

**COMMISSION DECISION**

**of 14/10/2009**

**relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the  
EEA Agreement**

**Case 39416 SHIP CLASSIFICATION**

**(Only the English text is authentic)**

**(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty<sup>1</sup>, in particular Article 9(1) thereof,

Having regard to the Commission decision of 12 May 2009 to initiate proceedings in this case,

Having expressed concerns in the preliminary assessment of 12 May 2009,

Having given interested third parties the opportunity to submit their observations pursuant to Article 27(4) of Regulation (EC) No 1/2003 on the commitments offered to meet those concerns,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Having regard to the final report of the Hearing Officer,

WHEREAS:

## 1. SUBJECT MATTER AND PARTIES

- (1) This Decision is addressed to the International Association of Classification Societies and to International Association of Classification Societies Limited (hereinafter jointly referred to as "**IACS**").
- (2) This Decision concerns the treatment by IACS of third party classification societies (hereinafter referred to as "**CSs**") which are not members of IACS. In its preliminary assessment of 12 May 2009, the Commission expressed its concerns as to the compatibility with Article 81 EC Treaty and Article 53 EEA Agreement of IACS' decisions on (i) the criteria and procedures ruling membership of IACS and the suspension or withdrawal of membership, and on the way that these criteria and procedures were applied, and (ii) the elaboration and accessibility to non-IACS CSs of IACS' resolutions and technical background information relating to these resolutions.
- (3) **The International Association of Classification Societies** is an unincorporated association established in the United Kingdom. It was formed in September 1968<sup>2</sup> by the world's seven largest classification societies, with the aim of combining technical knowledge and experience and it currently has ten members<sup>3</sup> and one associate

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<sup>1</sup> OJ L 1, 4.1.2003, p.1.

<sup>2</sup> IACS was formed shortly after the 120 000 ton oil super tanker Torrey Canyon sank off the South coast of England in March 1967. The ship's poor design was a major contributing factor to this disaster.

<sup>3</sup> Current members of IACS are: American Bureau of Shipping (ABS), Bureau Veritas (BV), China Classification Society (CCS), Det Norske Veritas (DNV), Germanischer Lloyd (GL), Korean Register of

member<sup>4</sup>. According to their own claim, more than 90% of the world's cargo carrying tonnage is covered by the classification design, construction and through-life compliance rules and standards set by the ten members and one associate member of IACS<sup>5</sup>. The IACS members carry out the vast majority of this work themselves [\*]. The International Association of Classification Societies has had a consultative status with the International Maritime Organisation (hereinafter "IMO") since 1969, and has had a permanent representative within IMO since 1976.

- (4) The **International Association of Classification Societies Limited** is a company limited by guarantees, established in 1992 in the United Kingdom by the members of the International Association of Classification Societies. Its sole purpose is to provide permanent secretarial services to the Association. It currently employs 15 people, and rents offices in the United Kingdom (London and Southampton) and in Belgium (Brussels).

## 2. PROCEDURAL STEPS

- (5) The investigation was based on the inspection at the premises of IACS and some CSs on 29 and 30 January 2008 and on fact-finding through requests for information pursuant to Article 18 of Council Regulation (EC) No 1/2003 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as "Regulation (EC) No 1/2003") in the course of 2007-2009.
- (6) On 12 May 2009, the Commission opened proceedings with a view to adopting a decision under Chapter III of Regulation (EC) No 1/2003 and adopted a preliminary assessment as referred to in Article 9(1) of Regulation (EC) No 1/2003 which set out the Commission's competition concerns regarding IACS' decisions: (i) on the criteria and procedures ruling membership of IACS and the suspension or withdrawal of membership, and on the way that those criteria and procedures were applied, and (ii) on the elaboration and accessibility to non-IACS CSs of IACS' resolutions and technical background information relating to those resolutions. The preliminary assessment was notified to IACS by letter of 12 May 2009.
- (7) On 28 May 2009, IACS replied that it disagreed with the preliminary assessment but nevertheless unconditionally submitted an offer of commitments ("the **Commitments**") to the Commission in response to the preliminary assessment<sup>6</sup>.
- (8) On 10 June 2009, a notice was published in the Official Journal of the European Union<sup>7</sup> pursuant to Article 27(4) of Regulation (EC) No 1/2003, summarising the

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Shipping (KR), Lloyd's Register of Shipping (LR), Nippon Kaiji Kyokai (NK), Registro Italiano Navale (RINA), Russian Maritime Register of Shipping (RS).

<sup>4</sup> Indian Register of Shipping (IRS).

<sup>5</sup> IACS' website: [www.iacs.org.uk/explained/default.asp](http://www.iacs.org.uk/explained/default.asp) x.

\* Parts of this sentence have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

<sup>6</sup> The offer of Commitments was adopted unanimously by the Council of the International Association of Classification Societies (in which all ten members of that association are represented) and by the Board of Directors of International Association of Classification Societies Limited.

<sup>7</sup> OJ C 131, 10.6.2009, p.20.

case and the Commitments and inviting interested third parties to give their observations on the Commitments within one month following publication.

- (9) On 16 July 2009, the Commission informed IACS of the observations received from interested third parties following the publication of the notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.

### **3. PRELIMINARY ASSESSMENT**

#### **3.1. Relevant markets**

##### *3.1.1. Product market*

- (10) According to the preliminary assessment, the product market is considered to be the market for classification services for merchant ships. In this respect, classification services of CSs consist of two closely related sub-segments<sup>8</sup>:

(a) Classification work: this is the traditional domain of CSs. It encompasses (i) the production of technical standards (commonly known as 'rules and procedures'<sup>9</sup>) for ship construction, equipment, maintenance and inspection; (ii) the verification of plans and the supervision of the ship construction against these rules and procedures; and (iii) the inspection and certification of ships against these rules once in service (thus issuing the so-called 'class certificates').

(b) Statutory work: flag States can delegate to CSs, separately, for each ship flying their flag, the task of (i) carrying out the surveys of ships provided for in the IMO maritime safety conventions in order to verify compliance with the technical requirements contained in the IMO maritime safety conventions (statutory requirements); and (ii) issuing the international certificates on their behalf which attest compliance of the ships with these requirements.

##### *3.1.2. Geographic market*

- (11) According to the preliminary assessment, the market for classification services is considered to be worldwide. The relevant geographic market for both sub-segments is also considered to be worldwide. This conclusion is based on the close links between the two sub-segments and the fact that these services are provided by the same providers (the CSs) in most countries of the world, under similar conditions and subject to similar competitive constraints and cover a merchant ship fleet which also operates worldwide.

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<sup>8</sup> In practice, both classification work and statutory work are interrelated as (a) classification rules must respect and incorporate statutory requirements and (b) the inspection practice in both work areas is closely interlinked.

<sup>9</sup> The term "rules and regulations" comes from Council Directive No 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations (OJ L 319, 12.12.1994, p. 20) which was repealed with effect on 17 June 2009. In Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131, 28.5.2009, p. 11) the term has become "rules and procedures".

### 3.2. Position of the parties on the relevant market

- (12) In its preliminary assessment, the Commission took the preliminary view that the ten members of IACS have a strong position on the ship classification market. The preliminary assessment was based on, amongst other factors, the high combined market shares of the ten members of IACS<sup>10</sup>, and the view that CSs which are not members of IACS may face significant competitive disadvantages preventing them from competing effectively with IACS members:
- (a) Many flag States do not allow CSs which are not IACS members to perform statutory surveys on their behalf. This means that non-IACS CSs are excluded from a significant part of the market of the classification services (namely, statutory work, and in practice as a result of this also classification work, for ships flying the flag of these countries<sup>11</sup>).
  - (b) An indirect consequence of this is that a ship that is classed with a non-IACS CS will be more difficult to re-sell. This is because the potential buyers will only be able to register this ship in a limited number of flag States unless they decide to change class to an IACS member – which is a costly and particularly cumbersome procedure. This gives ship owners an incentive to have their ships classed by an IACS member.
  - (c) Many ports do not permit entry of ships which are not classified by an IACS member. This decreases the operational value of such ships and therefore, a potential customer of classification services (that is, the ship-owner) has less incentive to have its ships classified by a non-IACS CS.
  - (d) Some international associations of ship-owners and ship-builders require that their members have their ships classified by IACS members as a condition of membership.
  - (e) Under the Institute Classification Clause<sup>12</sup>, ships classified by an IACS member (or associate member) benefit from the standard insurance and marine rates for the cargo they carry whereas ships classed by CSs which are not members of IACS cannot benefit from this clause and would therefore have to negotiate

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<sup>10</sup> Source: IACS website, <http://www.iacs.org.uk>.

<sup>11</sup> Chapter II-1/3-1 of the International Convention on the Safety of Life at Sea (SOLAS) states that *"In addition to the requirements contained elsewhere in the present regulations, ships shall be designed, constructed and maintained in compliance with the structural, mechanical and electrical requirements of a classification society which is recognized by the Administration in accordance with the provisions of Regulation XI/1, or with applicable national standards of the Administration which provide an equivalent level of safety."*

<sup>12</sup> Art 1 of the Institute Classification Clause of 01/01/2001: *"This insurance and the marine transit rates as agreed in the policy or open cover apply only to cargoes and/or interests carried by mechanically self-propelled vessels of steel construction classed with a Classification Society which is:*

*1.1 a Member or Associate Member of the International Association of Classification Societies (IACS), or;*

*1.2 a National Flag Society as defined in Clause 4 below, but only where the vessel is engaged exclusively in the coastal trading of that nation (including trading on an inter-island route within an archipelago of which that nation forms part).*

*Cargoes and/or interests carried by vessels not classed as above must be notified promptly to underwriters for rates and conditions to be agreed".*

the insurance and marine rates for their cargo. Given such uncertainty, a potential customer of classification services (that is, the ship-owner) has less incentive to have its ships classified by a CS which is not a member or an associate member of IACS.

- (f) Many Protection and Indemnity clubs (hereinafter referred to as "**P&I clubs**")<sup>13</sup> are hesitant to insure ships not classified by an IACS member and they either do not normally accept such ships<sup>14</sup> or require special conditions of entry<sup>15</sup>. This increases the cost of insurance for third party liabilities and expenses for ships not classified by an IACS member and hence the operating costs of such a ship.
- (g) IACS, as the only international body representing CSs, has a consultative status within IMO. IACS is the only actor from the ship classification industry that has a consultative status at the IMO and, as such, a permanent representative within IMO. Non-IACS CSs cannot take part in the formulation of the proposals of IMO measures or in their defence; therefore their views and interests cannot as easily be taken into account.
- (h) Non-IACS CSs are excluded from IACS' technical work. Within IACS, IACS' members alone decide upon adoption of IACS rules and procedures - which are, in practice, *de facto* industry standards.
- (i) Non-IACS CSs are excluded from full knowledge and use of IACS' technical standards (namely, IACS' resolutions). In particular, IACS prevents non-IACS CSs from having access to the technical background information relating to these standards<sup>16</sup>.

### 3.3. Practices raising concerns

- (13) In its preliminary assessment, the Commission took the preliminary view that there may have been a restriction of competition on the relevant market of ship classification services as a result of IACS' decisions on (i) the criteria and procedures ruling membership of IACS and the suspension or withdrawal of membership, and on the way that these criteria and procedures were applied, and (ii) the elaboration and accessibility to non-IACS CSs of IACS' resolutions and technical background information relating to these resolutions. Given the Commission's preliminary view that the ten members of IACS have a strong position on the market

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<sup>13</sup> The P&I clubs are associations of ship-owners who band together for the purpose of providing insurance cover on the various aspects of shipping operations. In general, P&I clubs cover third party liabilities and expenses arising from owning ships or operating ships as principals. P&I clubs provide collective self insurance to their members. The membership is comprised of a common interest group who wishes to pool their risks together in order to obtain "at cost" insurance cover. Source: UK P&I Club website, [http://www.ukpandi.com/ukpandi/infopool.nsf/HTML/About\\_Home](http://www.ukpandi.com/ukpandi/infopool.nsf/HTML/About_Home)

<sup>14</sup> As confirmed by some P&I clubs, it is unusual for a P&I club to insure a non-IACS classified ship and normally a P&I club will only consider ships that are classed with full or at least associate members of IACS.

<sup>15</sup> The Commission's investigation showed that it is not unusual for some P&I clubs to submit ships classified by non-IACS CSs to additional conditions.

<sup>16</sup> During the Commission's investigation, IACS improved the accessibility of its technical information, which was then published on its website. The Commission however considered it appropriate to ensure that this issue was also addressed in formal commitments.

and that CSs which are not members of IACS may face significant competitive disadvantages, the Commission's preliminary assessment was that these decisions therefore raised concerns as to their compatibility with Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement. Moreover, the Commission's preliminary view was that these decisions did not appear to fulfil the cumulative requirements for exemption under Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement.

(14) In particular, the preliminary assessment expressed the concern that IACS, contrary to Article 81 of the EC Treaty and Article 53 of the EEA Agreement as interpreted by the case law of the European Court of Justice<sup>17</sup> and the Commission's Horizontal Guidelines<sup>18</sup>, may have failed to:

- (a) enact requirements that are objective and sufficiently determinate so as to enable them to be applied uniformly and in a non-discriminatory manner concerning admission to, as well as suspension and withdrawal of, membership of IACS;
- (b) apply these requirements in an appropriate, reasonable and non-discriminatory way (including the establishment of sufficient safeguards to ensure such kind of application through an independent appeal/review mechanism);
- (c) provide an adequate system for including non-IACS CSs in the process of elaboration of IACS' technical standards (namely, IACS' resolutions), including the establishment of independent complaint/grievance and appeal/review mechanisms ensuring access to IACS' technical working groups;
- (d) provide for proper dissemination to non-IACS CSs of technical background information (in particular technical background documents) with regard to the application of IACS' resolutions, including the establishment of an independent appeal/review mechanism ensuring the access to this technical background information.

