

Gibraltar Merchant Shipping (Safety, etc.)

GIBRALTAR MERCHANT SHIPPING (ORGANISATIONS FOR INSPECTION, SURVEY AND CERTIFICATION OF SHIPS) REGULATIONS, 2002

1995-13
Repealed
Subsidiary
2002/062

Regulations made under s. 118.

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Repealed by LN. 2011/158 as from 22.9.2011

(LN. 2002/062)

12.11.2002

Amending enactments	Relevant current provisions	Commencement date
LN. 2004/051	r. 2(1)	1.7.2004

EU Legislation/International Agreements involved:

Directive 94/57/EC

Directive 95/21/EC

Directive 97/58/EC

Directive 1999/97/EC

Directive 2001/105/EC

Directive 2001/106/EC

Directive 2002/84/EC

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In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, and for the purposes of transposing into the law of Gibraltar Council Directive 94/57/EC of 22 November 1994, as amended by Directive 2001/105/EC of 19 December 2001, on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administration, the Government has made the following Regulations:

Title.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations, 2002.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“Administration” means the Registry of Ships in the case of Gibraltar, and in other cases the Administration of the relevant flag State;

“authorisation” means an act whereby a Member State grants an authorisation or delegates powers to a recognised organisation;

“cargo ship safety radio certificate” means the certificate introduced by the amended SOLAS 1974/1978 and issued in accordance with 1988 Protocol to SOLAS;

“certificate” means a certificate issued by or on behalf of the Gibraltar Registry of Ships or a Member State in accordance with the international conventions;

“class certificate” means a document issued by a classification society certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with the rules and regulations laid down and made public by that society;

“Commission” means the Commission of the European Union;

“Committee” means a committee of the Commission as referred to in Article 7 of Council Directive 94/57/EC as amended by paragraph 6 of Directive 2001/105/EC of the European Parliament and of the Council of 19 December 2001;

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“Directive” means Council Directive 94/57/EC as amended by Commission Directive 97/58/EC and Directive 2001/105/EC of the European Parliament and of the Council of 19 December 2001 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administration and Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and prevention of pollution from ships;

“inspections and surveys” means such inspections and surveys that are mandatory under the international conventions;

“international conventions” means–

- (a) the 1974 International Convention for the Safety of Life at Sea (SOLAS);
- (b) the 1966 International Convention on Load Lines; and
- (c) the 1973/1978 International Convention for the Prevention of Pollution from Ships,

together with the protocols and amendments thereto, and related codes of mandatory status in its up-to-date version as in force in all Member States at the time of reference;

“location” or “located” refers to the place of the registered office, central administration or principal place of business of an organisation;

“Member State” means any State within the European Economic Area and for the purposes of these Regulations includes those non-EU Member States who through their EEA affiliation have agreed to comply with the Directive;

“Merchant Shipping Notice” means a Notice described as such, issued by the Maritime and Coastguard Agency of the United Kingdom and reference to Merchant Shipping Notice No. M 1672 includes reference to any Merchant Shipping Notice amending or replacing that Notice which is considered by the Administration to be relevant from time to time;

“organisation” means a classification society or other private body carrying out safety assessment work for an Administration;

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“port State control administration” means an Administration that takes the responsibility, while a foreign flag ship is in its port Waters, for the enforcement of international standards for ships safety, pollution, prevention and shipboard living and working conditions, in pursuance of Council Directive 95/21/EC as amended by Commission Directive 1999/97/EC and Directive 2001/106/EC and the Paris MOU;

“recognised organisation” means an organisation recognised in conformity with regulation 4;

“ship” means a ship falling within the scope of the international conventions;

“ship flying the flag of a Member State” means a ship registered in and flying the flag of a Member State in accordance with its legislation; and a ship which does not correspond to this definition is assimilated to a ship flying the flag of a third State;

“UK–MCA” means the Maritime and Coastguard Agency of the United Kingdom.

Enforcement of international conventions.

3.(1) The Administration may, for the purposes of enforcing the provisions of the international conventions, with regard to the ships flying its flag, authorise organisations to undertake fully or in part inspections and surveys related to certificates including those for the assessment of compliance with regulation 15, and if appropriate, to issue or renew the related certificates.

(2) The Administration shall not entrust the duties mentioned in subregulation (1) to any organisation unless that organisation is recognised under the provisions of these Regulations.

