

ROTTERDAM GUARANTEE FORM LIMITATION 2020 (RGFL2020)

(A)

The undersigned (B),

WHEREAS:

on the application of (C), hereinafter referred to as the applicant, to limit [his/her/its] liability in connection with (D) the Rechtbank Rotterdam (District Court Rotterdam) rendered the decision (E) that the applicant shall constitute a limitation fund;

in that decision the Rechtbank Rotterdam appointed (F) as rechter-commissaris (judge commissary; supervisory judge) to administer the distribution of the fund and appointed (G) as vereffenaar (liquidator) thereof;

DECLARES HEREBY IRREVOCABLY AND UNCONDITIONALLY THAT:

1. on first written demand of the above mentioned rechter-commissaris and vereffenaar jointly, or their (legal) successors or substitutes jointly, the undersigned will pay, within 14 (fourteen) calendar days from the date of the demand into a bank account in the joint names of the rechter-commissaris and vereffenaar, or of their (legal) successors or substitutes, as the case may be, any amount or amounts up to a maximum of:
 - (a) (H) Special Drawing Rights (SDR) as defined by the International Monetary Fund (IMF) converted into Euro's (EUR), according to the value of the EUR at the date this guarantee is submitted to the Rechtbank Rotterdam (whereby the value of the EUR in terms of the SDR is calculated in accordance with the method of valuation applied by the IMF in effect at the date in question for its operations and transactions); together with
 - (b) the Dutch statutory moratory interest calculated over the period from (I) to the date this guarantee is submitted to the Rechtbank Rotterdam; increased further by
 - (c) the Dutch statutory moratory interest over this principal sum (a) and interest (b) from the date this guarantee is submitted to the Rechtbank Rotterdam until the date of actual and full payment under this guarantee ; and
 - (d) EUR (J), for costs of the proceedings.
2. the undersigned will also pay on demands for part payment under this demand guarantee by the persons referred to under 1;
3. this demand guarantee is governed by Dutch law; and
4. the undersigned submits to the exclusive jurisdiction of the Rechtbank Rotterdam for claims or disputes in connection with this demand guarantee;

[Place, date of issue demand guarantee]

[Name and details of authority of the person executing the document]

NOTES REGARDING THE SPACES (A) – (J) TO BE FILLED IN

- (A) = Name of the vessel for which the fund is established.
- (B) = Full name, address, place of domicile, and any other identifying data (e.g. trade register number/identifier) of the guarantor.
- In connection with the requirement that the security offered must be adequate (compare Article 6:51 sub (2) DCC) the guarantor must be domiciled within the area in which the EU Regulation (1215/2012) or the Lugano Convention 2007 apply. The rechter-commissaris and vereffenaar should not be required to litigate elsewhere to enforce payment under the guarantee.
- (C) = Full name, address, place of domicile of the person submitting the application for limitation of the liability that led to this guarantee being issued.
- (D) = Description of the occurrence (with date) which led to the application for limitation of the liability.
- (E) = Date and case number/identifier of the decision rendered by the Rechtbank Rotterdam.
- (F) = Name of the rechter-commissaris referred to in the decision rendered by the Rechtbank Rotterdam.
- (G) = Name and other details of the vereffenaar referred to in the decision rendered by the Rechtbank Rotterdam.
- (H) = In numbers and words, the amount of the principal sum of the limitation fund(s) in Special Drawing Rights of the International Monetary Fund (IMF) as determined by the Rechtbank Rotterdam upon granting the application for limitation of liability. (Compare Article 8:759 DCC and Article 5 Royal Decree of 29 Nov. 1996, Staatsblad 1996, 587 read together with Article 642c sub (2) heading Dutch Code of Civil Procedure (DCCP))
- (I) = The (start of the) day following the date of the occurrence giving rise to the claim. (Compare Article 8:757 DCC and Article 4 Royal Decree of 29 Nov. 1996, Staatsblad 1996, 587 read together with Article 642c sub (2) heading and under (a) and (b) DCCP.)
- (J) = In numbers and words, the amount stated in the decision rendered by the Rechtbank Rotterdam to defray the costs of the proceedings.

NOTE OF EXPLANATION
ROTTERDAM GUARANTEE FORM LIMITATION 2020 (RGFL 2020)

The first edition (RGFL 2017) of this form was drafted by the Limitation Guarantee Form Committee of the Dutch Association for Transport Law following a suggestion from the Rotterdam District Court. The RGFL 2017 was amended late 2019. During the drafting of the amended form the following people served on the committee: Prof. M.H. Claringbould, T. Roos, W.P. Sprenger, and T. van der Valk. Prof. Mr M.H. Claringbould is emeritus professor maritime law at Leiden University, and a former advocate in Rotterdam. Mr Sprenger is a senior judge at the Rotterdam District Court; the others are advocates in Rotterdam. During the drafting, the Committee received helpful comments from H. van der Houven van Oordt, advocate in Rotterdam, and from T.C. Wiersma, advocate in Amsterdam.

