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For the attention of Andrew Kelly

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Dear Sirs,

Consultation on changes to domestic legislation implementing certain international maritime liability conventions

We write with our comments on the Consultation Document.

Most of the issues raised in the Consultation Paper dated 22 December 2015 are addressed to the shipowning community and insurers. There are, however, several technical/legal matters on which the BMLA can comment.

Option 1.

As the UK Government supported the increase in limits at the IMO Legal Committee meetings it is right that the new limits should be given the force of law in the UK.

Under this head we are invited to comment on the limit which should be introduced for vessels under 300 tons. Under the 1996 LLMC the first tranche of the limitation fund is based on a minimum tonnage of 2,000 tons with a minimum limit of SDR 2 million for loss of life and personal injury claims and SDR 1 million for property claims. However, the UK Government exercised the right to "split" this first tranche and applies these limits only to vessels between 300 tons and 2,000 tons. Under UK law the limits for vessels up to 300 tons are SDR 1,000,000 for loss of life and personal

injuries and SDR 500,000 for property claims. (See paragraph 5 (1) (a) of Part II of Schedule 7 to the MSA 1995).

When increasing the limits in 2012 the IMO Legal Committee decided to increase the limits on this first tranche from SDR 2 million to SDR 3.02 million for loss of life and personal injury claims and to SDR 1.51 for property claims. It is not strictly correct to state, as appears in section 1.2 of Annex A, that under the IMO 2012 increases "The new maximum limit of liability for claims for loss of life and personal injury …on ships between 300 gross tons but not exceeding 2,000 gross tons is 3.02 SDR (up from 2 million SDR)." This may well be the future position UK law, assuming that we are to continue with the UK's subdivision of the first tranche, but it is not the position under the 2012 amendments. We are asked whether it would be appropriate for there to be a lower limit under UK law for vessels of less than 300 tons and, if so, whether it would be appropriate to take 50% of the limit applying to vessels between 300 and 2,000 tons. As stated in the consultation document there is good precedent for this and we would support limits for vessels of less than 300 tons of SDR 1.51 million for loss of life a personal injury claims and SDR 755,000 for property damage claims.

Option 2.

When, in the future, the IMO Legal Committee increases limits and provided the UK Government has supported those increases it would make good sense to simplify the bringing into force of those increases in UK law by the introduction now of an "ambulatory reference" - thereby doing away with the need for further legislation.

Option 3.

There is no apparent internal logic to shipowners having rights to limit in respect of passenger claims both under the Athens Passenger Conventions (1974 and 2002) and under Article 7 of the LLMC (1976 and 1996). It may be that this is the consequence of the confusion concerning the treatment, first of sea-going and non-seagoing ships and, secondly of non-carrying ships and attempts to clarify matters in S1 1998 No 1258 and S1 2004 No 1273.

As stated in the consultation paper there have been cases in which it has been an advantage to claimants to have access to a global fund (based on the number of passengers the ship is licenced to carry) under Article 7 rather than a per capita limit under the Athens conventions. That said, the substantial increases in the per capita limits introduced by Athens 2002 should make the occasions on which that would be the case very few and far between.

In principle the proposal that all passenger claims against the carrying ship (whether seagoing or not) should be subject to the Athens regime and that owners should no longer be able to rely upon Article 7 as an alternative or further way of limiting liability for passenger claims is logical. However, any abolition of the right to limit under Article 7 should only be considered in the wider context of its effect on any non-seagoing ships to which the Athens Conventions may not apply and, to the extent relevant, non-carrying ships. In this regard domestic legislation could be devised to ensure any coastal ships or craft to which the Athens Convention is not extended still have the benefit of limitation.

We have been provided with a copy of the response to the consultation document of Hill Dickinson and would respectively associate the Association with the view that the present position is confused.

Wider consideration may be warranted to ensure the simple disapplication of Article 7 does not produce the anomaly of ships properly entitled to limit liability under Article 7 losing that right.

We do not know of any other states which have removed the overlap of these two limitation provisions.

Yours faithfully,

Andrew Taylor
Secretary/Treasurer
British Maritime Law Association