### **3.4. Effect on trade between Member States**

(15) In its preliminary assessment, the Commission took the preliminary view that, given that the market for classification services is worldwide and that the disadvantages caused by the foreclosure practices raising concerns in the present case in principle have an effect on the overall activities of CSs, which take place, among others, in most of the Community/EEA countries and cover a merchant ship fleet which operates also between Community/EEA Members States, IACS' decisions on membership requirements and on the way to apply them, as well as IACS' decisions on the elaboration and accessibility of IACS' resolutions and technical background

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<sup>17</sup> See in particular: Judgment of the Court of First Instance of 11 July 1996 in joined cases T-528/93, T-542/93, T-543/93 and T-546/93 – *Metropole television SA and others v Commission* [1996] ECR-II-649 paragraphs 95, 100-102.

<sup>18</sup> Commission Notice: Guidelines on the applicability of Article 81 of the EC Treaty to horizontal cooperation agreements (OJ C 3 of 6.1.2001, p. 2) ("Horizontal Guidelines"), section 6 (paragraphs 159-175) on agreements on standards.

information relating to these resolutions, were capable of affecting trade between Member States of the Community and the EEA.

#### **4. KEY ELEMENTS OF THE PROPOSED COMMITMENTS**

- (16) The key elements of the Commitments offered by IACS on 28 May 2009 are as follows:

##### **4.1. Membership criteria**

- (17) IACS will establish a single class of membership of IACS.
- (18) IACS will adopt, in accordance with published guidelines and procedures, the following objective, transparent, and non-discriminatory qualitative membership criteria applicable and designed to be applied uniformly to applications for membership and to continued membership of IACS:
- (a) Demonstrated ability to develop, apply, maintain, regularly up-date and publish its own set of classification rules in the English language covering all aspects of the ship classification process (design appraisal, construction survey, and ships-in-service periodical survey);
  - (b) Demonstrated ability to provide surveys of ships under construction in accordance with the CS' rules and periodic surveys of ships in service, including statutory surveys in accordance with IMO and Flag State requirements;
  - (c) Sufficient international coverage by exclusive surveyors relative to the size of the CS' construction programme and classed fleet in service;
  - (d) Extensive documented experience in assessing the design and construction of ships;
  - (e) Significant in-house managerial, technical, support and research staff commensurate with the size of the CS' classed fleet and its involvement in the classification of ships under construction;
  - (f) Technical ability to contribute with its own staff to the work of IACS in developing minimum rules and requirements for the enhancement of maritime safety;
  - (g) Contribution on an ongoing basis with its own staff to the work of IACS as described in (f) above;
  - (h) Maintaining in electronic form and updating at least annually a register of classed ships in the English language;
  - (i) Independence from ship-owning, ship-building and other commercial interests which could undermine the CSs' impartiality;
  - (j) Compliance with IACS' Quality System Certification Scheme (QSCS);



- (19) An Applicant that satisfies all criteria save for (g) shall be admitted as an IACS member but shall have no voting rights in the IACS Council or in any other IACS body. Criterion (g) shall be assessed over the first 3 years of membership and upon satisfactory compliance with this requirement at the end of that period, the IACS member shall automatically enjoy full voting rights.
- (20) IACS will conduct periodical assessments of IACS members to verify their compliance with the membership criteria. IACS will suspend or withdraw membership of IACS, as appropriate, of CSs which fail to satisfy the requisite membership criteria.
- (21) All decisions regarding accession to, suspension or withdrawal of membership of IACS will be subject to the right of appeal to the Independent Appeal Board.

#### **4.2. QSCS independence and availability to non-IACS CSs**

- (22) IACS will introduce a system whereby audits and assessment of compliance with its QSCS shall be carried out by independent external Accredited Certification Bodies (ACBs). Moreover, IACS will modify QSCS so that the requirements contained therein can be applied equally to IACS members and to non-members (including non-applicants for membership) by independent ACBs, without any involvement of IACS' Council.

#### **4.3. Participation by non-members of IACS in IACS' technical work**

- (23) IACS will set up and maintain a subscription-based, online Technical Contributions Forum ("IACS' TC Forum") on IACS' website providing any interested CSs with a platform to publish comments and discussions with other CSs (including both IACS members and non-IACS CSs) relating to IACS' technical work programmes. IACS will introduce an appeal mechanism to the Independent Appeal Board for interested parties that are denied access to IACS' TC Forum on the basis that they are not CSs.
- (24) Any CS not member of IACS which is registered on the IACS TC Forum can participate with its own employees in IACS' working groups (WG). A non-member of IACS which participates in a WG shall have full access to the same information, the same opportunities to state its views and to contribute to the discussions within the WG as any IACS member in that WG on a non-discriminatory basis but will have no voting rights. IACS will introduce a grievance mechanism and an appeal mechanism to the Independent Appeal Board for any CS which considers that it has been denied the exercise of its rights of information and participation in an IACS WG. The Chairman of a WG shall summarise all the views expressed by the WG's participants in the technical recommendation which the IACS members within the WG may decide to put to IACS' General Policy Group (GPG)/IACS' Council for adoption by IACS.

#### **4.4. Access by non-members of IACS to IACS' resolutions and technical background information**

- (25) IACS will place in the public domain, at the same time and in the same way as they are made available to IACS members, all current and future versions of IACS resolutions, as well as a history file containing the main points of discussion and any technical background document.

- (26) IACS will include a statement on its website that non-IACS CSs are free to use such material, royalty free and without licence, by embedding it in their own classification rules, notwithstanding any intellectual property rights that may be held by IACS members.
- (27) IACS shall place no restriction on the individual freedom of its members to enter into any agreement with any CS in relation to the provision of further information or assistance with regard to the application of IACS' resolutions.
- (28) A decision (whether explicit or implicit) not to publish an IACS resolution or a technical background document which is available to IACS members shall be appealable to the Independent Appeal Board.
- (29) IACS will release to the public, free of charge, a Common Structural Rules (CSR) Tracking Database to provide users with a searchable database on CSR revision history with supporting materials.

## 5. COMMISSION NOTICE

- (30) In response to the publication on 10 June 2009 of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003, the Commission received 15 responses from interested third parties representing different kinds of market participants, including competitors (other CSs), consumers and regulators.
- (31) Most respondents welcomed the Commitments as necessary for improving the competitive situation on the ship classification market and for further promoting the efficiency and quality of IACS' technical work and standards.
- (32) Although observations by respondents were generally positive, there were also a few respondents that requested certain changes to be made to the published draft Commitments. In essence, the latter respondents asked for more detailed formulations and arrangements in the Commitments while not demanding an increase in the scope of the Commitments. In light of the principle of proportionality, the Commission considered that the requested amendments exceeded what was appropriate and necessary for attaining the objectives pursued in the context of this procedure. Therefore, the Commission took the view that it was not necessary to modify the draft Commitments<sup>19</sup>.

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Footnote 3 to the main commitment document states that *"An applicant which has enjoyed "Associate" membership status of IACS immediately before the Effective Date may request IACS to assess its compliance with Criterion (vii) by reference to the contribution it has made with its own staff to the work of IACS in the 3 years preceding its application for membership."* After publication of the proposed commitments in the market test notice (pursuant to Article 27(4)), one respondent, which is currently an Associate member of IACS, initially claimed that - in spite of this footnote 3 - there was an ambiguity created by point 7.1. of Annex 4 (Membership Criteria: Guidance) in the sense that this respondent was never admitted by IACS to participate in the GPG (General Policy Group) and on this basis could be held not to have already fulfilled the requirement of contribution on an ongoing basis with its own staff to the work of IACS. This issue was clarified in a letter sent by IACS to this respondent on 2 July 2009 in which IACS declared that if this respondent requested IACS to assess its compliance with Membership Criterion (vii) by reference to the contribution it had made with its own staff to the work of IACS

- (33) In conclusion, the observations received did not allow the Commission to identify new competition concerns and contained no points such as to make the Commission reconsider the concerns it expressed in the preliminary assessment. In view of the results of the market test, the Commission maintains the position that it took in the Notice pursuant to Article 27(4) of Regulation (EC) No 1/2003, namely that the Commitments are adequate to meet the competition concerns expressed in the preliminary assessment<sup>20</sup>.

## 6. PROPORTIONALITY OF THE COMMITMENTS

- (34) According to settled case law, the principle of proportionality requires that the measures adopted by Community institutions must be suitable and not exceed what is appropriate and necessary for attaining the objective pursued<sup>21</sup>. When there is a

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in the 3 years preceding its application for membership, its application would not be prejudiced by the fact that this respondent had not participated in the GPG hitherto. In that letter, IACS also declared that this respondent's compliance with Membership Criterion (vii) would be assessed by reference to its participation in those working groups which had been open to it as an Associate member of IACS. In its official comment to the Article 27(4) market test notice submitted on 10 July 2009, this respondent no longer mentioned this issue as a matter of concern. A copy of IACS' letter of 2 July 2009 has been submitted by IACS to the Commission and is part of the Commission's file in this case.

<sup>20</sup> On 25 August 2009, IACS submitted a slightly rectified version of its main Commitment document. The amendments made by this rectified version in section A (Definitions, concerning the reference to the "Draft EU Directive", the "Draft EU Regulation" and the definitions of "European Union Recognised Organisation" and "Quality Assessment and Certification Entity") and in section B (in point 2.5.) were confined to taking account of the fact that Directive 94/57/EC was repealed with effect from 17.6.2009 by Article 14 of the new Directive 2009/15/EC and that the new Regulation 391/2009/EC had been adopted on 23.4.2009 and - after its publication in the Official Journal - had entered into force on 17.6.2009. Since reference to the final version of the new Directive turned out to be superfluous for the purpose of the Commitments and was therefore deleted in the rectified version of the main Commitment document, while the new Regulation in the parts relevant for the Commitments had remained precisely the same as its draft version to which the Commitments submitted on 28.5.2009 had already referred, the rectified version submitted on 25.8.2009 referring solely to the new Regulation constituted a mere technical update confined to improving the readability of the text of Commitments without touching their content. On 3 September 2009, IACS also submitted a slightly rectified version of Annexes 3, 5 and 6 to the main Commitment document in which the amendments were limited to respectively deleting the words "*and dated 20 May 2009*" where reference to the main Commitment document (with the title "Commitments offered to the European Commission under Article 9 of Council Regulation (EC) No 1/2003") was made, taking account of the fact that the rectified text of the main Commitment document submitted on 25 August 2009 is not dated anymore. Finally, on 10 September 2009, IACS submitted slightly rectified versions of Annexes 2 and 3 to the main Commitment document to take account of a minor inconsistency between these two Annexes concerning the question how to proceed when the Chairman of the Independent Appeals Board (IAB) is unavailable or indisposed. Annex 3 under point 1.5. in its original version stated "*Where the [IAB] Chairman is unavailable or indisposed, he shall designate one of the other adjudicators to act as [IAB] Chairman.*", whereas Annex 2 under point 2.1. stated "*Where the IAB Chairman is unavailable or indisposed, [the IACS] Council shall designate one of the other adjudicators to act as IAB Chairman.*" Neither of these two ways of handling unavailability or indisposition of the IAB Chairman had attracted any comments from third parties in reply to the market test notice published pursuant to Article 27(4). To eliminate this minor consistency in a practical and sensible way, the above cited sentences in Annexes 3 and 2 were respectively replaced in both Annexes by the same two sentences stating: "*Where the [IAB] Chairman is unavailable or indisposed, the [IAB] Chairman shall designate one of the other adjudicators to act as [IAB] Chairman. If the [IAB] Chairman fails to do so, [the IACS] Council shall designate one of the other adjudicators to act as [IAB] Chairman.*"

<sup>21</sup> Case T-260/94 *Air Inter v Commission* [1997] ECR II-997, paragraph 144, and Case T-65/98 [2003] ECR • - 4653 *Van den Bergh Foods v Commission*, paragraph 201.

choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued<sup>22</sup>. For the assessment of the proportionality of Commitments submitted within the framework of Article 9 of Regulation (EC) No 1/2003, the Commission takes into account that the Commitments are not imposed by the Commission to remedy an infringement established under Article 7(1) of Regulation (EC) No 1/2003, but voluntarily proposed by the party concerned with a view to bring the Commission procedure to an end without a formal decision on the existence of an infringement.

- (35) The Commission takes the view that the Commitments are sufficient and necessary to address the concerns identified in its preliminary assessment without being disproportionate.
- (36) With regard to the proposed criteria for membership of IACS, the Commitments strike an appropriate balance between maintaining demanding criteria for membership of IACS on the one hand, and removing unnecessary barriers to membership of IACS on the other hand. The new criteria will ensure that only technically competent CSs are eligible to become member of IACS, thus preventing that the efficiency and quality of IACS' work is unduly impaired by too lenient requirements for participation in IACS. At the same time, the new criteria will not hinder CSs, who are technically competent and willing to do so, from joining IACS.
- (37) Similarly, the new IACS system for participation of non-IACS CSs in the IACS technical standard setting process will ensure appropriate possibilities for non-IACS CSs to participate in the development of IACS technical resolutions, while also guaranteeing the proper functioning of IACS' technical working groups.
- (38) In addition, the Commitments will also ensure full access of non-IACS CSs to the results of IACS' technical standard setting process.
- (39) Furthermore, the detailed arrangements in the Commitments – including their annexes – are suitable, appropriate and necessary to remedy the concerns expressed by the Commission and for this purpose to (i) establish precise procedures for the handling of applications for membership of IACS as well as the periodical verification of existing members (Annex 3); (ii) provide detailed guidelines as to the interpretation and application of the criteria governing membership of IACS (Annex 4); (iii) establish precise procedures on the set-up of the Independent Appeal Board and the procedures under which it operates (Annex 5); (iv) establish detailed procedures as to third party participation in IACS' technical work and comprehensive access to IACS' resolutions and technical background documents (Annex 6).
- (40) Any remaining elements of the Commitments are ancillary or specifically related to the main Commitments and therefore have to be considered as part of the overall package of remedies and necessary to ensure the implementation of the Commitments offered by IACS.

