

**PART IX**  
**LIABILITY OF SHIPOWNER**  
(Whole of Part IX were substituted by A792/91)

**358. Interpretation and application .**

(1) In this Part -

"Convention" means the International Convention relating to the limitation of the liability of owners of sea-going ships signed in Brussels on the 10th October 1957;

"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; and for the purpose of this definition an order made by the Minister declaring a country to be a Convention country shall be conclusive evidence that that country is a Convention country;

"Malaysian ship" means any ship registered or licensed under this Ordinance;

"owner" includes the charterer to whom a ship is demised and any owner, builder or other party interested in any ship built at any place in Malaysia and also includes -

(a) where it occurs in section 359, every person whose liability is excluded by subsections (2) and (3); and

(b) elsewhere, except in the second place where it occurs in section 364, every person whose liability is limited by subsections (2) and (3);

"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;

"ship" includes any structure, whether completed or in the course of construction, launched and intended for use in navigation as a ship or part of a ship.

(2) The person whose liability in connection with a ship is excluded or limited by this Part 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.

(3) 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 subsection (2) -

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

(b) the liability of the master, member of the crew or servant himself shall be excluded or limited as aforesaid notwithstanding his actual fault or privity in that capacity, except in the case mentioned in paragraph (b) of section 359.

(4) This Part shall apply to any ship qualified to be registered as a Malaysian ship notwithstanding that it has not yet been registered.

**359. Limitation of shipowner's liability in certain cases of loss or or damage to goods .**

The owner of a Malaysian ship, or any share therein, shall not be liable to make good to any extent whatever any loss or damage happening without his actual fault or privity in the following cases:

- (a) where any goods, merchandise or other thing whatsoever taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or
- (b) where any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board his ship, the true nature and value of which have not at the time of shipment been declared by the owner or shipper thereof to the owner or master of the ship in the bill of lading or otherwise in writing, are lost or damaged by reason of any robbery, theft, breach of trust or misappropriation thereof.

**360. Limitation of owner's liability in certain cases of loss of life, injury or damage .**

(1) The owner of a Malaysian or foreign ship shall not, where all or any of the following occurrences take place without his actual fault or privity, namely:-

- (a) where any loss of life or personal injury is caused to any person being carried in the ship;
- (b) where any damage or loss is caused to any goods, merchandise or other things whatsoever on board the ship;
- (c) where any loss of life or personal injury is caused to any person not carried in the ship through the act 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 her cargo, or in the embarkation, carriage or disembarkation of her passengers, or through any other act of any person on board the ship; or
- (d) where any loss or damage is caused to any property, other than any property mentioned in paragraph (b), or any rights are infringed through the act 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 her cargo, or in the embarkation, carriage or disembarkation of her passengers, or through any other act of any person on board the ship, be liable to damages beyond the following amounts:
  - (aa) 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 three thousand one hundred gold francs for each ton of the ship's tonnage; and
  - (bb) in respect of such loss, damage or infringement as is mentioned in paragraphs (b) and (d), whether there is in addition loss of life or personal injury or not, an

aggregate amount not exceeding an amount equivalent to one thousand gold francs for each ton of the ship's tonnage.

(2) For the purposes of this section -

(a) 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;

(b) the Minister may from time to time by order to be published in the Gazette specify the amount equivalent to three thousand one hundred gold francs and one thousand gold francs;

(c) the tonnage of a Malaysian ship, other than a sailing ship, shall be her registered tonnage with the addition of any engine room space deducted for the purpose of ascertaining that tonnage;

(d) the tonnage of a Malaysian sailing ship shall be her registered or licensed tonnage;

(e) where a ship built at any port or place in Malaysia but not registered or licensed under this Ordinance or the law of any other country, or a foreign ship, has been or can be measured according to Malaysian law, her tonnage as ascertained by that measurement shall be deemed to be her tonnage;

(f) where a ship built at any port or place in Malaysia but not registered or licensed under this Ordinance or the law of any other country, or a foreign ship, has not been and cannot be measured according to Malaysian law, the Surveyor-General 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 is 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 duly measured according to Malaysian law, and the tonnage so stated in that certificate shall for the purpose of this section be deemed to be the tonnage of the ship.

(g) the tonnage of any structure included in the definition of the expression "ship" by virtue of subsection (1) of section 358 shall, for the purpose of this Part, be ascertained as provided in this subsection for a foreign ship; and

(h) in the case of paragraph (aa) of subsection (1), a ship of less than three hundred tons shall be deemed to be a ship of three hundred tons.

(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 without regard to any liability incurred on another occasion.

(4) The application of this section 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 section shall apply 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 country outside Malaysia and that law either does not set any limit to that liability or sets a limit exceeding that set to it by this section.

### **361. Release of ship etc.**

(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 360, or security is given to prevent or obtain release from such an arrest, the Court may, and in the circumstances mentioned in subsection (3) shall, order the release of the ship, property or security if the conditions specified in subsection (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 subsection (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 Malaysia or elsewhere, in respect of such 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, will be actually available to the claimant; and

(b) that either the guarantee is for an amount not less than such limits 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) 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 purpose 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 360 shall be decided as at the time at which the security is given; and

(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 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).

### **362. Restriction on enforcement after giving of security**

(1) No judgement or decree for a claim founded on a liability to which a limit is set by section 360 shall be enforced, except so far as it is for costs, if security for an amount not less than that limit has been given, whether in Malaysia 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 to the person in whose favour the judgement 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 360 shall be decided as at the time at which the security is given; and
- (b) where part only of the amount for which security has been given will be available to the person in whose favour the judgement or decree was given or made that part shall not be taken to correspond to his claim if any other part may be available to which no limit is set as mentioned in subsection (1).

### **363. Power of Court to consolidate claims against owners, etc.**

(1) Where any availability is alleged to have been incurred by the owner of a Malaysian or foreign ship in respect of any occurrence in respect of which his liability is limited under section 360, and several claims are made or apprehended in respect of that liability, then the owner may apply to the High Court, and that Court may determine the amount of the owner's liability, and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other court in relation to the same matter, and may proceed in such manner and subject to such directions as to making persons interested parties to the proceedings and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

(2) In making any distribution in accordance with this section 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 in any country outside Malaysia.

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

### **364. Part owners to account in respect of damages .**

All sums paid for or on account of any loss of damage in respect whereof the liability of owners is limited under this Part, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

### **365. Insurance of certain risks not invalid .**

An insurance effected against the happening, without the owner's fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part shall not be invalid by reason of the nature of the risk.

### **365A. Proof of passengers on board ship**

In any proceeding under this Part against the owner of a ship or share therein with respect to loss of life, the passenger lists under Part IV of this Ordinance shall be received as evidence that the person upon whose death proceedings are taken under this Part was a passenger on board the ship at the time of death.

*(Whole of Part IX substituted by A 792/91)*