



Hong Kong introduces higher liability limits

From 3 May 2015 the tonnage limitation thresholds for maritime claims in Hong Kong substantially increased for ship owners. This Insight reviews the impact of the change.

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Background

Hong Kong recently implemented the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976 (the 1996 Protocol), which came into operation in Hong Kong on 3 May 2015. The new limits amount to an approximate 250 per cent increase on previous tonnage limits, though they could go even higher.

Prior to 3 May 2015, the Convention on Limitation of Liability for Maritime Claims 1976 (the LLMC) was in place in Hong Kong. The limits are based on the vessel's gross tonnage (GT) and are expressed in Special Drawing Rights (SDR) as published by the [IMF](#). However, the 1976 limitation limits have been eroded by inflation and a reduction in the purchasing power of the SDR.

Many other countries adopted the higher limits under the 1996 Protocol some years ago when it first came into force on 13 May 2004. In fact, the Legislative Council in Hong Kong passed The Merchant Shipping (Limitation of Shipowners Liability (Amendment) Bill in 2005 (the Limitation Ordinance) to adopt the 1996 Protocol, however, it would only come into force once the People's Republic of China took a further step. It was not until this year that the Central People's Government notified the IMO of Hong Kong's accession to the 1996 Protocol. So in a sense, Hong Kong has lagged behind global limitation limits.

The LLMC allows shipowners, including the charterer, manager and operator of the vessel, as well as others to limit their liability for certain maritime claims arising out of any one occurrence. Different limits apply for claims for loss of life or personal injury, and claims for other types of loss or damage. The limit for claims for loss of life or personal injury is higher than the limit for other claims (see table) and also has priority over other claims.

Higher limits

Full details of the implications of the 1996 Protocol can be found in a previous [Gard Insight](#). In brief, the main changes are:

- The minimum tonnage for limitation purposes is increased from 500 GT to 2,000 GT;
- The per-ton limit is increased throughout the tonnage levels;
- The overall limit for passenger claims is abolished and the limit of liability is increased from SDR 46,666 to SDR 175,000 for each passenger a ship is certified to carry.

It should be noted that claims for special compensation under the International Salvage Convention 1989 and claims for contributions in general average cannot be limited under the 1996 Protocol.

The tables below show a comparison between the previous, current and possible future limits of liability for loss of life/personal injury claims, passenger claims and property claims:

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To illustrate more clearly the significance of the above increases we set out below some examples of limits converted into US dollars. The current conversion rate for 1 SDR is about USD1.41.

A further increase around the corner?

In April 2012, parties to the 1996 Protocol negotiated a further increase in limitation limits under the 1996 Protocol which took effect from 8 June 2015. This increase amounts to about a 51 per cent in tonnage limits. See our previous [Gard Insight](#) and [Gard Alert](#) updates for further information.

Although Hong Kong is now a party to the 1996 Protocol, the amendment to increase the limits is not technically a part of Hong Kong law and so the increased limitation levels are not applicable to Hong Kong. Section 28 of the Limitation Ordinance provides that the Chief Executive may order any amendment in accordance with revisions to the 1996 Protocol to time, however no further notice has been published to date.

Forum shopping

For now the tonnage limitation levels applied in Hong Kong will remain considerably lower than those applied by other parties to the 1996 Protocol. Therefore, shipowners (as well as charterers, managers, operators and others), who are looking for a suitable jurisdiction in which to commence a tonnage limitation action, may continue to see Hong Kong as a major attraction.

However, some countries in the Asia Pacific region, e.g. Singapore, remain parties to the LLMC 1976, with even lower limitation limits. Mainland China is not a signatory to the LLMC, however its basic provisions form part of Mainland China's maritime code. With the change in Hong Kong, there may be a shift in forum shopping.

Details of the parties to the 1996 Protocol can be found on [the IMO's website](#).

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