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<sup>22</sup> Case 265/87 *Schröder* [1989] ECR 2237, paragraph 21, and Case C-174/05 *Zuid-Hollandse Milieufederatie and Natuur en Milieu* [2006] ECR I- 2243, paragraph 28.

- (41) The Commitments are binding on IACS for a period of 5 years. It is suitable, appropriate and necessary that the Commitments cover a five year period. If the Commitments were binding for a shorter period, it would not be enough to effectively and adequately remedy the possible restrictions of competition identified in the preliminary assessment.
- (42) In addition, the public consultation under Article 27(4) of Regulation (EC) No 1/2003 welcomed the proposed Commitments and confirmed that the Commitments offered by IACS are sufficient to address the Commission's concerns without imposing disproportionate conditions on IACS.

## **7. CONCLUSION**

- (43) By adopting a decision pursuant to Article 9(1) of Regulation (EC) No 1/2003, the Commission makes Commitments offered by the undertakings concerned to meet the Commission's concerns expressed in its preliminary assessment binding upon them. Recital 13 of the Preamble to the Regulation (EC) No 1/2003 states that such a decision should not conclude whether or not there has been or still is an infringement. The Commission's assessment of whether the Commitments offered are sufficient to meet its concerns is based on its preliminary assessment, representing the preliminary view of the Commission based on the underlying investigation and analysis, and the observations received from third parties following the publication of a notice pursuant to Article 27(4) of Regulation (EC) No 1/2003.
- (44) In light of the Commitments offered, the Commission considers that there are no longer grounds for action and, without prejudice to Article 9(2) of Regulation (EC) No 1/2003, the proceedings in this case should therefore be brought to an end.
- (45) The Commission retains full discretion to investigate and open proceedings under Articles 81 and 82 of the EC Treaty and Articles 53 and 54 of the EEA Agreement as regards practices that are not the subject matter of this Decision.

HAS ADOPTED THIS DECISION:

*Article 1*

The Commitments as listed in the Annex shall be binding on IACS for a period of 5 years as of the effective date which is the date upon which IACS receives formal notification of this Decision pursuant to Article 9(1) of Regulation (EC) No 1/2003.

*Article 2*

The proceedings in the present case shall be brought to an end.

*Article 3*

This Decision is addressed to:

**International Association of Classification Societies,  
6th Floor, 36 Broadway  
London SW1H 0BH  
UNITED KINGDOM**

**International Association of Classification Societies Limited,  
6th Floor, 36 Broadway  
London SW1H 0BH  
UNITED KINGDOM**

Done at Brussels, 14/10/2009

*For the Commission*

*Neelie KROES*

*Member of the Commission*

**ANNEX**

**THE COMMITMENTS**

## CASE COMP/39416 SHIP CLASSIFICATION

### COMMITMENTS OFFERED TO THE EUROPEAN COMMISSION UNDER ARTICLE 9 OF COUNCIL REGULATION (EC) NO 1/2003

In accordance with Article 9 of Council Regulation (EC) No 1/2003 ("Regulation 1/2003"), the International Association of Classification Societies ("IACS") and IACS Ltd offer the following commitments ("Commitments") to the European Commission (the "Commission") with a view to meeting the Commission's concerns as set out in the Commission's preliminary assessment ("Preliminary Assessment") dated 12 May 2009 in the context of its investigation in Case COMP/F-2/39416 and enabling the Commission to adopt a decision pursuant to Article 9 Regulation 1/2003 confirming that the Commitments address its concerns ("Commitment Decision").

Consistent with Article 9 of Regulation 1/2003, these Commitments may not be interpreted as an acknowledgement by IACS that it has infringed competition law.

This text shall be interpreted in the light of the Preliminary Assessment, the Commitment Decision, the general framework of Community law, and in particular in the light of Regulation 1/2003.

#### **SECTION A - DEFINITIONS**

For the purpose of the Commitments, the terms listed below shall have the following meaning:

**Accredited Certification Body ("ACB"):** an organisation recognised by a national accreditation body to comply with ISO-IEC 17021:2006 standard and International Accreditation Forum guidance on the application of ISO/IEC Guide 62:1996.

**Applicant:** a CS which has notified IACS Council that it wishes to become an IACS Member.

**Classification Society ("CS"):** an organisation which:

- (i) publishes its own classification rules (including technical requirements) in relation to the design, construction and survey of ships<sup>1</sup>, and has the capacity to (a) apply, (b) maintain and (c) update those rules and regulations with its own resources on a regular basis<sup>2</sup>;
- (ii) verifies compliance with these rules during construction and periodically during a classed ship's service life;
- (iii) publishes a register of classed ships;
- (iv) is not controlled by, and does not have interests in, ship-owners, shipbuilders or others engaged commercially in the manufacture, equipping, repair or operation of ships; and
- (v) is authorised by a Flag Administration as defined in SOLAS Chapter XI-1, Regulation 1 and listed accordingly in the IMO database, Global Integrated Shipping Information System (GISIS).

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<sup>1</sup> For the purposes of these Commitments, "ships" are defined as any ships subject to SOLAS safety certification and capable of unrestricted navigation.

<sup>2</sup> For the purposes of this definition of CS only, the organisation may have legally acquired classification rules and regulations, as well as any modifications or additions thereto for the purpose of the application, maintenance and updating of those rules and regulations.



**EU Regulation:** EU Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations.

**Effective Date:** the date upon which IACS receives formal notification of the Article 9 Decision from the Commission accepting these Commitments.

**European Union Recognised Organisation ("EU RO"):** a classification society or other private body which is recognised by the European Commission pursuant to Article 4 or Article 15 of the EU Regulation.

**IACS:** the International Association of Classification Societies, which is the association of IACS Members established on the basis of its Charter.

**IACS Common Structural Rules ("CSR"):** a comprehensive set of minimum requirements for the classification of the hull structures of double-hull oil tankers and bulk carriers, in relation to which the contract for construction was signed on or after 1 April 2006.

**IACS Council:** IACS' highest decision-making body.

**IACS GPG ("GPG"):** IACS General Policy Group.

**IACS Ltd:** International Association of Classification Societies Ltd, a company limited by guarantees provided by IACS Members, the sole purpose of which is to provide permanent secretariat services to IACS.

**IACS Member:** a member of IACS, having the rights and obligations laid down in IACS' Charter. For information only, a list of current IACS Members, as at the date of these Commitments, is attached at Annex 1.

**IACS Permanent Secretariat:** the secretariat of IACS, incorporated as IACS Limited.

**IACS Permanent Secretary:** the head of the IACS Permanent Secretariat.

**IACS Procedural Requirements ("PRs"):** IACS resolutions on technical matters of procedure.

**IACS Procedures:** the IACS document that codifies the working procedures of IACS.

**IACS QSCS Operations Centre ("OC"):** a group of auditors and lead auditors, employed by IACS Ltd.

**IACS Resolutions:** IACS' URs (including CSR), UIs and PRs.

**IACS TC Forum:** the internet forum to be set up on IACS' website providing CSs with a platform for publication of comments and discussion with other CSs (including non-IACS CSs) relating to IACS' work programmes.

**IACS Technical Background documents ("TB"):** notes outlining the background and results of discussions in IACS technical groups relating to the development of specific IACS Resolutions.

**IACS Unified Interpretations ("UIs"):** IACS resolutions on matters arising from implementing the requirements of IMO instruments. They provide uniform interpretations of Convention Regulations or IMO Resolutions on those matters which in the Convention are left to the satisfaction of the Administration or where more precise wording is found to be necessary.

**IACS Unified Requirements** ("URs"): minimum technical requirements adopted by IACS which, subject to ratification by the governing body of each IACS Member, are to be incorporated in their rules and practices. URs set forth minimum requirements; each IACS Member remains free to set more stringent requirements.

**IACS Working Group** ("WG"): IACS Panels and GPG Expert Groups.

**IACS WG Chairman**: The chair of the WG as appointed by GPG.

**IMO**: International Maritime Organisation.

**Independent Appeal Board**: the independent appeals board appointed by Council.

**ISO**: International Organization for Standardization (see [www.iso.org](http://www.iso.org)).

**Membership Criteria**: the Membership Criteria set out in IACS' Charter.

**Non-IACS CS**: a CS which is not an IACS Member.

**Quality Advisory Committee** ("AVC"): an external committee composed of representatives of organisations concerned with the quality of services provided by IACS Members, including IMO (as observer), Flag and Port States, international industry associations, insurers and underwriters, and which provides advice on matters related to the contents and application of QSCS.

**Quality Assessment and Certification Entity** ("QACE"): the quality management system provided for by the EU Regulation, Article 11.

**Quality Management System Requirements** ("QMSR"): a set of IACS requirements based on the following internationally recognised quality standards and international requirements, as far as applicable to CSs:

- (i) ISO-IEC 9001:2000 / EN 29001 "Quality Management System Requirements";
- (ii) ISO-IEC 17020:2004 / EN 45004 "Quality Requirements for Inspection Bodies";
- (iii) IMO Resolution A.739 (18) Guidelines for the authorization of organisations acting on behalf of the Administration; and
- (iv) IMO Resolution A.789 (19) on Specifications on the survey and certification functions of Recognised Organisations acting on behalf of the Administration.

**Quality System Certification Scheme** ("QSCS"): the audit and certification scheme adopted by IACS and which comprises (i) the QMSR and (ii) the IACS Resolutions.

**SOLAS**: the International Convention for the Safety of Life at Sea, as adopted by IMO.

**Transition Period**: a period which, without prejudice to what is said in paragraph 2.9 hereafter, will expire no later than 1 January 2011.

## **SECTION B - THE COMMITMENTS**

### **1. MEMBERSHIP CRITERIA**

#### **1.1 IACS and IACS Ltd undertake to:**

- (a) Establish a single class of membership of IACS;

- (b) Adopt, by way of an amendment to the IACS Charter, and in accordance with published guidelines and procedures, the following objective, transparent, non-discriminatory qualitative Membership Criteria applicable and designed to be applied uniformly to applications for and continued membership of IACS:
- (i) Demonstrated ability to develop, apply, maintain, regularly up-date and publish its own set of classification rules in the English language covering all aspects of the ship classification process (design appraisal, construction survey and ships-in-service periodical survey);
  - (ii) Demonstrated ability to provide surveys of ships under construction in accordance with the CS's rules and periodic surveys of ships in service, including statutory surveys in accordance with IMO and Flag State requirements;
  - (iii) Sufficient international coverage by exclusive surveyors relative to the size of the CS's construction programme and classed fleet in service;
  - (iv) Extensive documented experience in assessing the design and construction of ships;
  - (v) Significant in-house managerial, technical, support and research staff commensurate with the size of the CS's classed fleet and its involvement in the classification of ships under construction;
  - (vi) Technical ability to contribute with its own staff to the work of IACS in developing minimum rules and requirements for the enhancement of maritime safety;
  - (vii) Contribution on an ongoing basis with its own staff to the work of IACS as described in (vi) above;
  - (viii) Maintaining in electronic form and updating at least annually a register of classed ships in the English language;
  - (ix) Independence from ship-owning, ship-building and other commercial interests which could undermine the CS's impartiality;
  - (x) Compliance with QSCS;
- (c) Apply the rule that Applicants for membership shall be assessed against the Membership Criteria listed above. An Applicant that satisfies all Criteria save for (vii) shall be admitted as an IACS Member but shall have no voting rights. Criterion (vii) shall be assessed over the first 3 years of membership and upon satisfactory compliance with this requirement at the end of that period<sup>3</sup>, the IACS Member shall automatically enjoy full voting rights;
- (d) Apply the rule that all IACS Members shall contribute to IACS on an equal financial basis with other IACS Members;
- (e) Conduct periodical assessments of IACS Members to verify their compliance with the Membership Criteria;

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<sup>3</sup> An Applicant which has enjoyed "Associate" membership status of IACS immediately before the Effective Date may request IACS to assess its compliance with Criterion (vii) by reference to the contribution it has made with its own staff to the work of IACS in the 3 years preceding its application for membership.

- (f) Suspend or withdraw membership, as appropriate, from IACS Members which fail to satisfy the requisite Membership Criteria;
- (g) Establish an independent body to hear appeals on all decisions regarding accession to, suspension or withdrawal of membership. The Independent Appeal Board shall be composed of independent adjudicators having relevant technical and legal expertise; and
- (h) Apply the rule that all decisions regarding accession to, suspension or withdrawal of membership shall be made in writing, reasoned and subject to the right of appeal to the Independent Appeal Board.

