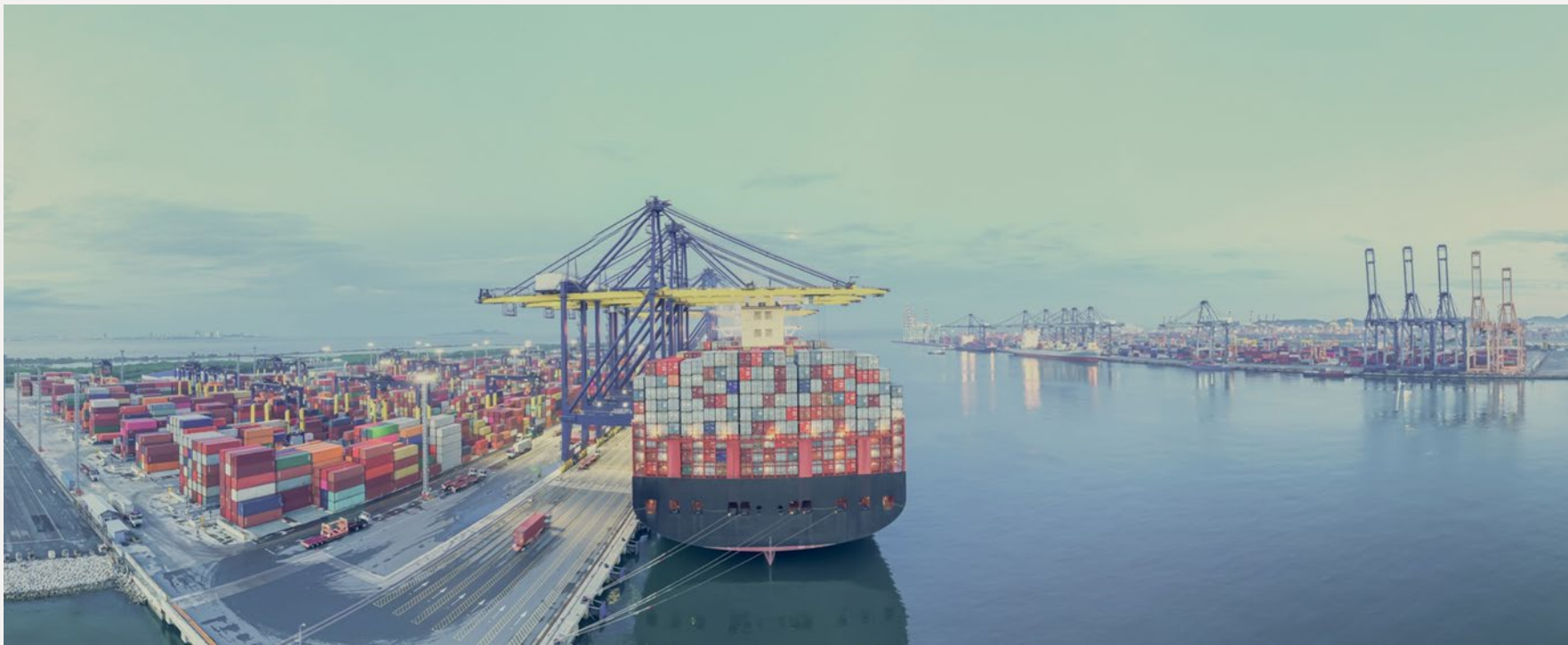




Limitation of liability in Norway – an introduction





Agenda

- 1. Introduction to limitation of liability**
- 2. Substantive rules for limitation (NMC Chapter 9)**
 - Who, what, when?
- 3. Procedural rules for the limitation fund and limitation proceedings (NMC Chapter 12)**
 - How?
- 4. Jurisdiction considerations**

Limitation of liability – the basics



What?

- Maximum cap on liability for the vessel interests related to one specific incident
- Common security for all claimants (limitation fund)
- International cooperation (conventions)
- Nordic cooperation (implementation into maritime codes)



Why?

