

**MODEL CONTRACTUAL CLAUSES  
FOR USE IN AGREEMENTS BETWEEN  
CLASSIFICATION SOCIETIES AND GOVERNMENTS  
AND CLASSIFICATION SOCIETIES AND SHIPOWNERS**

*Comité Maritime International*

*Drafted by the Joint Working Group on a Study of Issues Re Classification Societies*

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**INTRODUCTION**

The following model contractual clauses were drafted on the initiative of the Comité Maritime International (CMI) by a Joint Working Group of representatives of concerned Non-Governmental International Organisations, as described in the Group's June 1997 Report. These clauses are intended to reflect the increasingly important role which Classification Societies play in maritime affairs with regard to safety, not only in the performance of quasi-governmental functions with regard to statutory survey and certification but also in the performance of their traditional classification work for the maritime industry.

In this regard, attention is called to IMO Assembly Resolution A.789(19) and MSC Circ. 710 / MEPC Circ. 307 on Guidelines for the Authorisation of Organizations Acting on Behalf of the Administration,<sup>1</sup> and to EU Council Directive 95/57/EC of 22 November 1994 on Common Rules and Standards for Ship Inspection and Survey Organisations, & c.

The model clauses define and clarify, subject to applicable national law, the circumstances under which the civil liability of the Societies and their employees and agents should be regulated or limited. The rationale for this is set forth in the Group's June 1997 Report to the Centenary Assembly. Most regrettably, as of 6 March 1999 the Organizations directly concerned on behalf of shipowners and Classification Societies have been unable to agree between themselves upon the core issue of a limit of liability; therefore Clause II-9 following contains square-bracketed alternatives as to limitation.

These model clauses are presented for use by the industry as a best-practice drafting aid until such time as agreement on a final version of Clauses II-8 and II-9 may be reached between the two principal classification and shipowner Organizations. The clauses are intended to be read in conjunction with the Principles of Conduct for Classification Societies (adopted by the CMI Assembly in Antwerp on 14 June 1997).

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<sup>1</sup>As expanded in the Reports and Annexes of the Flag State Implementation Subcommittee (FSI) of the IMO's MSC and MEPC, currently FSI 3/17 [23 March 95], ¶¶ 8.35-8.38 and Annex 6, ¶¶ 6.5-6.6.

## MODEL CLAUSES

### **PART I: For inclusion in agreements between the Societies and Governments —**

1. (a) The duties and functions of [*Classification Society*] pursuant to this agreement are as specified in Annex I attached.<sup>2</sup>

(b) [*Administration*] shall be given the opportunity to verify that the quality system and performance of [*Classification Society*] continues to comply with the requirements specified in Annex I attached. In this regard [*Administration*] may utilise appropriate audit methods, including recognition of audits performed on [*Classification Society*] by an independent body of auditors effectively representing the interests of [*Administration*], such as the IACS QSCS auditors. The Principles of Conduct for Classification Societies referred to in the Introduction above shall be the standard<sup>3</sup> for measurement of performance by [*Classification Society*].

(c) [*Classification Society*] shall report to [*Administration*], in accordance with the procedures agreed between them, the information specified in Annex II<sup>4</sup> concerning surveys and certification performed by [*Classification Society*] on behalf of [*Administration*], and shall promptly notify [*Administration*] of any change in the status of the classification of a ship which is classed by [*Classification Society*] and is flying the flag of [*State*].
2. In carrying out the duties and responsibilities specified in Annex I, whether pursuant to applicable international agreements, conventions, national legislation, or this agreement, [*Classification Society*] acts solely as the agent of [*Administration*], under whose authority or upon whose behalf it performs such work.
3. In any claim arising out of the performance of a duty or responsibility, or out of any certification with regard to work covered by Annex I, [*Classification Society*] and its employees and agents shall be subject to the same liabilities and be entitled to the same defences (including but not limited to any immunity from or limitation of liability) as would be available to [*Administration's*] own personnel if they had themselves performed the work and/or certification in question.<sup>5</sup>

### **PART II: For inclusion in the Rules of the Societies (which contain the terms of agreements between the Societies and Shipowners) —**

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<sup>2</sup> A model for Annex I is not offered. It is intended that Annex I should contain the technical and operational requirements to be agreed between the Government and the Classification Society.

<sup>3</sup> Without prejudice to the application of other internationally-agreed standards which are at a minimum substantially equivalent to those contained in the Principles of Conduct.

<sup>4</sup> It is intended that Annex II should contain the detailed reporting requirements to be agreed between the Government and the Classification Society.

<sup>5</sup> References to applicable provisions of national law should be added following the text of the clause. (Amendment of national law may need to be pursued in some States.)

4. Responsibilities of [*Classification Society*] —
- (a) [*Classification Society*] when acting pursuant to these Rules certifies the classification of a ship<sup>6</sup> to the shipowner,<sup>7</sup> and does not certify the condition of the ship for any purpose other than the assignment of classification under these Rules.
- (b) In carrying out its obligations pursuant to these Rules, [*Classification Society*] agrees that the Principles of Conduct for Classification Societies referred to in the Introduction above shall be the standard for performance of its services.
5. Responsibilities of the shipowner —
- (a) It is the responsibility of the shipowner:
- (i) to maintain a classed ship, its machinery and equipment in compliance with the Rules and requirements of [*Classification Society*]; and
- (ii) to operate the ship in accordance with all applicable Rules and conditions of class.
- (b) It is the responsibility of the shipowner to ensure:
- (i) that plans and particulars of any proposed alterations to the hull, equipment or machinery which could invalidate or affect the classification of the ship are submitted to [*Classification Society*] for prior approval; and
- (ii) that all repairs or modifications to hull, equipment or machinery which are required in order that a ship may retain her class are carried out by the shipowner in accordance with the Rules and requirements of [*Classification Society*].
- (c) it is the responsibility of the shipowner:
- (i) to make a classed ship available for survey in such a manner, location and condition as to ensure that all surveys necessary for the maintenance of class can be carried out by [*Classification Society*] at the proper time and in accordance with the Rules and requirements of [*Classification Society*]; and

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<sup>6</sup>“Ship” for the purposes of these Principles of Conduct shall include any type of vessel which is classed with or otherwise surveyed or certificated by the Classification Society.

