WORKSHOP CLNI 2012

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Overview

• Importance of limitation of liability in international traffic
• The challenges of CLNI 2012 on the Danube
• Limitation of liability
• Operation of limitation funds
• Conclusions
Importance of limitation of liability in international traffic I.

• Huge potential of causing serious damage (density of traffic + units with considerable speed and weight)
• Unlimited liability
  • potential liability is much higher than the financial capacity of the operator
• Discourage competition
• Risk for potential claimants
• Liability insurance is
  • Not available
  • Inadequate
  • Unreasonably expensive
Importance of limitation of liability in international traffic II.

- Long tradition of limitation for contractual claims (Hague Rules, CMR, CIM, Montreal Convention 1999, CMNI)
- Non-contractual claims
  - Sea - London Convention 1976
  - Air – Rome Convention 1952 (to be replaced by the Montreal Conventions 2009)
  - Carriage of dangerous goods – CRTD Convention 1990
  - Inland waterway - CLNI 1988
Limitation of non-contractual liability on the Danube International conventions

- CLNI 1988 not applicable
- 1976 London Convention (1996 Protocol) applies in
  - Hungary
  - Croatia also for inland navigation
  - Bulgaria
  - Romania

(Ukraine – local law incorporating London Convention)
## Limitation of non-contractual liability on the Danube

### Local laws

<table>
<thead>
<tr>
<th>No limitation</th>
<th>Limited liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hungary</td>
<td>• Croatia – 1976 London Convention</td>
</tr>
<tr>
<td>Slovakia</td>
<td>• Austria (value of ship, exception: pollution)</td>
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<tr>
<td>Romania</td>
<td>• Bulgaria (value of ship, exception: pollution)</td>
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<tr>
<td>Ukraine</td>
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</table>
The challenges of CLNI 2012 on the Danube

- Limitation of non-contractual liability = matter of public policy
- Operation of limitation funds
Limitation of liability

Different countries – different challenges

• Lower limits (London Convention)
• Higher limits (ship value)
• Limitation newly introduced (in general or to certain areas – see pollution)

"Limitation of non-contractual liability is against public policy,,

• Already exists in numerous international conventions (e.g. nuclear damage, maritime traffic) to which the riparian countries are members
• It is better to have a limited liability which will be paid for than an unlimited liability which remain unpaid
Operation of limitation funds I.

- Unknown in most Danube countries (Exception: Croatia)
- No special local law rules
- Despite (partial) applicability of 1976 London Convention
- Hungary – a weird example
  - Hungary has ratified the 1976 London Convention
  - Therefore it should be possible to establish a limitation fund
- Respective rules do not exist = In practice it is not possible
Operation of limitation funds II.

Issues to be addressed

• Choosing and preparing the right organization (court vs. Authority)
• Legal form of the limitation fund
• Procedural rules (claim against the fund)
• Option to exclude limitation if no fund is established
The IVR Guidelines
Overview

- Practical experience of implementing CLNI 1988 of
  - Germany
  - The Netherlands
  - Switzerland

- Covered issues
  - Implementation methods
  - Invoking limited liability
  - Establishment of the limitation fund
  - Effect of the establishment of the limitation fund
  - Distribution of the limitation fund
The IVR Guidelines
Implementation 1.

• Two possible approaches
  • Direct applicability
    • ratification
    • + if the national law so requires announcement of the text of the international convention
  • Transposition into national law
    • National legal regulation containing the provisions of the international convention

• Direct applicability of CLNI 1988
  • The Netherlands
  • Switzerland

• Transposition of CLNI 1988
  • Germany (Binnenschifffahrtsverordnung – Inland Navigation Act)
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Implementation 2.

• CLNI (1988 and 2012 alike)
  • Material rules of limitation
    • as per the CLNI or
    • the national regulation transposing CLNI
• CLNI does not cover procedural questions (in particular the rules of establishment and distribution of the limitation fund)
  • Separate set of procedural rules
    • Netherlands – Code of Civil Procedure
    • Germany – Special act (Shipping Distribution Act – for sea and for inland navigation)
    • Switzerland – Procedural rules of the implementing regulation of the Maritime Navigation Act
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Invoking the limited liability

• CLNI 2012 (also CLNI 1988)
  • Limitation is applicable with or without establishing a limitation fund
  • The States may however make the application of limitation subject to the establishment of a limitation fund
• Limitation fund is required
  • Netherlands
  • Switzerland
• Limitation fund is possible, but not a precondition for limitation
  • Germany
Establishment of a limitation fund

1. CLNI 2012 (also CLNI 1988)
   • Court or
   • Designated authority

2. Court is entitled to act in all 3 countries (special professional knowledge does exist at the courts)

3. Special (non-litigation type) court procedure

4. The fund may be
   • a deposit or
   • a guarantee

5. The national laws set the detailed requirements and procedural rules for the deposit and the guarantee (e.g. in Switzerland the guarantee can be issued by a bank or an insurance company and it must be in favour of the court)
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Establishment of a limitation fund 2.

• Court decides
  • over the amount (in accordance with the rules set by CLNI) of the fund (it may be necessary to set up more funds)
  • the acceptability of the guarantee (if not enforcable?)

• Potential creditors/claimants
  • Identification by the court
  • Oral hearing (Netherlands)
  • Notification (directly by mail or publication, no hearing – Switzerland)

• When?
  • Before or after proceedings were started against the liable party
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Establishment of a limitation fund 3.

- Where? - In the states where a claim has been or may be instituted
- Fund covers the liability of all persons related to the vessel that suffered the accident (i.e. Owner, operator, charterer, salvors)
- Brussels I. EU regulation - the place of the accident and the seat of the defendant both can be a place for starting proceedings
- If persons of different nationality involved (e.g. a Hungarian company operates a vessel owned by a German and chartered by a Dutch company which suffers an accident in Romania) theoretically funds should be established in all four states (supposing they all ratified CLNI)
- Forum shopping?
The IVR Guidelines

Effects of the establishment of a limitation fund

- Claims can be instituted only against the fund
- Other procedures must be terminated
- Securities (e.g. Arrest of ships) must be released
- Only those creditors are affected which can claim against the fund – it is vital for the shipowner that all potential creditors know about the fund!
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Handling and distribution of the limitation fund

1.

- CLNI only regulates the basic rules of distribution
- Details and procedure are to be regulated in the national laws
- The procedures have some differences, but the general rules are identical
  - An administrator is designated by the court, which is supervising its activity
  - The procedure is pretty similar to the liquidation procedure
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Handling and distribution of the limitation fund

2.

- Creditors (claimants) have a certain time to report their claims.
- The administrator revises the claims and sets up a schedule of claims.
- This can be contested by the creditors.
- The court decides on the approval of the final schedule (including the distribution).
- Some special rules.
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Handling and distribution of the limitation fund

3.

• Special rules
  • Netherlands
    • Creditors’ meeting under the supervision of the court to discuss the schedule of claims and settle potential disputes
    • Once that meeting has been concluded – validation procedure ending in a final decision
  • Switzerland
    • No creditors’ meeting
    • Notification of known creditors and publication of the schedule of claims
    • If any of the claims is disputed – creditors have to sue each other
Conclusion