(3) Notwithstanding subregulation (2), the duties mentioned in subregulation (1), may, for the cargo ship safety radio certificate, be entrusted to a private body–

- (a) recognised by an Administration of any Member State; and
- (b) having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

(4) For the purposes of this regulation, the Administration shall–

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- (a) act in accordance with the Schedule and the Appendix to IMO Resolution A.847(20); and
- (b) in all cases, approve the first issue of the exemption certificates.

(5) This regulation does not apply to the certification of specific items of marine equipment.

Recognition of organisations.

4.(1) The Administration shall not grant an authorisation for carrying out duties referred to in regulation 3(1) to any organisation unless that organisation is recognised under the provisions of these Regulations.

(2) The Administration shall forward, a request for recognition of an organisation, to the UK-MCA for onward transmission to the Commission together with complete information on, and evidence of, compliance with the criteria specified in the Schedule and, on the requirement and undertaking that it will comply with the provisions of regulations 16(c) and 17.

(3) After forwarding the request under subregulation (2), the Administration shall, in conjunction with the Commission, carry out assessments of the organisation for which the request for recognition is made in order to verify that the organisation meets and undertakes to comply with the criteria specified in the Schedule.

Limited recognition of organisations.

5.(1) The Administration may forward, to the UK-MCA for onward transmission to the Commission, a special request for a limited recognition of three years for organisations which meet all the criteria specified in the Schedule other than those set out under paragraphs 2 and 3 of section A.

(2) The procedure laid down in regulation 4 shall apply to a special request with the exception that the criteria specified in the Schedule for which compliance has to be assessed during the assessment carried out by the Commission, together with the Administration, shall be all the criteria other than those set out under paragraphs 2 and 3 of section A.

(3) The effect of the limited recognition granted under this regulation shall be limited exclusively to the Administration who made the request for such recognition.

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Monitoring of organisations.

6.(1) Every organisation which is granted recognition shall be closely monitored by the Administration and the outcome of such monitoring shall be reflected in the biennial report referred to in regulation 14.

(2) An organisation recognised under regulation 5 shall be monitored by the Administration—

- (a) with a view to possible decisions concerning whether or not to extend the limited recognition; and
- (b) for the purposes of assessment to be made under regulation 14.

(3) A decision on the extension of recognition of an organisation recognised under regulation 5 shall be made upon monitoring and taking into account the safety and pollution prevention performance records of the organisation.

(4) A decision on the extension of a limited recognition shall specify under which conditions, if any, such extension is granted.

Continuity of recognition.

7.(1) The organisations which are, on the basis of the Directive—

- (a) recognised by the United Kingdom; and
- (b) for whom Class Agreements have been signed and exchanged

on or before 22 January 2002, shall continue to be recognised in Gibraltar.

(2) Notwithstanding subregulation (1), those organisations shall be required to comply with the provisions of these Regulations and their compliance shall be assessed during the first assessment referred to in regulation 14.

Refusal to authorise any organisation.

8. Subject to regulations 9, 10 and 14, the Administration shall not, in principle, refuse to authorise any of the recognised organisations to carry out duties referred to in regulation 3(1).

Reciprocal treatment for recognised organisations.

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9.(1) The Administration may, in order to accept that a recognised organisation located in a State outside the European Economic Area (“third State”) is to carry out the duties referred to in regulation 3(1) or part of such duties, request the third State in question to grant reciprocal treatment for those recognised organisations which are located in the European Economic Area.

(2) A request by the Administration under subregulation (1) need not be made if the Commission itself requests the third State where a recognised organisation is located to grant reciprocal treatment for those recognised organisations which are located in the European Economic Area.

Working relationship between the Administration and organisations.

10.(1) The Administration shall, for the purpose of regulation 3, establish a working relationship between itself and the organisations acting on its behalf.

(2) The working relationship referred to in subregulation (1) shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least–

- (a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the Administration, while drawing inspiration from the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the Administration;
- (b) the following provisions concerning financial liability–
 - (i) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a willful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as

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decided by that court, caused by the recognised organisation;

- (ii) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to euro 4 million;
- (iii) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to euro 2 million;
- (c) provisions for a periodical audit by the Administration or by an impartial external body appointed by the Administration into the duties the organisations are undertaking on its behalf, as referred to in regulation 3(1);
- (d) the possibility for random and detailed inspections of ships;

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- (e) provisions for reporting essential information about their classed fleet, changes, suspensions and withdrawals of class, as referred to in regulation 17.