<sup>7</sup>“Shipowner” for the purposes of these Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.

(ii) to ensure that there is compliance with the requirements of [Classification Society] resulting from such surveys.

(d) It is the responsibility of the shipowner to inform [Classification Society] without delay:

(i) of any change of the ship's flag, ownership, management or name;

(ii) of any collision or grounding of the ship;

(iii) of any other damage, defect, breakdown, incident of navigation or proposed repair which might invalidate or affect the ship's classification; and

(iv) of any change in the intended or actual use of the ship which might invalidate or affect the ship's classification.

6. A failure by the shipowner to fulfil the foregoing responsibilities may in the reasonable exercise of discretion by [Classification Society] result in, among other measures, suspension or cancellation of classification or the withholding of certificates or reports by [Classification Society].<sup>8</sup>

7. [Classification Society] shall be liable for claims arising out of the performance of services pursuant to these Rules only if such a claim arises out of an act or omission that violates the standard of reasonable care,<sup>9</sup> and:

(a) is attributed to [Classification Society] or its employees, agents or other persons acting on behalf of [Classification Society], or

(b) is performed by an employee of [Classification Society] unless acting independently outside the terms or scope of his employment; or

(c) is performed by an agent or other person acting on behalf of [Classification Society], unless such act or omission exceeds the authority granted by [Classification Society] to such agent or such other person.

8. Without prejudice to clause 7 above, in respect of any claim arising out of the performance of services pursuant to these Rules [Classification Society] shall be liable only for loss of use of the ship, or for loss of or damage to the ship, or for expenses incurred in mitigating loss of or damage to the ship.<sup>10</sup>

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<sup>8</sup>It is recognized that it is also a common practice of Classification Societies to provide in their Rules that failure of the shipowner to make timely payment of fees charged for services rendered may, in the reasonable exercise of discretion by the Society concerned, result in suspension or cancellation of classification or the withholding of certificates or reports.

<sup>9</sup>Different standards or terms may be substituted in accordance with applicable national law.

<sup>10</sup>The ultimate form of clause 8 may change, dependent upon the ultimate figure(s) and/or formula in clause 9.

9. The limit of liability of [*Classification Society*] in respect of [a single claim arising out of the performance of a service] [all claims arising out of a single incident attributable to the performance of a service] pursuant to these Rules shall not exceed [X million United States Dollars] [Y times the fee charged by [*Society*] for the service in question or X million United States Dollars, whichever is the lesser amount] [X million United States Dollars or Y times the fee charged by [*Society*] for the service in question, whichever is the greater amount].

10. Any dispute arising out of or in connection with these Rules and any issues concerning responsibility, liability or limitation of liability shall be determined in accordance with the law of [*State*].<sup>11</sup>

11. Any suit or proceeding in respect of a claim arising out of or in connection with these Rules or the performance by [*Classification Society*], its employees or agents of a function pursuant to these Rules shall be instituted in or transferred to the appropriate court of [*State and venue*], which shall have exclusive jurisdiction to hear and determine any such dispute.<sup>12</sup>

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<sup>11</sup>This will normally be the State of domicile or situs of the Society.

<sup>12</sup>In order to survive the common law test of *forum non conveniens*, the venue must be a reasonable one in terms of its legal system, the demonstrated competence of its courts in such cases, and its convenience to the claimant and to witnesses.



## FOOTNOTES

1. As expanded in the Reports and Annexes of the Flag State Implementation Subcommittee (FSI) of the IMO's MSC and MEPC, currently FSI 3/17 [23 March 95], ¶¶ 8.35-8.38 and Annex 6, ¶¶ 6.5-6.6.
2. A model for Annex I is not offered. It is intended that Annex I should contain the technical and operational requirements to be agreed between the Government and the Classification Society.
3. Without Prejudice to the application of other internationally-agreed standards which are at a minimum substantially equivalent to those contained in the Principles of Conduct.
4. It is intended that Annex II should contain the detailed reporting requirements to be agreed between the Government and the Classification Society.
5. References to applicable provisions of national law should be added following the text of the clause. (Amendment of national law may need to be pursued in some States.)
6. "Ship" as defined by the Principles of Conduct shall include any type of vessel or other unit which is classed with or otherwise surveyed or certificated by the Classification Society.
7. "Shipowner" as defined by the Principles of Conduct shall mean the individual or juridical person in a contractual relationship with the Classification Society.
8. It is recognized that it is also a common practice of Classification Societies to provide in their Rules that failure of the shipowner to make timely payment of fees charged for service rendered may, in the reasonable exercise of discretion by the Society concerned, result in suspension or cancellation of classification or the withholding of certificates or reports.
9. Different standards or terms may be substituted in accordance with applicable national law.
10. The ultimate form of clause 8 may change, dependent upon the ultimate figure(s) and/or formula in clause 9.
11. This will normally be the State of domicile or situs of the Society.
12. In order to survive the common law test of *forum non conveniens*, the venue must be a reasonable one in terms of its legal system, the demonstrated competence of its courts in such cases, and its convenience to the claimant and to witnesses.