



## UNIFIED INTERPRETATION QUESTIONNAIRE

Background: Please see attached Questionnaire on Unified Interpretation for Standard to Break Limitation Under IMO Conventions. The IWG's Co-Chairs, Dieter Schwampe and John Markianos-Daniolos, would be grateful if you could forward your responses to the Questionnaire by 31 May 2020, given the amount of work on this project that needs to be completed ahead of the 2020 Tokyo Conference.

Note: All replies to be based national legislation on court precedents in your jurisdiction, references for which should be provided.

### I. PRELIMINARY QUESTIONS

1. Has your jurisdiction ratified the following conventions (the 'Conventions'):

a. International Convention on Civil Liability for Oil Pollution Damage 1969 ('CLC 1969')

A/ Yes, replaced by the 1992 Protocol.

b. 1992 Protocol to the CLC 1969 ('CLC 1992')

A/ In force in the country.

c. Convention on Limitation of Liability for Maritime Claims 1976 ('LLMC 1976')

A/ Not in force.

d. 1996 Protocol to the LLMC 1976 ('LLMC 1996') (references to 'LLMC' shall be understood as references to either LLMC 1976 or, where applicable, to LLMC 1976 as amended by LLMC 1996)

A/Not in force. The country has not ratified said convention. Efforts has been made so that the principles of said convention could be incorporated in a draft of Maritime Code.

e. International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 ('HNS 1996')

**Colombian MLA Association**  
**Carrera 12 No. 93-78 Of. 303, Bogotá DC – Colombia**  
**PBX: (+57) (1) 6232336**  
**Email: elizabeth.salas.jimenez@gmail.com**  
**M: (+57) 3153058054**  
**www.acoldemar.org**

A/ Not in force.

f. 2010 Protocol to the HNS 1996 ('HNS 2010') (references to 'HNS' shall be understood as references to either FINS 1996 or, where applicable, to HNS 1996 as amended by HNS 2010)

A/ Not in force.

g. International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 ('Bunkers Convention')

A/ Not in force.

h. Nairobi International Convention on the Removal of Wrecks 2007 ('WRC')

A/ Not in force.

2. Please indicate whether the a.rn. Conventions apply directly in your jurisdiction or whether the stipulations have been translated and incorporated into domestic legislation.

A/ The CLC 1969 was incorporated to our local system through Law 55 of 1989. The convention it is now denounced. Now the 1992 Protocol (as well as the 1992 Fund) was incorporated via Law 523 of 1999.

3. Is the wording of domestic provisions incorporating art. V(2) CLC 1969/art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS/art. 6 Bunkers Convention/art. 10(2) WRC into domestic legislation different to the original text of the Conventions?

A/ Please refer to the above answers. Only some conventions have been incorporated with no changes.

3 a. If the answer to the previous question is in the affirmative, what are the differences?

A/ N/A

4. If your jurisdiction has not ratified the Conventions, does your jurisdiction recognise a right of limitation of liability for claims that would otherwise fall under the Conventions (the '**Equivalent Claims**')?

A/ Limitation of liability is only possible via article 1481 of the Colombian Commercial Code which states that the shipowner would only be held liable up to the value of the ship, her accessories and the freight regarding some specific obligations (ie. compensation owed to third parties as a consequence of the damages and/or losses caused during navigation or in port due to the fault of the master or crew, compensation owed as a consequence of damages caused to cargo carried on the ship, etc).

4a. If the answer to the previous question is in the affirmative, what are the requirements for breaking the right to limitation for Equivalent Claims?

5. Are there any general principles of law in your jurisdiction that may serve to break the right to limitation otherwise than through the specific provisions contained in the Conventions (e.g. abuse of right)?

A/ As per Article 1482 of the Colombian Commercial Code the limitation would not be available whenever there is any claim based on the personal act or fault of the shipowner.

## II. "PERSONAL ACT OR OMISSION" — Attribution to the person liable

6. How is the requirement for a "personal act or omission" in art. V(2) CLC 1992, art. 4 LLMC, and arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

A/ Local courts have not yet construed that specific phrase.

7. Where the party entitled to limitation is an entity, what are the requirements for attributing an act or omission to the party entitled to limitation?

