



ST. CHRISTOPHER AND NEVIS

CHAPTER 7.07

MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT

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MERCHANT SHIPPING (LIABILITY OF SHIPOWNERS AND OTHERS) ACT

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**MERCHANT SHIPPING (LIABILITY
OF SHIPOWNERS AND OTHERS) ACT**

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CHAPTER 7.07

MERCHANT SHIPPING (LIABILITY
OF SHIPOWNERS AND OTHERS) ACT

AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION RELATING TO THE LIMITATION OF THE LIABILITY OF OWNERS OF SEAGOING SHIPS; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title and construction.

1. (1) This Act may be cited as the Merchant Shipping (Liability of Shipowners and others) Act, and shall be construed as one with the Merchant Shipping Acts, 1894 to 1954, of the United Kingdom Parliament.

(2) Any reference in this Act to any other enactment is a reference thereto as amended, and includes references thereto as applied, by or under any subsequent enactment, including, except where the context otherwise requires, this Act.

Interpretation.

2. In this Act, unless the context otherwise requires, “Court” means the High Court of Justice of the Eastern Caribbean Supreme Court established by the West Indies Associated States Supreme Court Order, 1967.

Increase in liability of shipowners and others.

3. (1) In ascertaining the limits set to the liability of any persons by section 503 of the Merchant Shipping Act, 1894, 57 and 58 vict. C.60 or section 2 of the Merchant Shipping (Liability of Shipowners and others) Act, 1900, 63 and 64 vict. C.32, there shall be substituted—

- (a) for the amount of fifteen pounds mentioned in the said section 503, an amount equivalent to three thousand one hundred gold francs;
- (b) for each of the amounts of eight pounds mentioned in the said sections, an amount equivalent to one thousand gold francs,

and the amount by which the amount substituted by paragraph (a) of this subsection is to be multiplied shall be three hundred in any case where the tonnage concerned is less than three hundred tons.

(2) For the purposes of this section, a gold franc shall be taken to be a unit consisting of sixty-five and a half milligrams of gold of millesimal fineness nine hundred.

(3) The Cabinet may, from time to time, by Order published in the *Gazette*, specify the amounts which for the purposes of this section are to be taken as equivalent to three thousand one hundred and one thousand gold francs respectively.

(4) Where money has been paid into Court in respect of any liability to which a limit is set as aforesaid, the ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified under subsection (3) of this section unless the amount paid was less than that limit as ascertained in accordance with the Order then in force under that subsection.

Amendments as to nature of liability limited by section 503 of the Merchant Shipping Act, 1894 of the United Kingdom Parliament.

4. (1) In subsection (1) of section 503 of the Merchant Shipping Act, 1894 of the United Kingdom the following paragraphs shall be substituted for paragraphs (c) and (d)—

- “(c) where any loss of life or personal injury is caused to any person not carried in the ship through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship;
- (d) where any loss or damage is caused to any property (other than property mentioned in paragraph (b) of this subsection) or any rights are infringed through the act or omission of any person (whether on board the ship or not) in the navigation or management of the ship, or in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or through any other act or omission of any person on board the ship;”

and for the words “loss of or damage to vessels, goods, merchandise or other things”, both where they occur in paragraph (i) and where they occur in paragraph (ii), there shall be substituted the words “such loss, damage or infringement as is mentioned in paragraphs (b) and (d) of this subsection”.

(2) The application of the said section 503 to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

(3) Nothing in the said section 503 shall apply to any liability in respect to loss of life or personal injury caused to, or loss of or damage to any property or infringement of any right of, a person who is on board or employed in connection with the ship under a contract of service with all or any of the persons whose liabilities are limited by that section, if that contract is governed by the law of any country outside this State and that law either does not set any limit to that liability or sets a limit exceeding that set to it by that section.

Extension to other persons of provisions applying to shipowners.

5. (1) The persons whose liability in connection with a ship is excluded or limited by Part VIII of the Merchant Shipping Act, 1894 of the United Kingdom shall include any charterer and any person interested in or in possession of the ship, and, in particular, any manager or operator of the ship.

(2) In relation to a claim arising from the act or omission of any person in his or her capacity as master or member of the crew or (otherwise than in that capacity) in the course of his or her employment as a servant of the owners or of any such person as is mentioned in subsection (1) of this section—

- (a) the persons whose liability is excluded or limited as aforesaid shall also include the master, member of the crew or servant, and, in a case where the master or member of the crew is the servant of a person whose liability would not be excluded or limited apart from this paragraph, the person whose servant he or she is; and

- (b) the liability of the master, member of the crew or servant himself or herself shall be excluded or limited as aforesaid notwithstanding his or her actual fault or privity in that capacity, except in the cases mentioned in paragraph (ii) of section 502 of the said Act of 1894.

Unregistered ships and ships in course of completion or construction.

6. (1) Part VIII of the Merchant Shipping Act, 1894 of the United Kingdom, shall apply to any structure, whether completed or in course of completion, launched and intended for use in navigation as a ship or part of a ship, and the expression “ship” in the said Part VIII and in this Act shall be construed accordingly.

(2) The said Part VIII shall apply to any British ship notwithstanding that it has not yet been registered.

(3) The tonnage of any ship or structure to which the said Part VIII applies by virtue of this section shall, for the purposes of that Part, be ascertained as provided by subsection (2) of section 503 of the said Act of 1894 with regard to foreign ships.