- Secure compensation for claimants
- Recognising the link between compensation and insurance
- Ensuring a level of predictability for insurers



Limitation in the Norwegian Maritime Code

- **Chapter 9 – Limitation of Liability for Maritime Claims (LLMC) Convention, 96 Protocol, and national rules**
 - Norwegian reservation to LLMC art 2(1)(d) and (e)
 - Chapter 10 (I) – Bunkers Convention
 - (Chapter 10 a – Wreck Removal Convention)
 - (Chapter 11 – HNS Convention, 2010 Protocol)
- Chapter 10 (II) – CLC
- **Chapter 12 – Limitation funds (procedural rules)**
- *Chapter 13 – Cargo*
- *Chapter 15 – Passengers*





NMC Chapter 9 – LLMC rules and the Norwegian reservation

Who can limit? – section 171

- Shipowners (in Norw. both «reder» and «skipets eier»)
- Charterers
- Managers/Operators
- Salvors
- Anyone for whom the above-mentioned are responsible
- Insurers



⌵ NMC Chapter 9 – What can be limited?

Personal injury and property claims – section 172

1. **Personal injury and property damage**
2. **Delay** claims for cargo, passengers and their property
3. Other non-contractual damage
4. **Measures to avert or minimise loss** subject to limitation under this limit, and related loss

Clean-up and wreck removal – section 172a

1. **Wreck removal** and removal of **all that is or has been onboard the vessel (incl. bunkers)**
2. Cargo removal
3. **Measures to avert or minimise loss** subject to limitation under this limit, and related loss

Own costs – section 179

1. Reasonable expenses for measures mentioned in section 172a incurred by someone with a right to limit in order to avert or minimise loss

NMC Chapter 9 – Exclusions

- **What is not subject to limitation?** – section 173
 - Salvage and other contractual claims for clean-up or mitigating measures
 - Claims covered by the CLC Convention
 - Nuclear liabilities
 - Personal injury claims from employees against parties who can otherwise limit liability
 - Interest and costs
- **Loss of the right to limit (breach of limitation)** – section 174
 - A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or with gross negligence (LLMC: recklessly) and with knowledge that such loss would probably result



The limitation amounts

“Property claims”

– section 175 (cf. 172) (LLMC 76, 96 Protocol)

- Calculated in SDR based on the vessel’s gross tonnage
- Separate amounts for personal injury (not taken into account in the examples below)
- **Example 1: “Helge Ingstad”, 5,200 GRT**
 - SDR 3,442,800
 - Approx. NOK 46 million using 31/10/22 exchange rate
- **Example 2: “Sola TS”, 62,557 GRT**
 - SDR 33,170,321
 - Approx. NOK 443 million using 31/10/22 exchange rate

“Clean-up claims”

– section 175a (cf. 172a)(Norwegian regulation)

- Calculated in SDR based on the vessel’s gross tonnage
- **Example 1: “Helge Ingstad”, 5,200 GRT**
 - SDR 20,000,000
 - Approx. NOK 267 million using 31/10/22 exchange rate
- **Example 2: “Sola TS”, 62,557 GRT**
 - SDR 96,557,000
 - Approx. 1.29 billion using 31/10/22 exchange rate

Chapter 9 – Conditions for and effects of limiting liability



- Litigation, arrest or other enforcement proceedings must be commenced by a claimant – section 177