### ***Implementation***

- 1.2 IACS shall adopt the Membership Criteria set out at paragraph 1.1(b) above, by way of an amendment to the IACS Charter, the relevant sections of which are attached at Annex 2 hereto, within 30 days of the Effective Date. Annex 2 contains all rules relating to IACS' Membership Criteria which are to be contained in the IACS Charter.
- 1.3 IACS shall adopt the *IACS Procedure: Membership Applications and Periodical Verification of Existing Members* (at Annex 3 hereto) and the *Membership Criteria: Guidance* (at Annex 4 hereto) within 30 days of the Effective Date. The purpose of the *Membership Criteria: Guidance* (at Annex 4) is to ensure that the Membership Criteria are in practice applied in an appropriate, reasonable and non-discriminatory way.
- 1.4 IACS shall establish the Independent Appeal Board referred to at paragraph 1.1(g) above and adopt the *Appeal Board Rules of Procedure* at Annex 5 hereto within 90 days of the Effective Date.
- 2. **QSCS INDEPENDENCE AND AVAILABILITY TO NON-IACS CSs**
  - 2.1 IACS and IACS Ltd undertake to introduce a system whereby audits and assessment of compliance with the QSCS shall be carried out by independent external ACBs.
  - 2.2 IACS and IACS Ltd undertake to modify QSCS so that the requirements therein can be applied equally to IACS Members and non-IACS CSs (including non Applicants) by independent ACBs, without any involvement of IACS' Council.
  - 2.3 IACS and IACS Ltd undertake to impose no restrictions on the ability of non-IACS CSs to request ACBs to audit and assess their compliance with the QSCS or any of its individual elements, all of which are published on IACS' website<sup>4</sup>, and, in the event of a successful audit, to issue a statement of compliance with the QSCS or such elements thereof as are satisfied.
  - 2.4 IACS and IACS Ltd undertake to maintain and continuously improve the QSCS by establishing procedures which ensure that, without prejudice to their independent assessment, when ACBs are auditing and assessing compliance of IACS Members and Applicants with QSCS, ACBs apply the minimum requirements contained in the QSCS in a consistent manner.
  - 2.5 IACS and IACS Ltd undertake to invite all EU ROs to work together with a view to establishing a module system whereby the QSCS and the QACE provided for by the EU Regulation contain the same basic quality management system requirements.

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<sup>4</sup> The current address of which is [www.iacs.org.uk](http://www.iacs.org.uk).

### **Implementation**

- 2.6 In order to ensure that the assessment of IACS Members' and Applicants' compliance with QSCS is carried out consistently and robustly, IACS and IACS Ltd shall implement the present Commitment in two phases.
- 2.7 During the Transition Period, compliance with the QSCS shall be assessed as follows:
- (a) IACS Members and Applicants shall be audited for verification of compliance with the QMSR by their chosen ACB, which shall issue a compliance report accordingly;
  - (b) IACS Members and Applicants shall be assessed by the OC for verification of compliance with both components of QSCS (namely, (i) the QMSR and (ii) IACS Resolutions), and the Chairman of IACS' Council shall issue a statement of compliance accordingly;
  - (c) for the avoidance of doubt, if an application for membership is refused on the basis that the Applicant does not have a valid QSCS certificate, this decision shall be appealable to the Independent Appeal Board in accordance with the Appeal Board Rules of Procedure.
- 2.8 Upon expiry of the Transition Period, IACS Members and Applicants shall be assessed by their chosen ACB for verification of compliance with both components of QSCS (namely, (i) the QMSR and (ii) IACS Resolutions). The ACBs shall issue a statement of compliance with the QSCS.
- 2.9 IACS and IACS Ltd undertake to initiate the steps necessary to implement the Commitments contained in this Section 2 within 30 days of the Effective Date. The Transition Period shall expire as soon as practicable and, in any event, no later than 1 January 2011.
- 2.10 The requirements of the QSCS shall be modified and made public by no later than 1 July 2009.
- 2.11 IACS and IACS Ltd shall receive feedback from the audits and assessments carried out by ACBs, in a form which does not reveal any confidential information, to identify any lack of consistency in areas required for continuous improvement of QSCS and, in consultation with the AVC, shall make any improvements to QSCS and inform the ACBs accordingly.
- 2.12 For the avoidance of doubt, IACS and IACS Ltd confirm that non-IACS CSs are free to request ACBs to audit and assess their compliance with the QSCS or any of its individual elements, all of which are publicly available on IACS' website, and in the event of a successful audit to issue a statement of compliance with the QSCS or such elements thereof as are satisfied.
3. **PARTICIPATION BY NON-IACS CSs IN IACS' TECHNICAL WORK**
- 3.1 IACS and IACS Ltd undertake to provide non-IACS CSs with the opportunity to participate fully in IACS' technical work, as described below.
- 3.2 IACS and IACS Ltd undertake to set up and maintain a subscription-based online Technical Contributions Forum ("IACS TC Forum") on IACS' website providing CSs with a platform for publication of comments and discussion with other CSs (including both IACS Members and non-IACS CSs) relating to IACS' technical work programmes. The subscription shall be set to recover the reasonable costs of establishing and maintaining

the IACS TC Forum only. The IACS TC Forum shall show all technical work items leading to new technical IACS Resolutions and, as soon as they become available, the initial draft related to those technical work items.

3.3 IACS and IACS Ltd undertake that:

- (a) Following the establishment of the IACS TC Forum, IACS and IACS Ltd will actively publicise the creation of this new platform, the requirements for being granted access (i.e. the requirements for qualifying as a CS) and shall invite all non-IACS CSs to register for and subscribe to the IACS TC Forum;
- (b) All subscribing CSs shall be informed by way of electronic notifications about any new work item or new draft of IACS Resolutions posted on the IACS TC Forum;
- (c) Any CS that subscribes to the IACS TC Forum shall have the right to comment on and discuss, through its own employees, the individual technical work programme items and to upload its own proposals on them;
- (d) A request to subscribe to the IACS TC Forum shall be made by the interested party to the IACS Permanent Secretary by submitting documentation evidencing that the interested party is a CS. The IACS Permanent Secretary shall promptly review the documentation and make a recommendation on the application to Council for decision;
- (e) Subject only to Council being satisfied that the interested party is a CS, GPG shall make all necessary arrangements and provide the relevant CS with all relevant information to provide it with full access to the IACS TC Forum;
- (f) An interested party which has applied for but has been refused access to the IACS TC Forum on the basis that it is not a CS shall be entitled to appeal this decision to the Independent Appeal Board in accordance with the Appeal Board Rules of Procedure.

3.4 Any non-IACS CS which is registered on the IACS TC Forum can at its option participate with its own employees in IACS WGs in accordance with the following procedure:

- (a) Within 1 month of publication of a new technical work item on the IACS TC Forum, any non-IACS CS which wishes to participate in the work relating to that item may notify the IACS Permanent Secretary of its request to be granted full access to the relevant discussions of the WG in charge of that work item;
- (b) The IACS Permanent Secretary shall promptly inform the relevant WG Chairman of any such request for participation, who shall make all necessary arrangements and provide the relevant non-IACS CS with all relevant information to allow the non-IACS CS full access to the work of the WGs;
- (c) A non-IACS CS which participates in a WG shall have full access to the same information, the same opportunities to state its views and to contribute to the discussions within the WG as any IACS Member in that WG on a non-discriminatory basis;
- (d) A non-IACS CS which has made a request for participation in accordance with paragraph 3.4(a) but considers that it has been denied the effective exercise of the specific rights particularised in paragraphs 3.4(b) and (c) shall promptly raise the matter with the relevant IACS WG Chairman with a view to finding an agreeable solution:

- (i) If not resolved at the WG level to the satisfaction of the non-IACS CS within 14 days of the grievance having arisen, the non-IACS CS shall, within 14 days of the determination at WG level, be entitled to refer the matter to the Chair of the IACS GPG for a decision. The reference shall be made in writing, shall be copied to the IACS WG Chairman and all WG members and shall, among other things, specify the specific nature of the alleged complaint; the precise nature of the redress sought; and details concerning the attempts made to resolve the matter at the WG level. The Chair of the IACS GPG shall decide the matter by way of a written and reasoned decision within 14 days.
- (ii) The relevant non-IACS CS shall be entitled to appeal the decision of the Chair of the IACS GPG to the Chairman of the Independent Appeal Board in accordance with the Appeal Board Rules of Procedures.
- (e) The WG Chairman shall summarise all views expressed by the WG participants in the technical recommendation that the IACS Members within the WG may resolve to put to GPG/Council for adoption by IACS;
- (f) All IACS Members and non-IACS CSs which participate in a WG shall bear their own costs of their employees' participation in the WG and shall make a reasonable and proportionate contribution to the running expenses of the WG.

### ***Implementation***

- 3.5 IACS and IACS Ltd undertake to implement the Commitments contained in this Section 3 within 30 days of the Effective Date. In particular, IACS shall adopt the IACS Procedure which is attached in Annex 6 hereto within 30 days of the Effective Date.
- 4. **ACCESS BY NON-IACS CSs TO IACS RESOLUTIONS AND TBs**
- 4.1 IACS and IACS Ltd undertake:
  - (a) To place in the public domain, at the same time and in the same way as they are made available to IACS Members, all current and future versions of IACS Resolutions, as well as a history file containing the main points of discussion and any TB document;
  - (b) To include on IACS' website a statement that non-IACS CSs are free to use such material, royalty free and without licence, by embedding it in their own classification rules, notwithstanding any intellectual property rights that may be held by IACS Members;
  - (c) That IACS and IACS Ltd shall place no restriction on their individual freedom to enter into any agreement with any CS in relation to the provision of further information or assistance with regard to the application of IACS Resolutions.
- 4.2 A decision (whether explicit or implicit) not to publish an IACS Resolution or existing Technical Background document available to IACS Members shall be appealable to the Independent Appeal Board.
- 4.3 The Commitment at paragraph 4.1(b) above is made on the premise that, where a CS decides to embed IACS Resolutions into its own published rules, it shall be the responsibility of that CS to verify the contents and the application of the IACS Resolutions.

- 4.4 IACS, IACS Members and IACS Ltd shall not be taken to have made any representation that any CS using IACS Resolutions, pursuant to paragraph 4.3 or otherwise, is operating in compliance with IACS Resolutions and they accept no liability (in contract, tort or otherwise) for any defect or deficiency in IACS Resolutions, or the related information, or for any resulting damage.
- 4.5 IACS and IACS Ltd undertake to release to the public, free of charge, a CSR Tracking Database to provide users with a searchable database on CSR revision history with supporting materials.

***Implementation***

- 4.6 The statement referred to at paragraph 4.1(b) above was placed on IACS' website on 16 December 2008<sup>5</sup>.
- 4.7 Where they were not already published, IACS published all the existing TBs for IACS Resolutions on IACS' website in November 2008.
- 4.8 The CSR Tracking Database became active on 19 November 2008 and contains:
- a full History of Revision (Rule Change Notice and Corrigenda) on a paragraph by paragraph basis;
  - date of approval and implementation;
  - what was amended/corrected;
  - TBs when relevant;
  - a copy of all revision/correction texts; and
  - Rule Change Notices and Corrigenda.
- 4.9 IACS and IACS Ltd commit to ensuring that all relevant industry associations representing shipowning, shipbuilding, cargo and insurer interests and non-IACS CSs are invited and able to register their users with the Permanent Secretariat, who shall then issue user log-in IDs so that they may access the CSR Tracking Database.
- 4.10 IACS shall adopt the IACS Procedure which is in Annex 6 hereto within 30 days of the Effective Date.

**SECTION C – DURATION, REPORTING AND REVIEW CLAUSE**

These Commitments shall remain in force for a period of five years as of the Effective Date.

IACS and IACS Ltd shall promptly report to the Commission its compliance with paragraphs 1.2, 1.3, 1.4, 2.9, 3.5, 4.9 and 4.10 above.

Throughout the period during which steps shall be taken to implement these Commitments, IACS and IACS Ltd shall provide the Commission with an annual written report on those steps taken during the relevant year. The report relating to 2009 shall be provided by 1 March 2010, and further reports shall be provided on 1 March of each year up to and including 2015.

IACS and IACS Ltd reserve the right to amend the *Membership Criteria: Guidance* (see Annex 4) in the light of relevant regulatory developments or experience in the application of the *Guidance* and/or any changes in commercial usage in the maritime industry or more generally which are

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<sup>5</sup> See <http://www.iacs.org.uk/publications/default.aspx>



relevant to services provided by CSs. Any such amendment shall pursue the objective of ensuring that the objective, transparent, non-discriminatory qualitative Membership Criteria are in practice applied in an appropriate, reasonable and non-discriminatory way. Any such amendment, together with an explanation of the reasons for it, shall first be notified to the Commission and enter into effect only if the Commission does not object to it within 3 months from the date of the notification. Any such amendment shall be published as soon as it enters into force in the same way as Annex 4 is published.

IACS and IACS Ltd also reserve the right to amend Section 3.4 and Annex 6 (Section 1) of the Commitments to allow IACS and IACS Ltd to take objectively necessary, proportionate and non-discriminatory steps to ensure that the efficiency and quality of IACS Working Groups is not unduly impaired as a result of the exercise of the participation rights contained in Section 3.4 and Annex 6 (Section 1) of these Commitments. Any such amendment, together with an explanation of the reasons for it, shall first be notified to the Commission and enter into effect only if the Commission does not object to it within 3 months from the date of the notification. Any such amendment shall be published as soon as it enters into force in the same way as these Commitments and Annex 6 are published.

Without prejudice to the preceding paragraphs, IACS and IACS Ltd reserve the right to request the Commission to modify the Commitments where there has been a material change in any of the facts on which the Article 9 Decision is based.

#### **SECTION D – GENERAL RELEASE PROVISION**

For the avoidance of doubt, if any IACS Member ceases to be an IACS Member, the obligations contained in these Commitments shall automatically cease to apply to it.

#### **SECTION E – GOVERNING LANGUAGE**

The language of these Commitments is English. If there is any variation between the English language version of these Commitments and versions in any other language, the English language version shall prevail.

#### **SECTION F - FINAL PROVISIONS**

The Commitments shall take effect upon the date of notification of the Article 9 Decision by which the Commission makes the Commitments binding on IACS and IACS Ltd, i.e. the Effective Date.

The Annexes to this document form an integral part of the Commitments.

