

# Establishing a Limitation Fund: Recent developments in Singapore and the UAE

The increasing willingness by jurisdictions to accept P&I Clubs' Letters of Undertaking to constitute limitation funds is a welcome trend for shipowners and P&I Clubs.



## Introduction

Under the Convention on Limitation of Liability for Maritime Claims 1976 (the "Convention"), shipowners may limit their liability in maritime claims by establishing a limitation fund. This may be done, either by depositing the sum or by producing a guarantee acceptable under the legislation of the State Party where the fund is constituted and considered to be adequate by the court or other competent authority.

In the landmark decision of *The Atlantik Confidence* [2014] EWCA Civ 217, the English Court of Appeal overturned the High Court's decision that a limitation fund must be constituted by cash payment into Court, holding instead that English law allows a limitation fund to be constituted by way of a guarantee, including a P&I Club Letter of Undertaking ("LOU").

There have since been recent developments in Singapore and the UAE, in relation to allowing limitation

funds to be constituted by way of P&I Club LOUs.

## Singapore

With effect from 1 February 2018, Singapore's Rules of Court have been amended to allow a person seeking relief in a limitation action to constitute a limitation fund either by making payment into Court under an order of the Court, or by producing a LOU from a P&I Club acceptable to the Court.

In applying for a limitation decree, commentaries have suggested that in addition to annexing a draft LOU wording to the summons application for review and confirmation by all parties, the P&I Club should file an affidavit demonstrating its financial capability to meet its obligations under the LOU.

## The UAE

Prior to the judgement in Claim No. DWT-0001-2017 issued in January 2018,

there had apparently been no reported limitation funds established in the UAE.

In this case, the Dubai World Tribunal (a special tribunal established to deal with insolvency proceedings relating to Dubai World and its subsidiaries) was not satisfied that the Dubai Courts would reject a P&I Club guarantee and confirmed that a P&I Club LOU was sufficient to establish a limitation fund in the DWT.

Given that this was a judgement by the special tribunal, it remains to be seen how this decision will affect the practice of the onshore courts in the UAE, especially since there are suggestions that the onshore courts in the UAE have been unwilling to grant limitation decrees or permit limitation funds to be constituted even in obvious cases.

## Comments

The increasing willingness by jurisdictions to accept P&I Clubs' LOUs to constitute limitation funds is a welcome trend for shipowners and P&I Clubs. The practical advantages of using a P&I Club's LOU as opposed to making a cash payment into Court are that it is a much quicker and considerably less expensive way to establish a limitation fund, without having to tie up cash reserves in court.

Here are links to the case reports for *The Atlantik Confidence* and Claim No. DWT-0001-2017. ■

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*The UK P&I Club's legal updates are to alert Members to urgent or recent developments which may impact upon Members' shipping operations.*

*If Members have any questions on any of our legal updates, please contact the Legal Team via [jacqueline.tan@thomasmiller.com](mailto:jacqueline.tan@thomasmiller.com) or [ioana.gonciari@thomasmiller.com](mailto:ioana.gonciari@thomasmiller.com), or your usual contact at the Club, and we will be pleased to assist with your questions.*