

Testing the Limits...Again. Will the UAE's Ratification of the LLMC 1996 Protocol Make the Difference?

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Introduction

On 10 November 2020, the UAE ratified the 1996 Protocol to the Limitation of Liability for Maritime Claims 1976 by virtue of the Federal Decree No. 167 of 2020 ("**1996 Protocol**"). On 23 May 2021, the 1996 Protocol will come into force in the UAE. The purpose of the 1996 Protocol is to increase the per-ton limit of liability throughout all tonnage levels, resulting in higher compensation payable in personal injury or casualty incidents. The increases involved are significant uplifts on the Limitation of Liability for Maritime Claims 1976 ("**LLMC 1976**") regime.

Two years ago we wrote about the UAE's treatment and implementation of the LLMC 1976. You can read it [here](#). In that article, we concluded that the UAE Courts will not constitute a limitation fund in the UAE, even if a limitation fund would ordinarily be constituted in other contracting States in the same circumstances. There are two reasons cited for this:

1. The Federal Transport Authority - Land & Maritime ("**FTA**") is the 'competent authority' entitled to constitute a fund as opposed to the UAE Courts; and
2. The FTA has not enacted a domestic legislative framework to facilitate the constitution of a limitation fund.

This has not changed in the last two years (the "**Status Quo**").

In view of the ratification of the 1996 Protocol, the obvious question remains whether the imminent application of the 1996 Protocol will make a difference to the Status Quo in the UAE. Will litigating parties to maritime disputes be able to avail themselves of the limitations of liability afforded by the 1996 Protocol, in part or in whole? This article explores two possible outcomes.

Comment

The future treatment and implementation of the 1996 Protocol in the UAE is far from clear. However, we anticipate that one of the following two outcomes is likely.

• **No limitation fund, but implementation of the tonnage-linked limitation cap**

It is our opinion that the Status Quo, in so far as it applies to the constitution of a limitation fund, will not be impacted by the entry into force of the 1996 Protocol. The corollary is that, until the UAE legislature enacts a framework for the constitution of a limitation fund, the 1996 Protocol will have no mechanism by which to implement such a fund.

The enacting UAE Federal Law does not provide for such a framework nor does it clarify whether the competent courts are the 'competent entity' for the purposes of setting up a fund. Therefore, parties

commencing litigation in the UAE and seeking to rely on the 1996 Protocol could be unpleasantly surprised by this revelation once proceedings to constitute a fund are commenced. P&I insurers should also be mindful of this when advising their Members.

However, it does not follow that the absence of a facilitative framework for constitution of a limitation fund means that a party cannot rely upon the monetary, tonnage-linked, limitation of liability cap. The LLMC 1976 and the amending 1996 Protocol provides for both a limitation cap and the function of a fund but arguably they are stand-alone provisions. We see no reason why the UAE Courts should not apply the limitation of liability calculations under the 1996 Protocol, regardless of whether it, or any other competent authority, constitutes a fund.

Notwithstanding this, Al Tamimi & Company has been involved in one recent case in which the limitation of liability availed of by the ship owner in a collision claim was determined by application of the UAE Maritime Law, not the LLMC 1976. Reasons were not provided by the court and consequently it is unclear why the LLMC 1976 limitation regime was not applied to determine the amount of compensation due. To our knowledge, this specific legal issue is untested.

- ***No limitation fund and no tonnage-linked limitation cap***

As mentioned above, our view is that constitution of a limitation fund will not be possible by virtue of the enactment of the 1996 Protocol alone. It is possible that the partial non-implementation of the 1996 Protocol may result in its entire non-application.

We surmise that the UAE Courts may presently adopt the view that the constitution of a limitation fund and the application of the limitation monetary caps are so intrinsically linked that the functions should either be applied together or not at all. In other words, ‘no limitation fund, no limitation cap’.

It is further suggested that this judicial interpretation, if existential, may survive the entry into force of the 1996 Protocol. The implication of this is that the purpose of the 1996 Protocol would be entirely neutered. It is our view that the absence of a limitation fund should *not* preclude a party from limiting damages in accordance with the per-ton calculations. There is no apparent reason why the UAE Maritime Law should be utilised for the determination of limitation of liability whilst the LLMC 1976 and 1996 Protocol are ratified.

Conclusion

Owners and P&I Clubs will have a watchful eye on the judicial developments following 23 May 2021. Whether the UAE addresses the curious Status Quo that has impacted the implementation of the LLMC 1976 over the last 25 years since its adoption remains to be seen. The ratification of the 1996 Protocol presents an opportunity for the UAE to do so. The outcome will provide certainty for litigating parties as they go ‘forum shopping’. It is also an opportune time to produce a legal framework for constituting a fund in order to extract the full benefits intended by ratification of the LLMC 1976 and 1996 Protocol.

However, we suspect that the 1996 Protocol will not materially change the judicial treatment of the maritime limitation regime. A welcome early development subsequent to its entry into force would be the testing of the applicability of the limitation monetary caps. This would assist the maritime legal community in understanding whether the 1996 Protocol has partial substance or not.

The UAE Ministry of Energy and Infrastructure has advised the maritime community that it will provide further guidance on the adoption of the 1996 Protocol, presumably prior to its entry into force. It is to be hoped that further light will then be shed on the intention for its implementation.

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