IACS and IACS Ltd shall publish and keep updated the non-confidential version of these Commitments in a prominent way on IACS' website, and shall require its Members to publish and keep updated the non-confidential version of these Commitments in a prominent way on their respective websites, throughout the whole period during which they remain in force. The non-confidential version shall be approved by the Commission in advance.

**THESE COMMITMENTS HAVE BEEN DULY ADOPTED BY RESOLUTIONS OF THE  
COUNCIL OF IACS AND OF THE BOARD OF DIRECTORS OF IACS LTD.**

**SCHEDULE OF ANNEXES WHICH FORM AN INTEGRAL PART OF THE COMMITMENTS**

|                |                                                                                                          |
|----------------|----------------------------------------------------------------------------------------------------------|
| <b>Annex 1</b> | List of current members of IACS                                                                          |
| <b>Annex 2</b> | Relevant sections of the IACS Charter                                                                    |
| <b>Annex 3</b> | Membership Applications and Periodical Verification of Existing Members                                  |
| <b>Annex 4</b> | Membership Criteria: Guidance                                                                            |
| <b>Annex 5</b> | Appeal Board Rules of Procedure                                                                          |
| <b>Annex 6</b> | Participation in IACS' Technical Work and Access to IACS Resolutions and Technical Background Documents. |

## **Annex 1**

### **LIST OF THE CURRENT MEMBERS OF IACS**

ABS

BV

CCS

DNV

GL

KR

LR

NK

RINA

RS

**Annex 2**

**THE INTERNATIONAL ASSOCIATION OF CLASSIFICATION SOCIETIES**

**DRAFT RELEVANT SECTIONS OF THE IACS CHARTER**

**1. MEMBERSHIP OF IACS**

**Membership Criteria**

1.1 IACS' Membership Criteria are as follows:

- (i) Demonstrated ability to develop, apply, maintain, regularly up-date and publish its own set of classification rules in the English language covering all aspects of the ship<sup>1</sup> classification process (design appraisal, construction survey and ships-in-service periodical survey);
- (ii) Demonstrated ability to provide surveys of ships under construction in accordance with the Classification Society's rules and periodic surveys of ships in service, including statutory surveys in accordance with IMO and Flag State requirements;
- (iii) Sufficient international coverage by exclusive surveyors relative to the size of the Classification Society's construction programme and classed fleet in service;
- (iv) Extensive documented experience in assessing the design and construction of ships;
- (v) Significant in-house managerial, technical, support and research staff commensurate with the size of the Classification Society's classed fleet and its involvement in the classification of ships under construction;
- (vi) Technical ability to contribute with its own staff to the work of IACS in developing minimum rules and requirements for the enhancement of maritime safety;
- (vii) Contribution on an ongoing basis with its own staff to the work of IACS as described in (vi) above;
- (viii) Maintaining in electronic form and updating at least annually a register of classed ships in the English language;
- (ix) Independence from ship-owning, ship-building and other commercial interests which could undermine the Classification Society's impartiality;
- (x) Compliance with the IACS Quality System Certification Scheme (QSCS).

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<sup>1</sup> "Ships" are defined as any ships subject to SOLAS safety certification and capable of unrestricted navigation.

- 1.2 Interpretative guidance in respect of the Criteria is contained in the document ***Membership Criteria: Guidance***, which is published and kept updated on the IACS website.

### **Application for membership**

- 1.3 Any CS which wishes to become a Member of IACS shall apply for membership in accordance with the IACS document ***Membership Applications and Periodical Verification of Existing Members*** (at **Annex 1** hereto).
- 1.4 An applicant that satisfies all criteria save for the criterion at 1.1 (vii) above shall be admitted as an IACS Member but shall have no voting rights. The criterion at 1.1(vii) above shall be assessed over the first 3 years of membership and, upon satisfactory compliance with this Criterion at the end of that period, the Member shall automatically enjoy full voting rights.

### **Rights of Members**

- 1.5 Without prejudice to Clause 1.4 above and 1.7 below, an IACS Member has the right to:
- (a) refer to itself as a Member of IACS;
  - (b) participate and vote in all meetings and discussions of Council and General Policy Group;
  - (c) participate and vote in all Working Groups;
  - (d) participate and vote in the Quality Committee; and
  - (e) participate in the IACS delegation to IMO meetings.

### **Obligations of Members**

- 1.6 IACS Members shall:
- (a) contribute to IACS on an equal financial basis with other IACS Members (including, without limitation, bearing the salary, travel and other expenses of its own representatives to the Council and subsidiary bodies, and sharing the expenses connected with the Permanent Secretariat<sup>2</sup>, the Independent Appeals Board, the Panel Chairs and their secretariats);
  - (b) continue to satisfy all of the Membership Criteria;

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<sup>2</sup> The expenses of the Quality Secretariat and IACS Operations Centre shall be shared among Members according to the current scheme in proportion to the individual tonnage of classed ships, until the end of the Transition Period.

- (c) submit to the verification process set out in the ***Membership Applications and Periodical Verification of Existing Members*** (at **Annex 1** hereto);
- (d) abide by the IACS Procedures in force from time to time;
- (e) be Chairman of IACS Council, and Chairman of the General Policy Group for a period of one year on a fixed rotational basis;
- (f) comply with all IACS Resolutions, except in cases where reservations are allowed by IACS and made by Members.

### **Suspension and withdrawal of membership**

- 1.7 Council shall have the power to suspend and withdraw membership from any existing member in accordance with the procedure laid down in the IACS document ***Membership Applications and Periodical Verification of Existing Members*** (at **Annex 1** hereto).

### **Appeals relating to the refusal, suspension or withdrawal of membership**

- 1.8 Decisions of Council refusing, suspending and withdrawing membership of IACS may be appealed by the CS concerned to the Independent Appeals Board in accordance with the IACS document ***Appeal Board Rules of Procedure*** at **Annex 2** hereto.

### **Resignation from the Association**

- 1.9 Any Member may resign from the Association by written notice to the Council, such notice taking effect 6 calendar months after the date thereof.

## **2. APPEALS**

- 2.1 The Independent Appeals Board shall comprise a Chairman (the "IAB Chairman") and a panel of at least 10 adjudicators, all of whom shall be appointed for a period of 5 years, have relevant technical and/or legal expertise<sup>3</sup> and be independent<sup>4</sup> of IACS Members, the Permanent Secretariat and any organisation which has been an IACS Member or "Associate Member" of IACS or which has ever applied for membership of IACS. Where the IAB Chairman is unavailable or indisposed, the IAB Chairman shall designate one of the other adjudicators to act as IAB Chairman. If the IAB Chairman fails to do so, Council shall designate one of the other adjudicators to act as IAB Chairman. In making appointments to the panel of adjudicators, Council shall ensure the representation of all major geographic areas of the world.

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<sup>3</sup> In this context, technical expertise shall mean proven knowledge of and expertise in the shipping sector, acquired in a professional capacity.

<sup>4</sup> In this context, independence shall mean the absence of any business, personal or family links to any such entity or organisation.

2.2 Appeals may be made to the Independent Appeal Board by the CS or interested party concerned against the following decisions made by IACS:

- (a) A decision to refuse membership of IACS
- (b) A decision to suspend membership of IACS
- (c) A decision to withdraw membership of IACS
- (d) A decision that an interested party is not a Classification Society
- (e) A decision taken by the Chairman of GPG in response to a grievance that a CS may have been denied the effective exercise of its rights to participate in IACS Working Groups
- (f) A decision (whether explicit or implicit) not to publish an IACS Resolution or existing Technical Background document available to IACS Members.

2.3 Appeals to the Independent Appeal Board are without prejudice to any right the appellant may have to apply to a civil court for redress. For the avoidance of doubt nothing in this clause 2.3 shall be taken to confer any rights or jurisdiction that would not otherwise exist under the applicable law or forum.

2.4 The powers and procedures applicable to such appeals and applications are set out in **Annex 1 (*Membership Applications and Periodical Verification of Existing Members*)**, **Annex 2 (*Appeal Board Rules of Procedure*)** and **Annex 3 (*Participation in IACS Technical Work and Access to IACS Resolutions and Technical Background Documents*)**.

### **3. APPLICABLE LAW AND FORUM**

3.1 This Charter shall be construed in accordance with English law.

3.2 Without prejudice to clause 2.3 above, any dispute relating to its interpretation, application or enforcement shall be heard by the Supreme Court of England & Wales.

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**ANNEX 1**

**Membership Applications and Periodical Verification of Existing Members**

**ANNEX 2**

**Appeal Board Rules of Procedure**

**ANNEX 3**

**Participation in IACS Technical Work and Access to IACS Resolutions and Technical Background Documents**



## **Annex 3**

### **IACS PROCEDURE**

#### **MEMBERSHIP APPLICATIONS AND PERIODICAL VERIFICATION OF EXISTING MEMBERS**

This document sets out the procedure for membership applications and the periodical verification of existing IACS Members' compliance with the Membership Criteria.

This Procedure forms part of the commitments offered by IACS to the European Commission.

All terms shall have the meaning given to them in the document with the title "Commitments Offered to the European Commission under Article 9 of Council Regulation (EC) No 1/2003", unless otherwise stated.

#### **1. Procedures for Membership Applications and Periodical Verification of Existing IACS Members**

##### **1.1 Application Process**

The process governing applications for membership of IACS is as follows:

- (a) Any CS may apply for membership in accordance with the procedure laid down herein;
- (b) Before it is granted Applicant status, a party that is applying for membership shall provide to the IACS Permanent Secretary documentation evidencing that it is a CS as defined. The IACS Permanent Secretary is to review the documentation submitted and, if he finds that any relevant documentation needed to determine whether the party that is applying for membership is a CS is missing, he may ask this party to provide the missing elements within a reasonable deadline. The IACS Permanent Secretary shall, within 3 months from the initial submission of the documentation, review the documentation provided and make a recommendation to the IACS Council as to whether the interested party satisfies the definition of a CS and, in the light of the IACS Permanent Secretary's recommendation, the IACS Council shall then decide within 1 month of receipt of the recommendation whether to grant the interested party Applicant status. The IACS Council shall inform the interested party of its decision in writing and, if it declines to grant Applicant status, the decision shall include the IACS Council's reasons;
- (c) If the interested party is granted Applicant status, it shall then submit to the IACS Council, through the Quality Secretary, an application containing all relevant information, evidence and explanation, with a view to demonstrating that it fulfils the Membership Criteria. The application shall in particular include information responding to each Review Item set out in the document *Membership Criteria: Guidance*. In the event that the Applicant is re-applying for membership after a previous rejection or withdrawal decision, it shall provide evidence of any material changes made since that rejection or withdrawal decision. The Applicant shall bear the costs associated with its application, if any, and shall be required to specifically accept IACS' procedures;
- (d) A Review Panel shall be appointed by the IACS Council to assist with the review of applications for membership. The Review Panel shall be assisted by the IACS Permanent Secretary and Quality Secretary. The Review Panel shall be composed of three IACS Council members with one IACS Council member being replaced each year so that any IACS Council member remains on the Review Panel for a maximum period of three years;

- (e) If the Applicant considers any of the information in its application to be confidential, it should advise the Review Panel in writing and provide a non-confidential summary to the Quality Secretary, together with the full confidential version of the application. In order to verify the accuracy of the non-confidential summary provided by the Applicant, the Quality Secretary only shall, upon signature of an appropriate confidentiality agreement with the Applicant, have access to the full confidential version of the application. The application shall then be considered in its non-confidential form;
- (f) The Review Panel is to review the application and, if it finds that any relevant information, evidence or explanation needed to make a determination on the application is missing, it may ask the Applicant to provide the missing element within a reasonable deadline set by the Review Panel;
- (g) Within 6 months of receipt of the application, the Review Panel shall assess whether the Applicant complies with the Membership Criteria and draw up its recommendation to the IACS Council. This recommendation, including the reasoning for it, will be communicated to the Applicant at the same time as it is communicated to the IACS Council;
- (h) Upon receipt of the Review Panel's recommendation and its file of information provided by the Applicant, the IACS Council shall inform the Applicant that it is entitled to a hearing by the IACS Council before the IACS Council takes its decision. The IACS Council is to determine whether the documentation is complete and may ask the Applicant to provide further information within a reasonable deadline set by the IACS Council;
- (i) Within 3 months of receipt of the Review Panel's recommendation, the IACS Council is to decide whether to accept or reject the application. The IACS Council may reject an application on the basis that the Applicant does not satisfy the Membership Criteria and/or that the Applicant has failed to provide sufficient evidence within the reasonable deadline laid down by the IACS Council to demonstrate that it satisfies the Membership Criteria. The Applicant is to be promptly notified of the IACS Council's decision and reasoning in writing;
- (j) An Applicant whose application is rejected may reapply for membership not less than one year following the IACS Council's final decision rejecting the application or, where an appeal is brought against the decision, the date of the Independent Appeal Board's decision rejecting the appeal, whichever is the later.

## **1.2 Verification Process**

IACS shall verify all IACS Members' compliance with the Membership Criteria on a concurrent basis once every three years (the "Periodic Review Date").

