

Legal framework, insurance, financial security

EU States Claims Management Workshop 2012

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International legal framework

1. General concepts

- Strict liability / limited liability
- Mandatory insurance / direct action
- Special Drawing Rights (SDR)



2. International legal regimes

- Limitation of Liability for Maritime Claims (LLMC) - 1976 / 1996 / 2012
 - ✓ Limit of liability for claims raised
 - ✓ Virtually unbreakable system of limiting liability
 - ✓ Loss of life or personal injury / property
 - ✓ Protocol 1996 – amount of compensation payable increased / tacit acceptance
 - ✓ Amendment to Protocol 2012 – new limits (entry into force 2015)
- ✓ Directive 2009/20/EC – insurance shipowners
- ✓ Entry into force: 1 December 1986
- ✓ Entry into force Protocol: 13 May 2004



2. International legal regimes

- International Convention on Civil Liability for Oil Pollution Damage – 1992 / 2003
 - ✓ Strict liability / limited liability - all seagoing ships carrying oil in bulk as cargo
 - ✓ Three tier system – CLC, 1992 FUND, Supplementary FUND
 - ✓ Insurance / financial security - ships carrying more than 2000 tons of oil or more
 - ✓ CLC – entry into force: 30 May 1996
 - ✓ 1992 FUND – entry into force: 30 May 1996
 - ✓ Supplementary FUND – entry into force: 3 March 2005



2. International legal regimes

- International Convention on Civil Liability for Bunker Oil Pollution Damage - 2001
 - ✓ Strict liability / limited liability – Pollution by ships' bunker fuel
 - ✓ Single tier system
 - ✓ Insurance / financial security - ships over 1000 gross tonnage
 - ✓ Not exceeding LLMC
- ✓ Entry into force: 21 November 2008



2. International legal regimes

- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) – 1996 / 2010
 - ✓ Strict liability / limited liability
 - ✓ Two-tier system
 - ✓ Insurance / financial security
 - ✓ Fund
- ✓ Not yet in force



2. International legal regimes

- Convention relating to Civil Liability in the field of Carriage of Nuclear Material - 1971
 - ✓ Conflicts nuclear conventions / maritime conventions
 - ✓ Exoneration maritime conventions in case of application:
 - Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy
 - Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage; or
 - National law which is similar in the scope of protection given to the persons who suffer damage.
 - ✓ Entry into force: 15 July 1975



2. International legal regimes

- Nairobi International Convention on the Removal of Wrecks - 2007
 - ✓ Legal basis for Coastal States to remove / have removed wrecks form EEZ
 - ✓ Insurance / financial security – ships over 300 gross tonnage
 - ✓ Not exceeding LLMC
 - ✓ Not yet in force



2. International legal regimes

- International Convention on Salvage – 1989

- ✓ No cure, no pay >< protection environment
- ✓ Special compensation for protection environment – salvor's expenses + up to 30% of these expenses
- ✓ tribunal / arbitrator may increase « if it deems it faire and just to do so »



10 2. International legal regimes

- Directive 2004/35 EC - 2004
 - ✓ Aplicable on sea, although focus on land
 - ✓ Administrative system to prevent / remediate environmental damage and to claim for the costs
 - ✓ Strict liability or fault liability depends on type of activity
 - ✓ Not applicable in case of application of:
 - International Convention of 27 November 1992 on Civil Liability for Oil Pollution Damage;
 - International Convention of 27 November 1992 on the Establishment of an International Fund for Compensation for Oil Pollution Damage;
 - International Convention of 23 March 2001 on Civil Liability for Bunker Oil Pollution Damage;
 - International Convention of 3 May 1996 on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea;
 - the Convention of 10 October 1989 on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels

Implementation date: 30 April 2007



2. International legal regimes

- Offshore Pollution Liability Agreement

- ✓ Agreement between private Companies
- ✓ Offshore facilities
- ✓ Strict liability
- ✓ Financial responsibility
- ✓ System for reimbursement, if the operator fails
- ✓ Facilities in UK, Denmark, Germany, France, Ireland, the Netherlands, Norway, the Isle of Man , the Faroer Island sand Greenland, but excluding those offshore facilities located in the Baltic and Mediterranean Seas
- ✓ Entry into force: 1 May 1975



Maritime Insurance

- Protection & Indemnity Clubs (P&I)
- «Pay to be paid» clause
- TOPIA & STOPIA – for information



Financial security

- Letter of Undertaking (LOU)
- Rotterdam Guarantee Form



Thanks!

Questions?

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