

REPORT BY THE IWG ON CLASSIFICATION LIABILITY

Following a discussion at the CMI Hamburg Conference in 2014, it was decided to put the liability of classification societies and the limitation of that liability back onto the work programme of the CMI. Hence an International Working Group (IWG) on Classification Societies was created in 2015.

For the work previously done by the CMI in this regard and for the public discussion of the topic in recent years, see the CMI website (<https://comitemaritime.org/work/classifications-societies/>) The IWG, with the support of the CMI Executive Council (ExCo), has considered that it was a necessary prerequisite for success that the main private stakeholders concerned, shipowners and classification societies, were to support and contribute to the work - through the International Chamber of Shipping (ICS) and the International Association of Classification Societies (IACS) respectively.

The initial mandate was therefore to explore whether there was interest among the said main stakeholders. The current IWG consists of ExCo members, and the idea has been to enlarge the group with stakeholder representatives and convert into an open ended committee at an appropriate time - as is often done in the CMI when one passes from an exploratory initial phase into a phase where substantive work is to be done.

IACS have throughout indicated that they would be interested in the work and prepared to contribute, whereas ICS several has been and remains negative.

The IWG and IACS have each approached ICS in order to try to convince them to participate in the work, However, ICS has taken the view that although it is generally a strong advocate of uniformity, they feel that in this case uniformity has to be balanced against the commercial relationship between the shipowner and the classification society. In particular, the issue of a limit of liability is one of a range of commercial matters which the two parties usually manage as part of an overall negotiation and problems had not been flagged which would warrant intervention by ICS or CMI. It has also been noted that Classification Societies occupy a special role being both in a contractual relationship with shipowners and also their role as RO with regulatory duties and responsibilities. The question of a limit of liability would therefore not be a straightforward issue. The conclusion overall is that the issue is not of direct concern to shipowners and therefore not a sufficient reason to support it.

The indication from the societies on the other hand is that they are mostly concerned with protection from/limitation of huge claims from third parties for alleged negligence in carrying out

classification work under a contract with a shipowner. Hence limitation of contractual liability to shipowners for faulty classification work as well as protection from claims by governments or third parties for faulty statutory work, issues that were dealt with by the CMI twenty years ago, now seems to be less of an issue to the societies.

The IWG has worked on the basis that there is an industry interest, which includes the interest of the shipowners, in trying to protect the societies from claims that have the potential of totally obliterating them, which would not really be in anybody's long term interest, wherefore it would really be in the interest of the main private stakeholders at least to participate in a brain storm – without further commitment - as to possible principles of or ideas for limiting the liability of the societies for exorbitant third party claims. A further assumption by the IWG has been that other stakeholders or interested parties should at some later stage be involved, such as IMO, IUMI and the International Group of P&I Clubs.

However, the shipowners' current position has to be respected and the IWG now therefore concludes that there is presently not scope for further work on classification societies in an enlarged IWG or open ended committee.

On that basis the IWG invites the Assembly to consider whether to discontinue the IWG, or possibly put it on a backburner. It suggests that the material on the CMI website on liability of classification societies should in any event be kept there for useful future reference.

1 November 2018