A/ N/A

8. Are there court decisions or legal texts in your jurisdiction where the right to limitation under the Conventions or equivalent domestic legislation has been broken (or where it has been submitted that such right should be broken), respectively confirmed (or where it has been submitted that such right should be confirmed), for acts/omissions of:

8a. The Master?

8b. Crew members?

8c. The Designated Person Ashore/Company Security Officer?

8d. Other individuals within the entity entitled to limitation?

8e. Third-party contractors (e.g. agents of the vessel)?

A/ N/A

If your answer is in the affirmative in any of the above questions, please briefly describe (a) the relevant facts; and (b) the rationale for the attribution of the relevant act or omission to the party entitled to limitation.

## III. "WITH THE INTENT"/"RECKLESSLY" — Degree of fault

9. How is "intent" in art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction?

A/ Local courts have not construed that specific word within the meaning of the aforementioned conventions. However, the likely is that the word will amount to "dolo" ie. wilful misconduct.

10. How is 'recklessness' under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS or relevant implementing domestic legislation interpreted in your jurisdiction? Does negligence qualify as recklessness ('Qualifying Negligence') under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS in your jurisdiction?

A/ Local courts have not construed that specific word within the meaning of the aforementioned conventions. However, the likely is that the word will amount to "culpa" ie. fault / negligence.

10a. If the answer to the previous question is in the affirmative, what are the elements of Qualifying Negligence under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

11. What is the standard for recklessness under art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

12. How is "actual fault" in art. V(2) CLC 1969 interpreted in your jurisdiction?

A/ N/A. CLC 1969 is not in force in Colombia.

13. How is "privity" in art. V(2) CLC 1969 interpreted in your jurisdiction?

A/ N/A. CLC 1969 is not in force in Colombia.

#### IV. KNOWLEDGE OF THE LIKELIHOOD OF THE HARMFUL RESULT

14. How is the requirement for knowledge in art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS interpreted in your jurisdiction?

A/ There is no caselaw dealing with this issue at the domestic level.

15. Does imputed or background knowledge suffice for the purposes of art. V(2) CI.0 1992/art. 4 LLMC/arts. 7(5) and 9(2) FINS?

A/ There is no caselaw dealing with this issue at the domestic level.

15.a. If the answer to the previous question is in the affirmative, what are the relevant requirements?

16. Does failure to obtain the necessary information suffice for the purposes of art. V(2) CLC 1992/art. 4 LLMC/arts. 7(5) and 9(2) HNS?

16a. If the answer to the previous question is in the affirmative, what are the relevant requirements?

#### V. "SUCH DAMAGE"/"SUCH LOSS"

17. How has the term "such loss"/"such damage" (art. 4 LLMC - art. V(2) CLC 1996/arts.

7(5) and 9(2) HNS 1996, respectively) been interpreted in your jurisdiction?

A/ There is no caselaw dealing with this issue at the domestic level.

## VI. BURDEN OF PROOF

18. Who bears the burden of proof to show that the requirements for breaking the right to limit are fulfilled?

A/ No decisions have been enacted at the domestic level in this regard.

19. Is it possible under the procedural rules of your jurisdiction that the burden of proof may shift to the person liable under certain conditions?

A/ The CLC/FUND 1992 schemes are incorporated in exactly the same wording of the instruments as they are in force at the international level.

## VII. INDICATIVE REFERENCE TO OTHER CONVENTIONS

20. What is the wording used to implement art. 10(2) WRC and art. 10(2) Bunkers Convention in your jurisdiction?

A/ The Bunkers Convention has not yet been ratified.

21. How have art. 10(2) WRC and art. 10(2) Bunkers Convention been interpreted in your jurisdiction in the context of breaking the right to limitation?

A/ Please refer to our previous answer.

## VIII. EQUIVALENT PROVISIONS

22. The same language for the test for breaking the liability limits is used in art IV (5)(e) of the Hague Rules as amended by the Visby Protocol.

22a. Has your country ratified the Hague-Visby Rules or enacted these rules into their domestic legislation?

A/ The Hague – Visby Rules scheme have been incorporated (to a certain extent) in our Commercial Code. However important differences could be found inbetween the Convention and the local provisions.

22b. If the answer to the previous question is in the affirmative, how are the relevant criteria as listed above (II-V) interpreted in the context of the respective provision incorporating art. IV (5)(e) of the Hague-Visby Rules?