

CLIENT BRIEFING:**LANDMARK RULING CLARIFIES HOW UAE MIGHT LIMIT LIABILITY**

A RECENT landmark legal ruling on limitation of liability for marine claims in the UAE has provided clarification on how local courts will deal with the issue. The judgment will be welcomed as giving an indication of how the 1976 Convention on the Limitation of Liability for Maritime Claims will be applied in the country.

As with most of the world's trading nations, the United Arab Emirates has adopted international conventions in its domestic laws which, in certain circumstances, allow carriers such as shipowners to limit their liability for claims made against them.

Historically, the reason for allowing shipowners to limit their liability was for policy purposes, namely, to encourage international trade by sea.

The value of claims arising from maritime incidents, for example, the loss of cargo, could outweigh the value of the vessel and ruin a shipowner. International conventions providing for limitation of liability were therefore aimed at seeking a balance between adequately compensating a claimant for its loss and allowing owners to restrict their potential liability to an amount that could be insured at a reasonable cost.

In the UAE, Articles 138-142 of the UAE Maritime Code (Federal Law No. 26 of 1981) entitle an owner, charterer or operator to limit liability based on the tonnage of the vessel.

These articles are closely based on the 1957 International Convention Relating to the Limitation of Liability of Owners of Seagoing Ships (the 1957 convention). This convention, however, was superseded in 1976 by the Convention on the Limitation of Liability for Maritime Claims (the 1976 convention).

It was generally accepted that the 1957 convention required updating and the 1976 convention was introduced in order to widen the types of claims subject to limitation, increase the limits of liability and revise the test for conduct barring a defendant from its entitlement to limitation. The intent was to provide higher levels of compensation for claimants in return for giving a defendant (defined as a salvor, shipowner, charterer, operator or manager of a seagoing vessel) an almost unbreakable right to limit its liability. Under the 1976 convention, the right to limit liability is lost only when a claimant can prove wilful intent or recklessness on the part of the person seeking to limit (Article 4 of the 1976 convention).

In the leading English case on a defendant's right to limit liability (*The Bowbelle* [1990] 1 Lloyd's Rep 532), Mr Justice Sheen observed that the 1976 convention conferred on shipowners an "almost indisputable right to limit their liability".

Certainly, the right to limit liability under the 1976 convention has, to our knowledge, been successfully challenged in England only once since 1976 (*The St Jacques II* [2003] 1 All ER 102.) In this case the master (who was also the owner) of a fishing vessel deliberately and regularly crossed busy shipping lanes in front of other vessels in the English Channel — in blatant contravention of the traffic separation scheme — in order to be the first to arrive at lucrative fishing grounds.

During one of those crossings, there was a collision. The master knew the risks he was taking — that is, the risk of a collision — but nevertheless deliberately took them. This illustrates the intent of the 1976 convention, namely that the right to limit would only be broken in extreme circumstances.

The UAE ratified the 1976 convention in 1997 (Federal Decree No 118 of 1997). Article 15(1) of the 1976 convention states that the convention shall be enforced whenever “a [shipowner or other defined person] applies for limitation of liability before the courts of a country which is party to the convention”. In theory, therefore, as a party to the 1976 convention, the UAE’s courts should enforce it.

As previous commentators have noted, however, the courts in the UAE, and the region generally, have been reluctant to accept the concept of limitation of liability on the grounds that it is contrary to religious, moral and legal customs that require damage to be compensated in full. Even the relevant articles of the UAE Maritime Code make reference to Sharia law. Article 138(3), for example, states that if the limitation amounts for death or injury are less than the compensation payable under Sharia law, the claimant is entitled to claim the compensation payable under Sharia law.

There was even some debate as to whether the 1976 convention was implemented in the UAE at all.

For these reasons it has been uncertain how the local courts would approach, interpret or, indeed, apply the 1976 convention when faced with a defendant seeking to limit its liability under that convention.

A recent decision of the Dubai Court of Cassation has provided welcome clarification. The court not only confirmed that the 1976 convention has force of law in the UAE and accordingly must be applied by the lower courts, but also acknowledged a defendant’s right to limit liability, subject to a claimant advancing evidence to defeat that right.

The clarification is welcome to avoid unnecessary arguments as to the applicability of the 1976 Convention in the UAE. However, other issues remain.

It is uncertain whether the Arabic text of the 1976 convention as implemented in the UAE — and which has force of law — conveys precisely the same meanings as the English text.

Consequently, it is possible that this may still allow rulings inconsistent with the intent of the 1976 convention.

Further, there remains no statutory provision for the constitution of a limitation fund for the purposes of securing a claim and paying out settlement funds.

Previous attempts to constitute a fund in the UAE were unsuccessful. Having said that, however, this should not be a stumbling block to a limitation defence because a defendant may nevertheless invoke limitation under the 1976 convention without having to constitute a limitation fund (Article 10 of the 1976 convention). The Court of Cassation judgement implicitly confirms that this will be the case in the UAE.

Furthermore, the UAE has not repealed the provisions (Articles 138–142) of the UAE Maritime Code, which deal with limitation. Article 8 of the UAE Maritime Code, however, recognises that international conventions which have been ratified by the UAE supersede domestic legislation and for this reason the 1976 convention should override these provisions.

Nevertheless, the possibility for conflict remains.

Finally, there also remains tension between the legal right to limit liability on the one hand and the principles behind Sharia law on the other, certainly in terms of limitation of liability where death or personal injury are concerned. It is perhaps in this area that further clarification by way of a revision of the UAE Civil and Maritime Codes is most urgently needed.

While the Court of Cassation judgment is welcome confirmation that the 1976 convention not only has force of law in the UAE but also recognises a defendant's right to limit its liability (subject to a claimant advancing evidence to defeat that right), there is likely to be further litigation over its interpretation and application for the above reasons.

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