The verification process is as follows:

- (a) For existing IACS Members, the first Periodic Review Date shall commence no later than 1 January 2011 and be finalised by 1 July 2011. For any new IACS Member, the first periodic review shall be the first Periodic Review Date immediately following its admission to membership, unless that Date is less than 6 months from the date of the new IACS Member's admission to IACS;
- (b) On the occasion of its first periodic verification, each IACS Member is to submit to the IACS Council, through the Quality Secretary, a compliance statement containing all relevant information, evidence and explanation, with a view to demonstrating that it fulfils the Membership Criteria. The compliance statement

shall in particular include information responding to each Review Item set out in the document *Membership Criteria: Guidance*;

- (c) For subsequent periodic reviews, a statement of any changes that have occurred in relation to the Membership Criteria since the last periodic review will be sufficient;
- (d) If the IACS Member considers that any of the information in its compliance statement is confidential, it should so advise the IACS Council in writing and provide a non-confidential summary to the Quality Secretary, together with the full confidential version of the compliance statement. In order to verify the accuracy of the non-confidential summary provided by the IACS Member, the Quality Secretary only shall, upon signature of an appropriate confidentiality agreement with the IACS Member, have access to the full confidential version of the compliance statement. The compliance statement shall then be considered by the IACS Council in its non-confidential form;
- (e) The IACS Council is to review the compliance statement and, if it finds that any relevant information, evidence or explanation needed to make a determination of continuing compliance is missing, it shall ask the IACS Member to provide the missing element within a reasonable deadline set by the IACS Council;
- (f) Each IACS Member has the right to a hearing by the IACS Council before the IACS Council takes its decision;
- (g) Once the IACS Council is satisfied that it has received all relevant information from the IACS Member, it shall so inform the IACS Member and within 3 months therefrom the IACS Council is to decide whether to:
  - confirm continued membership, or
  - initiate the suspension process in accordance with the procedure laid down in Section 1.3 below;
- (h) The IACS Member is to be notified of the IACS Council's decision in writing.

Each IACS Member is required to report to the IACS Council immediately that it ceases to have a valid QSCS certificate as required by Membership Criterion (x) in the IACS Charter. In such a case, the IACS Council is to initiate the verification process immediately to assess whether Membership Criterion (x) is fulfilled. Where the IACS Council determines that the IACS Member does not comply with Criterion (x), it shall immediately initiate the suspension process laid down in Section 1.3 below.

### **1.3 Suspension and withdrawal process**

Where the IACS Council determines that an IACS Member is not compliant with the Membership Criteria, it is to initiate the following process:

- (a) The IACS Council is to notify the IACS Member in question in writing that it has initiated the suspension process;
- (b) Such notification is to state the reasons for the initiation of the suspension process and is to set a reasonable time period in which the IACS Member in question is to rectify the alleged cause(s) of non-compliance and/or justify its conduct;
- (c) If the IACS Council determines, upon expiry of the period referred to in subparagraph (b) above, that the IACS Member remains non-compliant with the Membership Criteria, the IACS Council shall take a decision to suspend the IACS

Member's voting rights in IACS (the "suspension decision"). Where a suspension decision is taken in accordance with this procedure, the IACS Council shall notify the IACS Member of the reasons for the decision in writing;

- (d) The suspension decision is to set a reasonable time period in which the IACS Member is to rectify the cause(s) of non-compliance;
- (e) The suspension decision shall not take effect until the deadline for appeal to the Independent Appeal Board has expired or, where the IACS Member informs the IACS Council that it has made a request for interim measures in accordance with the Appeal Board Rules of Procedure, the date of any decision declining the request, whichever is the later;
- (f) At all times until a decision under Section 1.3(c) takes effect, IACS Ltd and each IACS Member will refrain from making any public announcement about the suspension decision. Once the suspension decision takes effect, IACS shall make an appropriate announcement on its website. IACS shall also make an appropriate announcement when the suspension decision expires;
- (g) Whilst the suspension is in force, the rights (including the right to participate fully in the work of IACS) and obligations of membership (including the obligation to contribute financially on the same basis as voting IACS Members) will continue to apply to the suspended IACS Member, except for the right to vote in the IACS Council, IACS GPG, the Quality Committee and IACS Working Groups;
- (h) IACS Council is to take a decision withdrawing IACS membership (the "withdrawal decision") if the IACS Member fails to rectify the non-compliance which led to the IACS Council's suspension decision within the applicable time period as set out under Section 1.3(d) above. Where membership is withdrawn in accordance with this procedure, the IACS Council is to state the reasons for the withdrawal in writing;
- (i) At all times until a decision under Section 1.3(h) takes effect, IACS Ltd and each IACS Member will refrain from making any public announcement about the withdrawal decision. Once the withdrawal decision takes effect, IACS shall make an appropriate announcement on its website;
- (j) An IACS Member whose membership is withdrawn may reapply for membership not less than one year following the IACS Council's final withdrawal decision or, where an appeal is brought against the decision, the date of the Independent Appeal Board's decision rejecting the appeal, whichever is the later.

#### **1.4 Adoption of Council decisions to reject, suspend or withdraw membership**

For the avoidance of doubt, the IACS Council decisions referred to in Sections 1.1(b), 1.1(i), 1.3(c), 1.3(h) and 1.6 of this Procedure shall be adopted as follows: when three-quarters of all IACS Council members entitled to vote are available they shall constitute a quorum to vote upon a decision, and that decision shall not be passed unless three-quarters of all IACS Council members entitled to vote vote in its favour.

**1.5 Independent Appeals Process in relation to IACS Council decisions to reject, suspend or withdraw membership**

The IACS Council shall appoint a Chairman of the Independent Appeal Board and a panel of at least 10 adjudicators for a period of 5 years, all of whom shall:

- (a) have relevant technical and/or legal expertise (in this context, technical expertise shall mean proven knowledge of and expertise in the shipping sector, acquired in a professional capacity); and
- (b) be independent of IACS Members, IACS Ltd and any organisation which has been an IACS Member or “Associate Member” of IACS or which has ever applied for membership of IACS (in this context, independence shall mean the absence of any business, personal or family links to any such entity or organisation).

Where the Chairman is unavailable or indisposed, the Chairman shall designate one of the other adjudicators to act as Chairman. If the Chairman fails to do so, the IACS Council shall designate one of the other adjudicators to act as Chairman. In making appointments to the panel of adjudicators, the IACS Council shall ensure the representation of all major geographic areas of the world.

Appeals may be made to the Independent Appeal Board against decisions taken by the IACS Council in accordance with Sections 1.1(b), 1.1(i), 1.3(c) and 1.3(h) above and 1.6 below.

Appeals to the Independent Appeal Board are without prejudice to any right the appellant may have to apply to a civil court for redress. For the avoidance of doubt nothing in this clause shall be taken to confer any rights or jurisdiction that would not otherwise exist under the applicable law or forum.

The Independent Appeal Board is governed by the Appeal Board Rules of Procedure.

**1.6 Procedure to be followed by the IACS Council in event of successful appeal**

If the Independent Appeal Board upholds the appeal, it shall notify the IACS Council forthwith. Within 3 months of such notification, the IACS Council is required to review the contested decision in the light of the findings of the Independent Appeal Board and render a new decision.

\* \* \* \* \*

## **Annex 4**

### **MEMBERSHIP CRITERIA: GUIDANCE**

This Guidance reflects IACS' view of those items which it is necessary to consider in making a transparent, objective and justifiable assessment of whether an applicant fulfils IACS' Membership Criteria. This document is intended to assist IACS, its members and applicants for membership in applying IACS' Membership Criteria. IACS reserves the right to amend this Guidance in the light of relevant regulatory developments or experience in the application of the Guidance and/or any changes in commercial usage in the maritime industry or more generally which are relevant to services provided by CSs.

Any such amendment shall pursue the objective of ensuring that the objective, transparent, non-discriminatory qualitative membership criteria are in practice applied in an appropriate, reasonable and non-discriminatory way. Any such amendment, together with an explanation of the reasons for it, shall first be notified to the European Commission and enter into effect only if the European Commission does not object to it within 3 months from the date of the notification. Any such amendment shall be published as soon as it enters into force in the same way as this Guidance is published.

An Applicant for membership is to submit an application which is to include all relevant information, evidence and explanation with a view to demonstrating that it fulfils, with the exception of Membership Criterion (vii), each of the Membership Criteria. The application shall in particular include information responding to each Review Item set out below. In the event that the Applicant is re-applying for membership after a previous rejection or withdrawal decision, it shall provide evidence of any material changes made since that rejection or withdrawal decision.

For the purposes of the first periodic verification of continuing compliance, each IACS Member's compliance statement is to include all relevant information, evidence and explanation with a view to demonstrating that it fulfils each of the Membership Criteria. The compliance statement shall in particular include information responding to each Review Item set out below. For subsequent periodic reviews, a statement of any changes (supported by appropriate evidence) that have occurred in relation to the Membership Criteria since the last periodic review will be sufficient.

The methodology for assessment is as follows:

- 1) A CS must meet *each* of the ten Membership Criteria set out in the Charter (albeit Membership Criterion (vii) only after 3 years);
- 2) Subject to point 3) below, in assessing whether a CS meets a particular Membership Criterion, IACS must undertake an "overall" assessment of all relevant facts, including the information obtained in relation to the Review Items for that Membership Criterion as listed below; and
- 3) A CS must always satisfy Review Items 1.1 (for the 1st Membership Criterion), 8.1 (for the 8th Membership Criterion), 9.1 (for the 9th Membership Criterion) and 10.1 (for the 10th Membership Criterion) as these reflect (at least to a very significant extent) the essence of the related Membership Criterion set out in the Charter.

For the purposes of the following Review Items, in the case of dual class ships, the actual statutory and/or classification work performed by the CS shall be duly taken into account.

**1. Demonstrated ability to develop, apply, maintain, regularly up-date and publish its own set of classification rules in the English language covering all aspects of the ship classification process (design appraisal, construction survey and ships-in-service periodical survey)**

|     | Review Item                                                                                                                                                                                                                                                                                                                      | Yes | No | Consider | Guidance Notes                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 | In addition to being a CS, does the applicant publish its own set of self-developed classification rules in the English language covering all aspects of the ship classification process (design, construction survey and ships-in-service periodical survey) for any ship type falling under the scope of the SOLAS convention? |     |    |          | <p>Ships are defined as any ships subject to SOLAS safety certification and capable of unrestricted navigation. SOLAS Chapter I Regulation 3 (a) provides that, unless expressly provided otherwise, SOLAS does not apply to certain ship types, including the following:</p> <ul style="list-style-type: none"> <li>(i) Ships of war and troopships;</li> <li>(ii) Cargo ships of less than 500 gross tonnage;</li> <li>(iii) Ships not propelled by mechanical means;</li> <li>(iv) Wooden ships of primitive build;</li> <li>(v) Pleasure yachts not engaged in trade;</li> <li>(vi) Fishing vessels.</li> </ul> <p>If no, decline.<br/>If yes, take 1.2 through to 1.6 into account in overall assessment.</p> |
| 1.2 | Does the CS have a process to take account of independent, external stakeholder input and advice with respect to the CS's classification Rules and rule development process?                                                                                                                                                     |     |    |          | Consider as part of overall assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 1.3 | Does the CS have survey procedures covering the construction of ships?                                                                                                                                                                                                                                                           |     |    |          | Consider as part of overall assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 1.4 | Does the CS have survey procedures covering ships in                                                                                                                                                                                                                                                                             |     |    |          | Consider as part of overall assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

|     |                                                                                                                                                            |  |  |  |                                         |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-----------------------------------------|
|     | service?                                                                                                                                                   |  |  |  |                                         |
| 1.5 | Are the rules and survey procedures regularly updated taking account of feedback from survey of ships in service and applicable requirements as necessary? |  |  |  | Consider as part of overall assessment. |
| 1.6 | Does the CS have its own research and development group contributing to rule development and updating of rules?                                            |  |  |  | Consider as part of overall assessment. |

**2. Demonstrated ability to provide surveys of the ships under construction in accordance with the CS's rules and periodic surveys of ships in service, including statutory surveys in accordance with IMO and Flag State requirements**

|     |                                                                                                                                                                                                                         |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2.1 | Does the CS hold the following statutory authorizations?<br>(i) SOLAS Safety Construction<br>(ii) Loadline<br>(iii) MARPOL Annex I<br>(iv) SOLAS Safety Equipment                                                       |  |  |  | Consider as part of overall assessment.                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 2.2 | In respect to the Paris and Tokyo MoU and USCG flag State categorisations, is the CS authorised by flag state(s) on the following lists:<br><br>White List<br><br>Grey List<br><br>Black List<br><br>USCG Targeted List |  |  |  | (1) The CS has authorisation from any White List flag or any non-targeted USCG flags: Satisfactory.<br>(2) No, but the CS has the intention and commitment to gain authorisation for any White List flag or non-targeted USCG flag in the near future: take this into account in the overall assessment.<br>(3) Neither (1) nor (2): take this into account in the overall assessment.<br>(4) If Black list or targeted USCG flag only, take this into account in the overall assessment. |
| 2.3 | Is the CS a Recognised Organisation on at least one of                                                                                                                                                                  |  |  |  | (1) If Yes, Satisfactory.                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |



|     |                                                                                                                      |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----|----------------------------------------------------------------------------------------------------------------------|--|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     | the most recent Paris or Tokyo MOU high performance level lists or on the most recent USCG zero point category list? |  |  |  | <p>(2) If No, but the CS has the intention and commitment to improve in the near future: take this into account in the overall assessment.</p> <p>(3) If Neither (1) nor (2): take this into account in the overall assessment.</p> <p>(4) Moreover, the assessment of an organisation's performance will take into account any circumstances that might affect such performance, including inter alia the size and composition of its fleet, its average age and trading patterns. For this purpose, the organisation concerned shall be invited to submit its observations and all relevant information.</p> |
| 2.4 | Does the CS have software systems for verifying compliance with its rules and applicable legislation?                |  |  |  | <p>A CS should have the capability to calculate whether the design meets their rules. For statutory calculation, such as load line, acceptance of the shipyard's calculation could be considered sufficient if the approval personnel are appropriately qualified. However, it is normal for a CS to hold proprietary licensed software to verify shipbuilders' calculations and issue the appropriate class and statutory certification.</p> <p>If no, explore how the classification performs this function, and take into account in overall assessment.</p>                                                |

**3. Sufficient International Coverage by Exclusive Surveyors relative to the size of the CS's construction programme and Classed Fleet in service**

|     |                                                                                                                              |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----|------------------------------------------------------------------------------------------------------------------------------|--|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1 | Is the CS's ratio of "classed ships plus ships under construction" to exclusive field surveyors less than 12:1? <sup>1</sup> |  |  |  | <p>(1) Yes, ratio is less than 12:1: satisfactory.</p> <p>(2) No, but due to the composition of their classed fleet and construction/conversion program, and/or the general or specific trading areas of their classed fleet, it is considered that there are sufficient surveyors to provide the required coverage: satisfactory.</p> <p>(3) No, but CS can commit, with a reasonable prospect of success, to providing sufficient coverage within a reasonable time: take this into account in overall assessment.</p> <p>(4) No, does not satisfy 1, 2 or 3: take this into account in overall assessment.</p>                                            |
| 3.2 | Can the CS provide surveys to meet the trading patterns of its classed fleet?                                                |  |  |  | <p>In respect to the required international network of a CS member of IACS, the following should be considered:</p> <p>1. Capability of assigning in every place of work, when and as needed, means and staff commensurate with the tasks to be carried out;</p> <p>2. A worldwide coverage by its exclusive surveyors or, in exceptional and duly justified cases, through exclusive surveyors of another CS; worldwide coverage does not require that a CS has more than a single office;</p> <p>3. Direct lines of responsibility and control established between the central and the regional offices (if any) and between the CS and its surveyors.</p> |

<sup>1</sup> For the purposes of the ratios set out in Review Items 3.1, 5.1, and 5.3 "ships" are self-propelled vessels above 100GT and ships under construction are ships which have had their keel laid or are at a similar stage of construction according to SOLAS and which have not yet been delivered.