Release of ship etc.

7. (1) Where a ship or other property is arrested in connection with a claim which appears to the Court to be founded on a liability to which a limit is set by section 503 of the Merchant Shipping Act, 1894 of the United Kingdom, or security is given to prevent or obtain release from such an arrest, the Court may, and in the circumstances mentioned in subsection (3) of this section shall, order the release of the ship, property or security, if the conditions specified in subsection (2) of this section are satisfied:

but where the release is ordered the person on whose application it is ordered shall be deemed to have submitted to the jurisdiction of the Court to adjudicate on the claim.

(2) The said conditions are—

- (a) that security which in the opinion of the Court is satisfactory (in this section referred to as “guarantee”) has previously been given, whether in this State or elsewhere, in respect of the said liability incurred on the same occasion and the Court is satisfied that, if the claim is established, the amount for which the guarantee was given or such part thereof as corresponds to the claim will be actually available to the claimant; and
- (b) that either the guarantee is for an amount not less than the said limit or further security is given which, together with the guarantee, is for an amount not less than that limit.

(3) The circumstances mentioned in subsection (1) of this section are that the guarantee was given in a port which, in relation to the claim, is the relevant port (or, as the case may be, a relevant port) and that that port is in a Convention country.

(4) For the purposes of this section—

- (a) a guarantee given by the giving of security in more than one country shall be deemed to have been given in the country in which security was last given;
- (b) any question whether the amount of any security is (either by itself or together with any other amount) not less than any limit set by section 503 of the Merchant Shipping Act, 1894 of the United Kingdom shall be decided as at the time at which the security is given;

- (c) where part only of the amount for which a guarantee was given will be available to a claimant that part shall not be taken to correspond to his or her claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1) of this section.

(5) In this section—

“Convention country” means any country in respect of which the Convention is in force (including any country to which the Convention extends by virtue of Article 14 thereof);

“relevant port”—

- (a) in relation to any claim, means the port where the event giving rise to the claim occurred or, if that event did not occur in a port, the first port of call after the event occurred; and
- (b) in relation to a claim for loss of life or personal injury or for damage to cargo, includes the port of disembarkation or discharge;

“the Convention” means the International Convention relating to the Limitation of the Liability of Owners of Seagoing Ships signed in Brussels on the 10th day of October, 1957.

(6) Any Order in Council made by Her Majesty (whether before or after the commencement of this Act) declaring that any country specified in the Order is a Convention country within the meaning of section 5 of the Merchant Shipping (Liability of Shipowners and Others) Act, 1958, of the United Kingdom Parliament shall, while such Order is in force have effect for the purposes of this section and be conclusive evidence that the country is a Convention country.

Restriction on enforcement after giving of security.

8. (1) No judgment or decree for a claim founded on a liability to which a limit is set by section 503 of the Merchant Shipping Act, 1894 of the United Kingdom shall be enforced, except so far as it is for costs, if security for an amount not less than the said limit has been given, whether in the State or elsewhere, in respect of the liability or any other liability incurred on the same occasion and the Court is of opinion that the security is satisfactory and is satisfied that the amount for which it was given or such part thereof as corresponds to the claim will be actually available to the person in whose favour the judgment or decree was given or made.

(2) For the purposes of this section—

- (a) any question whether the amount of any security is not less than any limit set by section 503 of the Merchant Shipping Act, 1894 of the United Kingdom shall be decided as at the time at which the security is given;
- (b) where part only of the amount for which security has been given will be available to the person in whose favour the judgment or decree was given or made that part shall not be taken to correspond to his or her claim if any other part may be available to a claimant in respect of a liability to which no limit is set as mentioned in subsection (1) of this section.

Distribution of limitation fund.

9. (1) In making any distribution in accordance with section 504 of the Merchant Shipping Act, 1894 of the United Kingdom the Court may, if it thinks fit, postpone the distribution of such part of the amount to be distributed as it deems appropriate having regard to any claims that may later be established before a court of any country outside the State.

(2) No lien or other right in respect of any ship or property shall affect the proportions in which under the said section 504 any amount is distributed amongst several claimants.

Minor and consequential amendments to Merchant Shipping Act, 1894 of the United Kingdom.

10. (1) In section 502 of the Merchant Shipping Act, 1894 of the United Kingdom the word “Sea-going” shall be omitted.

(2) For subsection (3) of section 503 of the said Merchant Shipping Act, 1894, there shall be substituted the following subsection—

“(3)The limits set by this section to the liabilities mentioned therein shall apply to the aggregate of such liabilities which are incurred on any distinct occasion, and shall so apply in respect of each distinct occasion without regard to any liability incurred on another occasion.”.

(3) In section 504 of the said Merchant Shipping Act, 1894, for the words “in respect of loss of life, personal injury or loss of or damage to vessels or goods” there shall be substituted the words “in respect of any occurrence in respect of which his or her liability is limited under section 503 of this Act”.

(4) In Part VIII of the said Merchant Shipping Act, 1894, the expression “owner” shall be construed as including, where it occurs in section 502, every person whose liability is excluded by section 5 of this Act, and elsewhere, except in the second place where it occurs in section 503, every person whose liability is limited by that section.

Saving for occurrences taking place before commencement.

11. Nothing in this Act applies in relation to any liability arising from an occurrence which took place before the commencement of this Act.
