



Tuvalu

**MERCHANT SHIPPING (LIMITATION OF
LIABILITY CONVENTIONS)
REGULATIONS**

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Tuvalu

MERCHANT SHIPPING (LIMITATION OF LIABILITY CONVENTIONS) REGULATIONS

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Tuvalu

MERCHANT SHIPPING (LIMITATION OF LIABILITY CONVENTIONS) REGULATIONS

MADE UNDER SECTION 48 AND 141 OF THE MERCHANT SHIPPING
ACT¹

PART I - PRELIMINARY

1 Citation

These Regulations may be cited as the Merchant Shipping (Limitation of Liability Conventions) Regulations.

2 Interpretation

(1) In these Regulations, unless the context otherwise requires —

“**gold franc**” means a unit consisting of 65.5 milligrammes of gold of millesimal fineness of 900;

“**Limitation of Liability Convention**” means the International Convention relating to the Limitation of the Liability of Owners of Sea-going Ships signed at Brussels on the 10th October, 1957;

“**ship**” includes every description of lighter, barge or like vessel, however propelled, and any structure launched and intended for use in navigation as a ship or a part of a ship, and a vessel belonging to a disciplined force or to the defence force of any other country;

“**the Act**” means the Merchant Shipping Act 1987.

(2) The Minister may from time to time, by notice, specify the amounts which, for the purposes of these Regulations, are to be taken as equivalent to any specified number of gold francs.

- (3) Where money has been paid into court in respect of any liability to which a limit is set by these Regulations, ascertainment of that limit shall not be affected by a subsequent variation of the amounts specified under sub-regulation (2) unless the amount so paid was less than the limit as ascertained in accordance with the order then in force under that sub-regulation.
- (4) For the purposes of these Regulations —
 - (a) the tonnage of a ship propelled by any mechanical power shall be her net registered tonnage with the addition of any engine-room space deducted for the purposes of ascertaining that tonnage, and the tonnage of a sailing ship shall be her net registered tonnage;
 - (b) where a foreign ship has been or can be measured according to the Act, her tonnage shall be that ascertained by that measurement, and where a foreign ship has not been, and cannot be, measured according to the Act, the Harbour Master shall, on receiving from or by the direction of the court hearing the case in which the tonnage of the ship is in question, such evidence concerning the dimensions of the ship as it may be practicable to furnish, give a certificate under his hand stating what would, in his opinion, have been the tonnage of the ship if she had been so measured, and the tonnage so stated shall be deemed for the purposes of these Regulations to be the tonnage of the ship; and
 - (c) the tonnage of a ship that is less than 300 tons shall be deemed to be 300 tons.
- (5) Regulations 3, 4 and 5 apply to any persons, other than the owner, who are responsible for the fault of a ship, as though “owner” includes those persons and all persons responsible for the navigation and management of the ship under a charter or demise.
- (6) An insurance effected against the happening, without the owner’s actual fault or privity, of any or all of the events in respect of which the liability of the owner is limited under these Regulations is not invalid by reason of the nature of the risk.

3 Specification of Convention

The Limitation of Liability Convention is specified as the International Maritime Convention which these Regulations are made for the purpose of implementing, or enabling legal effect to be given to, in Tuvalu.

4 Limitation of liability of ship owners

- (1) Where any of the following occurrences take place without the actual fault or privity of the owners of a ship, namely, where any —

- (a) loss of life or personal injury is caused to any person being carried in the ship;
- (b) damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;
- (c) loss of life or personal injury is caused to any person, not carried in the ship, through —
 - (i) the act or omission of any person, whether on board the ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers; or
 - (ii) any other act or omission of any person on board that ship;
- (d) loss or damage is caused to any property, other than property described in paragraph (b), or any rights are infringed, through —
 - (i) the act or omission of any person, whether on board the ship or not, in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers: or
 - (ii) any other act or omission of any person on board that ship,

the owner of the ship shall not be liable for damages beyond the following amounts, namely —

- (e) in respect of loss of life or personal injury, either alone or together with such loss, damage or infringement as is mentioned in paragraphs (b) and (d), an aggregate amount not exceeding an amount equivalent to 3,100 gold francs for each ton of the ship's tonnage; and
 - (f) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether or not there be in addition loss of life or personal injury, an aggregate amount not exceeding an amount equivalent to 1,000 gold francs for each ton of the ship's tonnage.
- (2) The limits set by this regulation to the liabilities mentioned therein apply to the aggregate of those 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 any other occasion.
 - (3) For the purposes of sub-regulation (1), where any obligation or liability arises —
 - (a) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned, or of anything on board such a ship; or
 - (b) in respect of any damage (however caused) to harbour works, basins or navigable waterways,

the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (b) and (d) of sub-regulation (1) and the obligation or liability as a liability to damages.

- (4) The application of this regulation 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.
- (5) Nothing in this regulation applies to any liability in respect of 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 this section, if that contract is governed by the law of any foreign country and that law either does not set any limit to that liability or sets a limit exceeding that set by this regulation.

5 Power of court to consolidate claim

- (1) Where any liability is alleged to have been incurred by the owner of a ship in respect of any occurrence in respect of which his liability is limited by regulation 4, and several claims are made or apprehended in respect of that liability, the Court may —
 - (a) on the application of the owner, determine the amount of his liability, and distribute that amount among several claimants (if appropriate);
 - (b) stay any proceedings pending in any other court, in relation to the same matter;
 - (c) proceed in such manner and subject to such rules of court as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not apply to be joined in the proceedings within a certain time, and as to requiring security from the owner, and as to the payment of any costs, as the Court thinks just.
- (2) In making any distribution in accordance with this regulation, the Court may, if it thinks fit, postpone distribution of such part of the amount to be distributed as it deems appropriate having regard to the claims that may be established before a court of any country outside Tuvalu.
- (3) No lien or other right in respect of any ship shall affect the proportions in which, under this regulation, any amount is distributed amongst several claimants.

6 Extension of limitation of liability

- (1) The persons whose liability in connection with a ship is limited by regulation 4, 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 capacity as master or member of the crew or (otherwise than in that capacity) in the course of his employment as a servant of the owners or of any such person as is mentioned in sub-regulation (1) —
 - (a) the persons whose liability is so limited or excluded 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 limited apart from this regulation, the person whose servant he is; and
 - (b) the liability of the master, member of the crew or servant himself shall be so limited notwithstanding his actual fault or privity in that capacity.

7 Release of ship on giving security

- (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 regulation 4 or security is given to prevent or obtain release from such an arrest, the court may, and in the circumstances mentioned in sub-regulation (3) shall, order the release of the ship, property or security if the conditions specified in sub-regulation (2) 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 conditions referred to in sub-regulation (1) 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 Tuvalu or elsewhere, in respect of the liability or any other 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, would be actually available to the claimant; and
 - (c) where part only of the amount for which a guarantee was given will be available to the claimant, that part shall not be taken to correspond to his 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 sub-regulation (1).
- (5) In this regulation —

“**Convention country**” means a country in respect of which the Limitation of Liability Convention is in force, including any country to which that Convention extends by virtue of Article 14 of the Convention;

“**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 damages to cargo, includes the port of disembarkation.

ENDNOTES

¹ Subsidiary Legislation made under Cap. 64A 1990 Revised Edition