b) at the port of disembarkation in respect of claims for loss of life or personal injury;
- (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 Subsections (1) and (2) of this Section 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. [P.L. 1990-92, §130.]

§524. Governing law.

Subject to the provisions of Section 116 of this Title and of this Chapter, the rules relating to the constitution and distribution of a limitation fund, and all rules of procedure in connection therewith, shall be governed by the civil procedure law of Marshall Islands. [P.L. 1990-92, §131.]

§525. Scope of application.

(1) This Chapter shall apply whenever any person referred to in Section 502 of this Chapter, seeks to limit his liability before a Court of the Republic or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of the Republic.

(2) This Chapter shall not apply to:

- (a) air-cushion vehicles;
- (b) floating platforms constructed for the purpose of exploring or exploiting the natural resources of the sea-bed or the subsoil thereof. [P.L. 1990-92, §132]