- Limitation without establishing a limitation fund – section 180



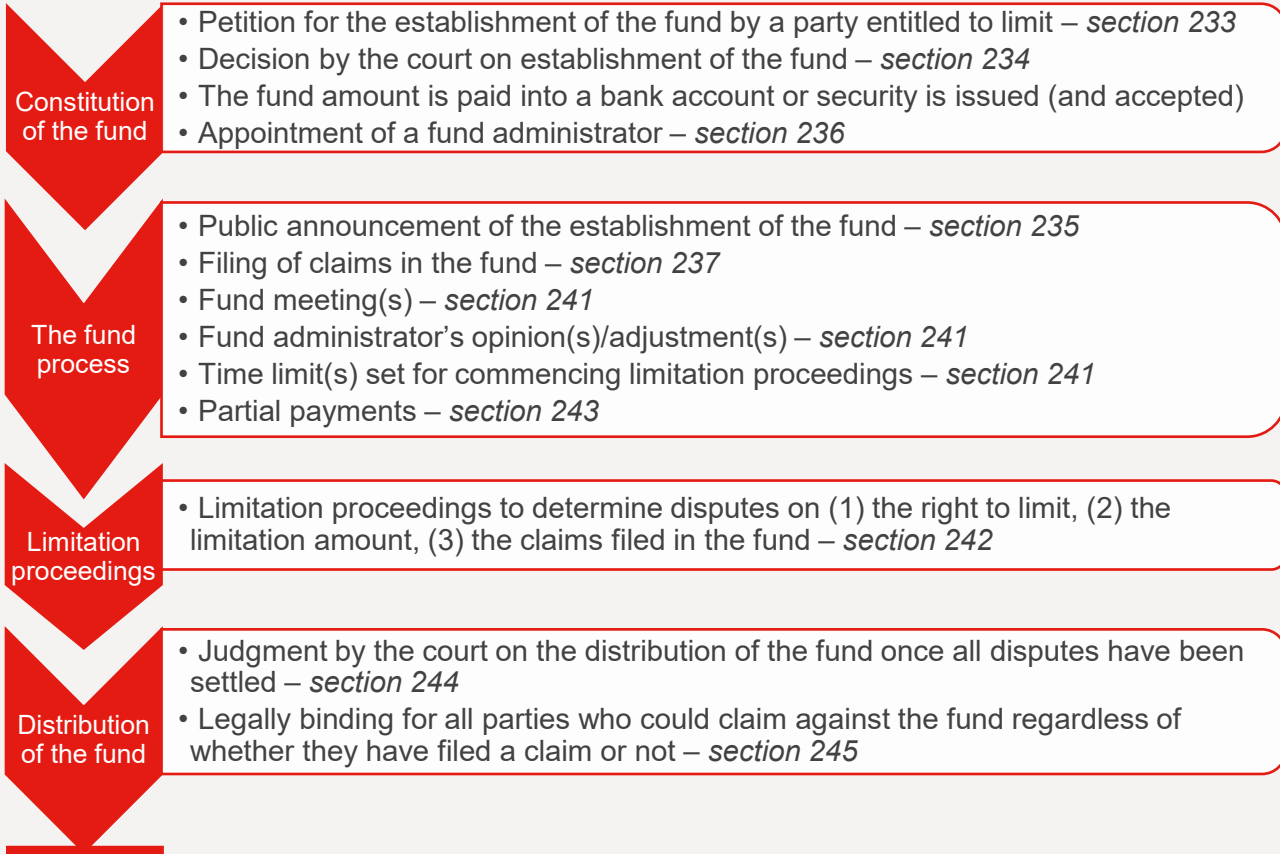
- Establishment of a fund bars other proceedings in convention states – sections 177 and 178

Chapter 12 – Procedural rules for limitation funds and limitation proceedings



- Ch. 12 applies to both LLMC and CLC funds
- Limitation funds – common security
- Non-exhaustive – supplemented by civil procedural (section 231) and bankruptcy rules and procedures
- A combination of convention-based and national regulation

