

## GWA ARTICLES

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**Title:** Limitation of Liability for Marine Claims in Sweden

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This article has previously been published in the summer 2004 issue of Cleaner Seas.

### **LIMITATION OF LIABILITY FOR MARINE CLAIMS IN SWEDEN**

The Protocol of 1996 to Amend the Convention on Limitation of Liability for Marine Claims 1976 ("1996 Protocol"), entered into force on 13 May 2004. More than 40 countries have adopted the 1976 Convention and with that an international uniformity has been established. Most of those countries are expected to sign the 1996 Protocol, which hitherto has been ratified by only ten individual states (Australia, Denmark, Finland, Germany, Malta, Norway, Russia, Sierra Leone, Tonga and the UK). Probably, the 1996 Protocol has not yet been incorporated into local law in all those countries.

As a result of the entry into force of the 1996 Protocol a substantial increase of limit of liability will follow for ship owners, charterers, managers and operators in connection with maritime incidents which are governed by the Protocol.

The limit of liability for a ship with a tonnage not exceeding 2,000 tons is 1 million SDR in respect of property claims and 2 million SDR in respect of claims for personal



injury or loss of life, compared to the 1976 limits of 167,000 SDR and 333,000 SDR respectively. For ships with a tonnage exceeding 2,000 tons the limits increase gradually in relation to the tonnage. In average the limitations have increased 2,4 times in relation to the limitations stated in the 1976 Convention.

Notwithstanding the above limits individual states may regulate by specific provisions of national law in respect of vessels of less than 300 tons, provided that the limit of liability is not lower than prescribed in the 1996 Protocol.

In respect of claims arising on a any distinct occasion for loss of life or personal injury to passenger of a ship, the limit of liability is 175,000 SDR multiplied by the number of passengers which the ship is authorized to carry. The previous maximum limit of 25 million SDR has been abolished. Individual states may regulate by specific provisions of national law the system of liability to be applied to claims for loss of life or personal injury to passenger of a ship, provided that the limit of liability is not lower than prescribed in the 1996 Protocol.

Claims for salvage, including special compensation pursuant to Art.14 of the International Convention on Salvage 1989, are excluded from limitation. The same applies to claims to contributions in general average and for damages related to oil pollution when the Convention on Civil Liability for Oil Pollution 1969 applies.

Claims related to carriage governed by the Convention on Carriage of Hazardous and Noxious Substances by Sea 1996 (this convention is not in force yet) may be excluded from limit of liability by regulation by individual states.

According to a simplified procedure stated in the 1996 Protocol it is possible to amend the limits upon request of at least one half, but in no case less than six, of the State Parties.



Sweden approved the 1976 Convention in 1983 and the rules were incorporated into Swedish law in 1985. The rules on Limitation of Liability are now enacted in the Maritime Code 1994 Chapter 9. The Swedish Parliament has recently approved a Government Bill and decided that Sweden shall ratify the 1996 Protocol later in June 2004. The amendments following the ratification will be incorporated into the Maritime Code probably in September 2004. Swedish law will apply when a party in proceedings before a Swedish court refers to the right to limit its liability.

Sweden will not yet use the option to regulate by specific provisions a higher limit of limitation for loss of life or personal injury to passenger. However, this question might be of interest if Sweden ratifies the 2002 Protocol to the 1974 Athens Convention (the limit of limitation according to the 1974 Athens Convention is 46,666 SDR per passenger; the 2002 Protocol prescribes a limit of 400,000 SDR per passenger). Nor will Sweden regulate by specific provisions in respect of vessels of less than 300 tons.

The approved Government Bill proposes that Sweden withdraw from the 1976 Convention when the 1996 Protocol starts to apply. Denmark and Norway are also expected to withdraw from the 1976 Convention in 2004. Finland has already withdrawn. Thus, the ambition for unification in the Nordic countries seems to be reached.

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