**4. Extensive documented experience in assessing the design and construction of ships**

|     |                                                                                                                                                                                                             |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.1 | Does the CS have documented records over the last ten years indicating that their exclusive surveyors have performed surveys to the IMO Conventions and classification rules for which they are authorised? |  |  |  | <p>The assessment of points 4.1, 4.2 and 4.3 shall take into account the following elements in order to determine the organisation's experience over the last ten years:</p> <p>A. Records of the design review according to the organisation's rules.</p> <p>B. Records of statutory surveys concerning new buildings.</p> <p>C. Documented experience of the organisation's staff.</p> <p>D. Ways in which the qualifications of the organisation's staff responsible for assessing the design and construction of ships have been maintained and updated.</p> <p>E. Assets, and in particular IT tools, used by the organisation for the purpose of verifying vessel compliance with relevant requirements.</p> <p>F. Any other objective elements demonstrating the organisation's capabilities under this criterion.</p> |
| 4.2 | Does the CS have documented training and qualification records and authorisations of their exclusive staff for ship types and conventions specified in 1.1 and 2.1 over the last ten years?                 |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4.3 | Does the CS have documented records of the design review according to its rules, or by equivalence, for recently classed newbuilds over the last ten years?                                                 |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

**5. Significant in-house managerial, technical, support and research staff commensurate with the size of the CS's classed fleet and its involvement in the classification of ships under construction**

|     |                                                                                                                                                                 |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.1 | Is the CS's ratio of "classed ships plus ships under construction" to "in-house managerial, technical, support and research staff" less than 10:1? <sup>1</sup> |  |  |  | <p>(1) Yes, ratio is less than 10:1: satisfactory.</p> <p>(2) No, but, considering additional mitigating or explanatory information the CS provides, the numbers are considered to be sufficiently commensurate: satisfactory.</p> <p>(3) No, but CS can commit, with a reasonable prospect of success, to achieving, within a reasonable time, sufficiently commensurate numbers: take this into account in overall assessment.</p> <p>(4) No, does not satisfy 1, 2 or 3: take this into account in overall assessment.</p> |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |  | Note: This does not require that all research and development must be done by in-house staff but rather that a society is to have a core of in-house research staff to define and manage the society's research programme.                                                                                                                                                                                                                                                                                                 |
| 5.2 | Does the CS have plan approval staff trained and certified to approve construction designs covered by the CS's rules and procedures, and the IMO Conventions for which it is authorised, in each of the following disciplines:<br>1. Hull structure<br>2. Machinery systems (including propulsion)<br>3. Electrical & Instrumentation (including control systems)<br>4. Subdivision and stability<br>5. Load line<br>6. Tonnage<br>7. Structural fire protection<br>8. Safety equipment<br>9. Oil pollution prevention? |  |  |  | Consider as part of overall assessment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| 5.3 | Is the CS's number of non-sister ship designs under review to total number of design approval surveyors/engineers less than 10:1? <sup>1</sup>                                                                                                                                                                                                                                                                                                                                                                          |  |  |  | (1) Yes, ratio is less than 10:1: satisfactory,<br>(2) No, but review of how the CS meets its responsibilities for approving the designs in its construction programme is considered satisfactory: satisfactory.<br>(3) No, but CS can commit, with a reasonable prospect of success, to making changes to approval programme such that it becomes satisfactory with a reasonable time: take this into account in overall assessment.<br>(4) No, does not satisfy 1, 2 or 3: take this into account in overall assessment. |

**6. Technical ability to contribute with its own staff to the work of IACS in developing minimum rules and requirements for the enhancement of maritime safety**

|     |                                                                                                                                                                                             |  |  |  |                                                                                                                                                                                                                                                                                          |
|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6.1 | Will the CS have nominated in-house technical staff, with the necessary experience and responsibility within their CS, to represent the CS on IACS Council, GPG, Panels, and Expert Groups? |  |  |  | Consider as part of overall assessment.                                                                                                                                                                                                                                                  |
| 6.2 | Does the CS have a research & development capability to contribute to the work programme of IACS?                                                                                           |  |  |  | (1) Yes: satisfactory.<br>(2) No, but CS can commit to providing, with a reasonable prospect of success, sufficient capability within a reasonable time: take this into account in overall assessment.<br>(3) No, does not satisfy 1 or 2: take this into account in overall assessment. |

**7. Contribution on an ongoing basis with its own staff to the work of IACS as described in 6 above**

|     |                                                                                                                                                                                                  |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7.1 | Have the CS's representatives contributed to the work of the Panels and GPG as reported by Panel and GPG Chairmen? For new members, this is to be assessed during initial 3-years of membership. |  |  |  | A CS shall be regarded as having contributed when the representatives of the CS have responded to the subjects put to members within GPG and the Working Groups which require a response and have made some substantive technical contribution on some of the Working Groups.<br><br>If yes: satisfactory.<br>If any report of No, and there is commitment to improve: satisfactory.<br>If multiple reports of No, and no improvement within one year, Council should consider suspension. |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**8. Maintaining in electronic form and updating at least annually a Register of Classed Ships in the English language**

|     |                                                                                                                               |  |  |  |                 |
|-----|-------------------------------------------------------------------------------------------------------------------------------|--|--|--|-----------------|
| 8.1 | Does the CS publish in an electronic form, and update at least annually, a register of classed ships in the English language? |  |  |  | If no, decline. |
|-----|-------------------------------------------------------------------------------------------------------------------------------|--|--|--|-----------------|

**9. Independence from ship-owning, ship-building and other commercial interests which could undermine the CS's impartiality**

|     |                                                                                                                                                                                                                                                                                                                      |  |  |  |                                                                                                                                                                                                                                                                                                                                                 |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9.1 | Is the CS organized and governed in such a manner that it is not controlled by, or interested in, shipowners, shipbuilders or others engaged commercially in the manufacture, equipping, repair or operation of ships?                                                                                               |  |  |  | <p>It is expected that the governing bodies of the CS would have less than 50% representation from combined shipowners, shipbuilders, and others engaged commercially in the manufacture, equipping, repair or operation of ships, and that the CS would not hold shareholdings of 50% or more in any such entities.</p> <p>If no, decline.</p> |
| 9.2 | Does the CS have statements within its operational procedures that state that surveyors or other employees of the CS shall not carry out classification or statutory work (or participate in the decision making related thereto) if that surveyor or employee has business, personal or family links to the client? |  |  |  | Consider as part of overall assessment.                                                                                                                                                                                                                                                                                                         |

**10. Compliance with QSCS**

|      |                                                    |  |  |  |                                                                                                                                                                                                                                                                                                                                          |
|------|----------------------------------------------------|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10.1 | Does the CS have a current valid QSCS certificate? |  |  |  | <p>The following should be taken into account:</p> <ol style="list-style-type: none"> <li>1. QMSR Compliance Report by ACB and Statement of Compliance with QSCS by IACS Council within the Transition Period defined in Commitments;</li> <li>2. Statement of Compliance with QSCS by ACB since 2011.</li> </ol> <p>If no, decline.</p> |
|------|----------------------------------------------------|--|--|--|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Annex 5

### IACS

#### APPEAL BOARD RULES OF PROCEDURE

##### 1. Definitions

**Appeal Board** means the Independent Appeal Board set up by IACS to hear Appeals in respect of Appealable Decisions.

**Appealable Decisions** means those decisions of IACS set out in Rule 2.1.

**Appeal Board Members** means the members of the Appeal Board appointed by IACS.

**Appellant** means a person wishing to appeal against an Appealable Decision.

**Case Panel** means the adjudicator(s) appointed under Rule 4.

**Council** means the Council of IACS.

**Notice of Appeal** means the Notice of Appeal referred to in Rule 2.

All other terms shall have the meaning given to them in the document with the title "Commitments Offered to the European Commission under Article 9 of Council Regulation (EC) No 1/2003", unless otherwise stated.

##### 2. Commencement of appeal and time limits

2.1 Appeals may be brought in accordance with these Rules of Procedure against the following decisions made by IACS:

- (a) A decision to refuse membership of IACS
- (b) A decision to suspend membership of IACS
- (c) A decision to withdraw membership of IACS
- (d) A decision that an interested party is not a Classification Society
- (e) A decision taken by the Chairman of GPG in response to a grievance that a CS may have been denied the effective exercise of its rights to participate in IACS Working Groups
- (f) A decision (whether explicit or implicit) not to publish an IACS Resolution or existing Technical Background document available to IACS Members.

2.2 The **Appellant** should send a Notice of Appeal to the Appeal Board within the time limits laid down in these Rules. The contact details of the Appeal Board shall be published on the IACS website.

2.3 A Notice of Appeal must be lodged with the Appeal Board:

- (a) In the case of a decision referred to in Rule 2.1(a) or (c) above, within two months of the date of notification of the decision of the Council.
- (b) In the case of a decision referred to in Rule 2.1(b) and (d) above, within one month of the date of notification of the decision.
- (c) In the case of a decision referred to in Rule 2.1(e) above, within 14 days of the date of the decision.

- (d) In the case of a decision referred to in Rule 2.1(f) above, within two months from the date on which the IACS Resolution or existing Technical Background document becomes available to IACS Members.

2.4 The Appeal Board shall not extend the time for appealing save in exceptional circumstances.

2.5 The Notice of Appeal must be served on IACS Ltd at the same time as it is lodged with the Appeal Board. IACS shall be the **Respondent** to the appeal.

2.6 The Appellant and the Respondent may be legally represented, or not, as they wish.

### 3. **Notice of Appeal**

3.1 The Notice of Appeal shall contain:

- (a) The name and address of the Appellant and of any legal representative, identifying the person and address to which communications from the Appeal Board should be sent.
- (b) A statement of the grounds of appeal including all arguments that the Appellant wishes to make stating in particular to what extent the Appellant relies on error of fact, error of law, the wrongful exercise of discretion, or otherwise.
- (c) A schedule of supporting documents, and copies of all documents relied on, including a copy of the appealed decision, and copies of all documents and materials submitted to IACS in connection with the appealed decision.
- (d) A description of the decision which should, in the view of the Appellant, have been made by IACS.

### 4. **Constitution of the Case Panel hearing the appeal**

4.1 Subject to Rule 5, on receipt of a Notice of Appeal the Chairman of the Appeal Board shall appoint a Case Panel to hear the appeal from amongst the Appeal Board Members and shall notify the parties of the decision.

4.2 In the case of an appeal against refusal, suspension or withdrawal of membership, the Appellant and Respondent shall each have the right to select one member of the Case Panel from within the Appeal Board Members. The two Appeal Board Members selected by the parties and the Chairman shall comprise the Case Panel. In the event that the parties select the same Appeal Board Member, the Chairman will select a third Case Panel member having regard to the subject matter of the appeal, the identity of the Appellant and the need to ensure representation of all major geographic areas of the world, as well as any submissions on the composition of the Case Panel made by the parties. The Chairman shall be entitled to appoint two additional members of the Case Panel in exceptional circumstances having regard to any representations made by the parties as to the constitution of the Case Panel.

4.3 In the case of appeals against other Appealable Decisions, the Chairman of the Appeal Board will select one adjudicator from the Appeal Board Members or will appoint him/herself to hear an appeal alone. Once selected, this adjudicator, sitting alone, will form the Case Panel which will hear and adjudicate on the appeal and will act as Chairman.

4.4 The Chairman may appoint a Secretary who shall be responsible for communication between the Case Panel and the parties and for the expeditious and economical administration of the appeal.

### 5. **Summary dismissal**



- 5.1 The Chairman of the Case Panel acting alone may at any time dismiss an appeal if the Notice of Appeal contains no arguable ground of appeal, or is otherwise frivolous or vexatious.

**6. Response to Notice of Appeal**

- 6.1 Without prejudice to Rule 5, the Respondent shall lodge with the Appeal Board a Response to the Notice of Appeal.