Chapter 12 – The fund process

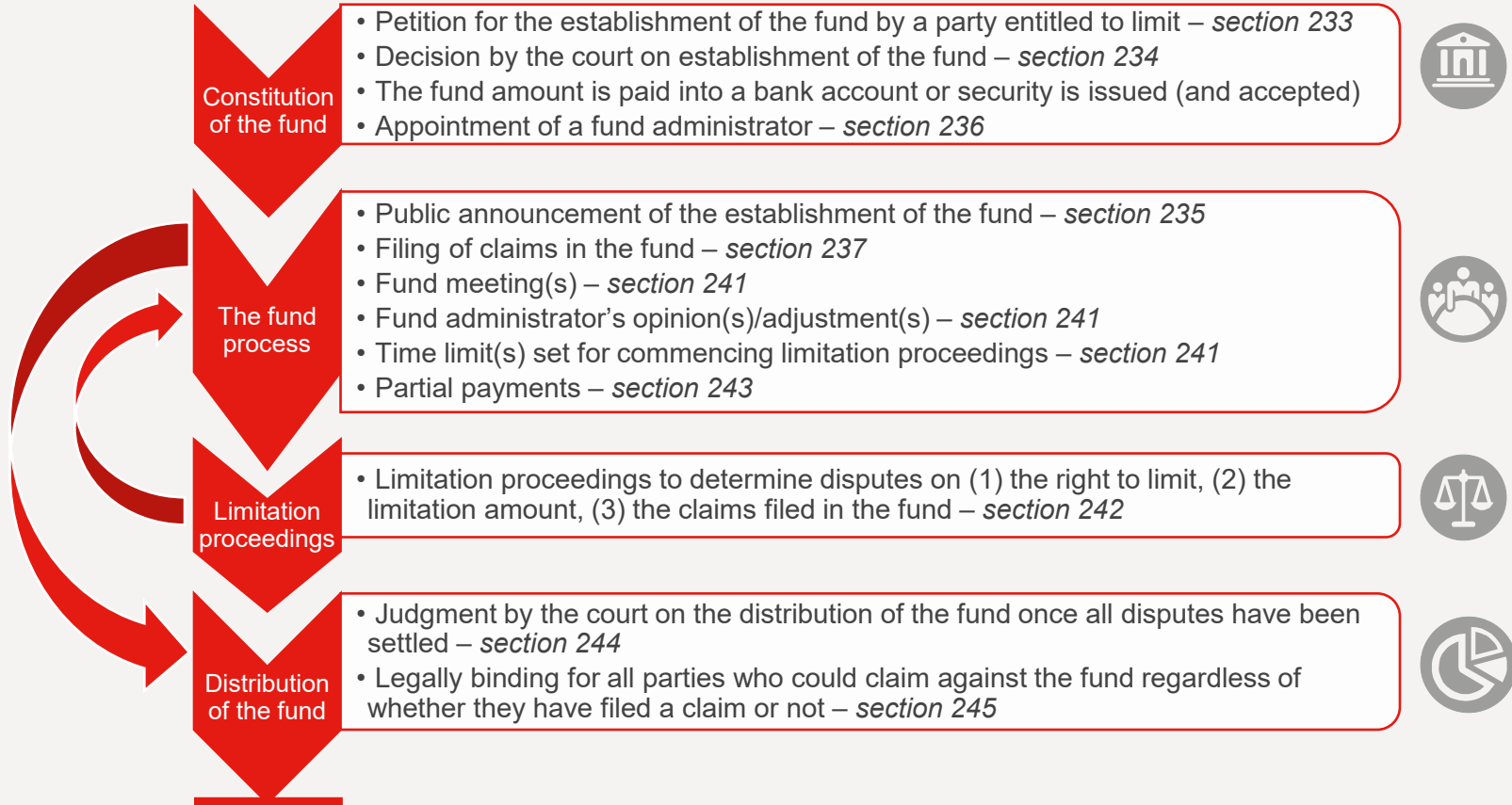


The fund amount – section 232



1. The limitation amount pursuant to section 175 or 175a; and
2. Interest on the limitation amount from the time of the incident until establishment of the fund, calculated at the rate for interest on overdue payments

Chapter 12 – The fund process





Jurisdiction considerations



- Establishment of a limitation fund in one jurisdiction binds the courts in other convention states



- Significant difference between states
 - Example – No reservation for clean-up costs in Sweden and Denmark
 - Difference between limitation at NOK 46 million and NOK 267 million for a vessel like “Helge Ingstad”



- Race to seize jurisdiction?



- Agreement on jurisdiction?



Thank you