This guarantee form contains the text of a (first demand) guarantee which may be used by the guarantor of a (legal) person who wants to limit his liability in connection with an occurrence with a seagoing ship or an inland navigation ship involving loss or damage.

This form contains a first demand guarantee. In this new form it is clearly stated that the rechter-commissaris (perhaps best translated as judge commissary or supervisory judge) and the vereffenaar (liquidator) can jointly make a demand under the guarantee, and also for part payments. This is in line with Article 642c sub (4) Dutch Code of Civil Procedure (DCCP), which states that the fund is established in the joint names of the rechter-commissaris and the vereffenaar, and to the exclusion of the person limiting his liability.

The form gives the rechter-commissaris and the vereffenaar the possibility to make a demand under the guarantee for payment to a bank account in their joint names in case they so deem just and proper. They may inter alia so demand in the event it is decided that the person who wants to limit liability and who has arranged for the constitution of the fund is not entitled to limit his liability when it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result. (Compare Article 8:755 and 8:1064 Dutch Civil Code (DCC).) Article 642s sub (2) DCCP provides that when this decision is no longer subject to appeal, the security provided will lapse and a deposited amount will be paid out to him who made the deposit but not earlier than one month after the judgment has become final and the vereffenaar has given notice, in the manner set out in Article 642i DCCP, of the day this payment will take place. According to the legislative history of that provision this arrangement with regard to a deposited amount was enacted so to enable the creditors to attach the deposited fund before it is refunded. This form neutralizes the difference between constituting a fund by making a bank deposit and by providing a guarantee. Under the guarantee the guarantor can be obligated to pay out the amount of the fund into a bank account in the joint names of the rechter-commissaris and the vereffenaar, whereupon the creditors may effect an attachment on the fund so deposited for the recovery of their claims. The Committee does not express an opinion about the issue whether or not such an attachment provides effective relief for a creditor.

Art. 11 of the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, as amended by the 1996 Protocol, as well as art. 11 of the Strasbourg Convention on Limitation of Liability in Inland Navigation (CLNI 1988) mention one single fund in the sum of certain amounts. In contrast, Dutch law (e.g. the former Article 8:755 DCC and, still, Article 642c and 642t DCCP) reckons with multiple funds (e.g. persons fund, property fund, wreck fund). Art. 12 of the Strasbourg Convention concerning the Limitation of Liability in Inland Navigation (CLNI 2012) (which entered into force recently) also allows the constitution of one or more funds. In order to obviate any complications in this respect and to allow the form to be used in as many cases as possible, any reference to either amounts together forming a fund or to several funds is avoided. Under circumstances – e.g. when several insurance companies only want to guarantee certain claims covered by an amount within a fund, or by a fund to be regarded separately, or when the possible spill-over of personal injury claims (Art. 642t sub (2) heading and sub (c) DCCP should be taken into account – there may be reason to amend the standard text of the guarantee accordingly. However, this requires bespoke wording which the Committee cannot provide in a standard form. In the RGFL 2017 an amount in Euro's had to be filled in at (H), being the amount of the principal sum in Special Drawing Rights (SDR) of the International Monetary Fund (IMF) converted into Euro's at the IMF rate of exchange of the date on which the guarantee was actually executed. Furthermore, in the RGFL 2017 a period of three days was presupposed between the date of

signature of the guarantee and the date of submission of the guarantee to the Rechtbank Rotterdam. Practice has shown that this period of three days was based on overly optimistic assumptions. It was therefore decided to take another approach in the RGFL 2020 and opt for a guarantee for an amount in Euro's to be calculated as per the date of actual submission of the guarantee to the Rechtbank Rotterdam on the basis of the amount in SDR of the fund(s) as determined by the Rechtbank Rotterdam upon granting the application for limitation of liability. As a result, the provisions dealing with interest had to be amended accordingly.

Users of the form will bear in mind that the guarantee to be put up will have legal effect towards all parties concerned, also those who have not (yet) been involved in the proceedings for limitation of liability. The party submitting the guarantee to the Rechtbank Rotterdam to satisfy the court decision as referred to in art. 642c DCCP (the 'undersigned') will need to make sure that together with the guarantee documents are submitted showing proof of the identity and the authority of the person(s) signing the guarantee.