- 6.2 The Response to the Notice of Appeal shall contain:

- (a) The address of the Respondent and of any legal representative.
- (b) A response to the grounds set out in the Notice of Appeal, together with all arguments that the Respondent wishes to make.
- (c) A schedule of supporting documents, and copies of all documents relied on, including copies of all documents and materials considered by the Respondent in making the appealed decision.

- 6.3 Unless the Chairman otherwise directs, the time for lodging the response shall be:

- (a) In the case of an appeal against refusal or withdrawal of membership, two months from the service of the Notice of Appeal on the Respondent.
- (b) In the case of an appeal against a decision referred to in Rule 2.1(e) above, 14 days from the service of the Notice of Appeal on the Respondent.
- (c) In the case of an appeal against any other Appealable Decision, one month from the service of the Notice of Appeal on the Respondent.

**7. Reply**

- 7.1 The Appellant shall have the right to lodge with the Appeal Board a Reply to the Response to the Notice of Appeal, within a deadline set by the Chairman with a copy to the Respondent.

**8. Conduct of the appeal**

- 8.1 The appeal will be conducted as flexibly and informally as possible, with a view to disposing of the appeal justly, economically and expeditiously. To that end, the Case Panel, or the Chairman acting alone, as the case may be, may make such procedural directions as he or they think fit. Such directions may include in particular directions:

- (a) Subject to Rule 2.4, setting, abridging, or extending any time limits.
- (b) Directing the hearing of evidence on particular issues, including directions as to the manner in which evidence is to be given or heard, the witnesses whose evidence should be given or heard and any cross-examination.
- (c) Allowing a party to submit further documents or arguments.
- (d) As to the instruction of experts by the parties, and the manner in which expert advice is to be given.
- (e) Determining the issues to be decided.
- (f) Disposing of the appeal, or of issues in the appeal, by consent or agreement.

- 8.2 The Case Panel will review the documents submitted by the parties and shall indicate to the parties as soon as possible any further information that it may require for the purpose of determining the appeal and whether it is able to determine the appeal by reference to the papers only, and without a hearing.

8.3 Where a party requests an opportunity to appear before the Case Panel for the purpose of better presenting its case, the Case Panel shall make arrangements for a hearing and shall give the other party an opportunity to attend and, if it wishes to do so, to present its own case.

8.4 Any hearing may take place in the physical presence of the parties or if convenient by way of electronic conferencing facilities.

**9. Hearings**

9.1 The Chairman shall set a date for the hearing, and shall give any directions as may be necessary as to the issues to be addressed, the evidence to be called, the time limits to be observed or any other aspect of the hearing.

9.2 The hearing before the Case Panel, or the sole adjudicator, as the case may be, shall be conducted in a manner appropriate for ensuring the just, economical and expeditious handling of the proceedings.

**10. Confidentiality**

10.1 Any party seeking to rely on confidential information may request such information is dealt with on terms of confidentiality, which are to be at the discretion of the Case Panel.

10.2 If the confidential information is or may be material to the Case Panel decision, the Case Panel hearing the appeal, or the Chairman as the case may be, shall seek means of ensuring the fairness of the procedure while respecting the confidentiality claimed.

**11. The Case Panel's decision**

11.1 The Case Panel shall take its decision by majority vote. Each Case Panel member shall have one vote.

11.2 The Case Panel shall give its decision in writing, setting out its reasons. The decision shall state whether it was unanimous or by the majority. In the case of an appeal which is upheld in whole or in part, the Case Panel shall remit the matter to the relevant IACS body for a new decision. The relevant IACS body is required to review the contested decision in the light of the findings of the Independent Appeal Board and render a new decision. Such new decision is appealable to the Appeal Board under the same deadlines and the same procedures as the original decision.

**12. Costs**

12.1 The Case Panel may award costs reasonably incurred by a party in conducting the appeal against the losing party. The Case Panel shall have regard to the manner in which the appeal has been conducted by both parties and also the extent to which the losing party has been guilty of unreasonable, vexatious or frivolous behaviour in the conduct of the appeal.

12.2 Any costs awarded hereunder against one party are recoverable by the other party as a civil debt.

12.3 The Case Panel shall decide what contribution if any should be paid by a losing Appellant towards the costs and expenses of the Appeal Board in the administration of the appeal. Subject to any such contribution by the Appellant, the costs and expenses of the Appeal Board shall be borne by IACS.

12.4 The Appellant is required, on submission of its appeal to the Appeal Board, to lodge with the Appeal Board a sum of money as a deposit pending any orders made by the Case Panel as to payment of the costs and expenses of the Appeal Board following disposal of the appeal. In the case of an appeal against refusal or withdrawal of membership, the

deposit shall be GBP25,000. In the case of an appeal against any other Appealable Decision, the deposit shall be GBP10,000.

- 12.5 In the event that the Case Panel decides that the Appellant should make a contribution to the costs and expenses of the Appeal Board incurred in the administration of the appeal, the deposit shall be applied by the Appeal Board to defray those costs and expenses to the extent determined by the Case Panel, and any remaining funds shall be returned forthwith to the Appellant.

- 12.6 Save as aforesaid, each party shall bear its own costs.

### 13. **Interim Orders**

- 13.1 The Chairman acting alone, or a Case Panel, as the case may be, may at any time make an interim order:

- (a) Suspending in part or in whole the effect of any decision appealed or to be appealed against pending the hearing of the appeal; or
- (b) Making such directions to prevent serious and irreparable damage to any person as may be necessary and consistent with the protection of the public interest in maritime safety.

- 13.2 In making an interim order the Chairman or Case Panel, as the case may be, shall take into account all relevant considerations, including the urgency of the matter, the effect on the person seeking the order if the order is not made, and in any case the effect on maritime safety or on any other aspect of the public interest of making or not making the order sought.

- 13.3 An application for any interim order must be made as soon as possible by making a written request to the Case Panel.

- 13.4 Rule 13.3 above applies to any application for an interim order even if a Notice of Appeal has not been lodged. In that event, the applicant must undertake to lodge a Notice of Appeal within the time limit.

- 13.5 The written request must set out all the considerations relied on in support of the request for a suspension of the Council's decision.

- 13.6 The Chairman, or the Case Panel as the case may be, shall give the other party the opportunity to be heard before ruling on the request for an interim order, unless the urgency of the matter otherwise requires. In the latter event the Chairman or Case Panel may make a temporary order until both parties can be heard.

- 13.7 The Chairman or the Case Panel, as the case may be, may at any time discharge an interim order after receiving submissions from the parties.

### 14. **Service**

- 14.1 Documents served on the Appeal Board or any party may be served by hand, post, fax or electronic means. Within one week of the lodging of a Notice of Appeal, Response, Reply, request for interim relief or response thereto, a signed original of the document in question shall be lodged with the Appeal Board.

### 15. **General**

- 15.1 Subject to the foregoing, the Appeal Board may regulate its own procedure.

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## **Annex 6**

### **IACS PROCEDURE PARTICIPATION IN IACS' TECHNICAL WORK AND ACCESS TO IACS RESOLUTIONS AND TECHNICAL BACKGROUND DOCUMENTS.**

This document sets out the procedure for participation by non-IACS CSs in IACS' technical work and for access by non-IACS CSs to IACS' Resolutions and Technical Background (TB) documents.

All terms in this document shall have the meaning given to them in the document with the title "Commitments Offered to the European Commission under Article 9 of Council Regulation (EC) No 1/2003", unless otherwise stated.

#### **1. PROCEDURES FOR PARTICIPATION BY NON-IACS CSs IN IACS' TECHNICAL WORK**

- 1.1 IACS shall provide non-IACS CSs with the opportunity to participate fully in IACS' technical work, as described below.

##### **Participation in the IACS TC Forum**

- 1.2 IACS shall maintain a subscription-based online Technical Contributions Forum ("IACS TC Forum") on IACS' website providing CSs with a platform for publication of comments and discussion with other CSs (including both IACS Members and non-IACS CSs) relating to IACS' technical work programmes. The subscription shall be set to recover the reasonable costs of establishing and maintaining the IACS TC Forum only. The IACS TC Forum shall show all technical work items leading to new technical IACS Resolutions and, as soon as they become available, the initial draft related to those technical work items.
- 1.3 IACS shall publicise on its website the existence of this platform and the requirements for being granted access (i.e. the requirements for qualifying as a CS).
- 1.4 All subscribing CSs shall be informed by way of electronic notifications about any new work item or new draft of IACS Resolutions posted on the IACS TC Forum.
- 1.5 Any CS that subscribes to the IACS TC Forum has the right to comment on and discuss, through its own employees, the individual technical work programme items and to upload its own proposals on them.
- 1.6 The procedure for subscribing to the IACS TC Forum shall be as follows:
- (a) A request to subscribe to the IACS TC Forum shall be made by the interested party to the IACS Permanent Secretary by submitting documentation evidencing that the interested party is a CS. The IACS Permanent Secretary shall promptly review the documentation and make a recommendation on the application to Council for decision.
  - (b) Subject only to Council being satisfied that the interested party is a CS, GPG shall make all necessary arrangements and provide the relevant CS with all relevant information to provide it with full access to the IACS TC Forum.
  - (c) An interested party which has applied for but has been refused access to the IACS TC Forum on the basis that it is not a CS shall be entitled to appeal this decision to the Independent Appeal Board in accordance with the Appeal Board Rules of Procedures.

## **Participation in IACS WGs**

1.7 Any non-IACS CS which is registered on the IACS TC Forum can at its option participate with its own employees in IACS WGs in accordance with the following procedure:

- (a) Within 1 month of publication of a new technical work item on the IACS TC Forum, any non-IACS CS which wishes to participate in the work relating to that item may notify the IACS Permanent Secretary of its request to be granted full access to the relevant discussions of the WG in charge of that work item;
- (b) The IACS Permanent Secretary shall promptly inform the relevant WG Chairman of any such request for participation, who shall make all necessary arrangements and provide the relevant non-IACS CS with all relevant information to allow the non-IACS CS full access to the work of the WG;
- (c) A non-IACS CS which participates in a WG shall have full access to the same information, the same opportunities to state its views and to contribute to the discussions within the WG as any IACS Member in that WG on a non-discriminatory basis;
- (d) A non-IACS CS which has made a request for participation in accordance with paragraph 1.7(a) but considers that it has been denied the effective exercise of the specific rights particularised in paragraphs 1.7(b) and (c) shall promptly raise the matter with the relevant IACS WG Chairman with a view to finding an agreeable solution:
  - (i) If not resolved at the WG level to the satisfaction of the non-IACS CS within 14 days of the grievance having arisen, the non-IACS CS shall, within 14 days of the determination at WG level, be entitled to refer the matter to the Chair of the IACS GPG for a decision. The reference shall be made in writing, shall be copied to the IACS WG Chairman and all WG members and shall, among other things, specify the specific nature of the alleged complaint; the precise nature of the redress sought; and details concerning the attempts made to resolve the matter at the WG level. The Chair of the IACS GPG shall decide the matter by way of a written and reasoned decision within 14 days.
  - (ii) The relevant non-IACS CS shall be entitled to appeal the decision of the Chair of the IACS GPG to the Chairman of the Independent Appeal Board in accordance with the Appeal Board Rules of Procedures.
- (e) The WG Chairman shall summarise all views expressed by the WG participants in the technical recommendation that the IACS Members within the WG may resolve to put to GPG/Council for adoption by IACS;
- (f) All IACS Members and non-IACS CSs which participate in a WG shall bear their own costs of their employees' participation in the WG and shall make a reasonable and proportionate contribution to the running expenses of the WG.

## **2. PROCEDURES FOR ACCESS BY NON-IACS CSs TO IACS RESOLUTIONS AND TB DOCUMENTS.**

2.1 IACS shall place in the public domain, at the same time and in the same way as they are made available to IACS Members, all current and future versions of IACS Resolutions, as well as a history file containing the main points of discussion and any TB document.

- 2.2 IACS' website shall include a statement that non-IACS CSs are free to use such material, royalty free and without licence, by embedding it in their own classification rules, notwithstanding any intellectual property rights that may be held by IACS Members.
- 2.3 IACS shall place no restriction on their individual freedom to enter into any agreement with any CS in relation to the provision of further information or assistance with regard to the application of IACS Resolutions.
- 2.4 A decision (whether explicit or implicit) not to publish an IACS Resolution or existing Technical Background document available to IACS Members shall be appealable to the Independent Appeal Board.
- 2.5 The Procedure at paragraph 2.2 above is based on the premise that, where a CS decides to embed IACS Resolutions into its own published rules, it shall be the responsibility of that CS to verify the contents and the application of the IACS Resolutions. IACS, IACS Members and IACS Ltd shall not be taken to have made any representation that any CS using IACS Resolutions, pursuant to this paragraph 2.5 or otherwise, is operating in compliance with IACS Resolutions and they accept no liability (in contract, tort or otherwise) for any defect or deficiency in IACS Resolutions, or the related information, or for any resulting damage.
- 2.6 IACS shall release to the public, free of charge, a CSR Tracking Database to provide users with a searchable database on CSR revision history with supporting materials. IACS shall ensure that all relevant industry associations representing ship-owning, shipbuilding, cargo and insurer interests and non-IACS CSs are invited and able to register their users with the Permanent Secretariat, who shall then issue user log-in IDs so that they may access the CSR Tracking Database.

### 3. **ADOPTION OF COUNCIL DECISIONS**

- 3.1 For the avoidance of doubt, the Council decisions referred to in paragraphs 1.6 and 2.4 (where Council makes an explicit decision) of this Procedure shall be adopted as follows: when three-quarters of all Council members entitled to vote are available they shall constitute a quorum to vote upon a decision, and that decision shall not be passed unless three-quarters of all Council members entitled to vote vote in its favour.

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