(3) The agreement or the equivalent legal arrangement may set the requirement that the recognised organisation has a local representation in Gibraltar which must be registered as a company under the Companies Act.

(4) The Administration shall forward precise information on the working relationship established in accordance with this regulation to the UK-MCA for onward transmission to the Commission.

Withdrawal of recognition.

11.(1) The Administration may request, through UK-MCA, that the Commission withdraw the recognition granted to an organisation under regulation 4 or 5 which no longer fulfils the criteria specified in the Schedule or which fails to meet the safety and pollution prevention performance records.

(2) The withdrawal of recognition shall be decided in accordance with the procedure referred to in Article 7 of the Directive, after the organisation concerned has been given the opportunity to submit its observations.

(3) A decision for withdrawal of recognition shall not be made without taking into account—

- (a) the outcome of the assessments of the recognised organisation as referred to in regulation 14;
- (b) the safety and pollution prevention performance records of the organisation, measured for all the ships it has in class irrespective of the flag the ships fly.

(4) The safety and pollution prevention performance records of the organisation shall be derived from—

- (a) the data produced by the Paris Memorandum of Understanding on Port State Control;
- (b) any other similar schemes; and
- (c) an analysis of the casualties involving ships classed by the recognised organisation;

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- (d) the reports produced by the Administration in pursuance of regulation 14(8).

Suspension of authorisation.

12.(1) Notwithstanding the criteria specified in the Schedule, where the Administration considers that a recognised organisation can no longer be authorised to carry out on its behalf the duties referred to in regulation 3(1), it may suspend such authorisation.

(2) Where the Administration makes a decision for suspension of the authorisation of a recognised organisation under subregulation (1), it shall—

- (a) forward its decision, without delay and giving substantial reasons, to the UK-MCA for onward transmission to the Commission and to inform other Member States; and
- (b) confirm the decision if the Commission decides that the decision of the Administration to suspend the authorisation of the recognised organisation is justified for reasons of serious danger to safety or the environment; or
- (c) withdraw the decision for suspension if the Commission decides that the decision of the Administration to suspend the authorisation of the recognised organisation is not justified.

Suspension of recognition.

13.(1) Whenever the Commission considers that the safety and pollution prevention performance records of a recognised organisation worsen, the recognised organisation may be requested to take appropriate measures to improve its safety and pollution prevention performance records.

(2) Where the Commission informs the Administration and the recognised organisation that the safety and pollution prevention performance records of the recognised organisation worsen, the Administration may forward a request, through the UK-MCA, to the Commission to suspend the recognition of the organisation and in such case, the recognised organisation may be suspended for a period of one year after giving the organisation concerned an opportunity to submit its observations where—

- (a) the recognised organisation fails to provide the Commission with an appropriate answer in pursuance of a request under subregulation (1);

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- (b) the Commission considers that the measures taken by the recognised organisation have failed to improve its safety and pollution prevention performance records; or
- (c) the Commission has evidence that the recognised organisation has failed to comply with the provisions of regulation 17.

(3) Where a recognised organisation has been suspended under this regulation for a period referred to in subregulation (2), the recognised organisation shall not be allowed, during that period, to issue or renew any certificate to ships flying the flag of the Administration while the certificates issued or renewed in the past by the organisation remain valid.

(4) After one year of suspension of recognition of an organisation, the Administration shall, in conjunction with the Commission, assess whether the shortcomings referred to in subregulations (1) and (2) which led to the suspension have been removed, and if such shortcomings are still present, the recognition shall be withdrawn.

Reporting to, and assessment of organisations.

14.(1) The Administration shall assess, at least on a biennial basis, that the recognised organisations which are authorised on its behalf to carry out duties under regulation 3 have been carrying them out to its satisfaction.

(2) The Administration shall forward a report of the results of the assessment referred to in subregulation (1) to the UK-MCA for onward transmission to the Commission and to other Member States by 31 March of each year following the years for which compliance with the functions has been assessed.

(3) The Administration shall, in conjunction with the Commission, assess all the recognised organisations on a regular basis and at least every two years to verify that such organisations fulfill the criteria specified in the Schedule.

(4) In selecting the organisations for assessment, particular attention shall be paid to—

- (a) the safety and pollution prevention performance records of the organisation; and
- (b) the reports produced under subregulation (7).

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(5) The assessment referred to in subregulation (3) may include a visit to the regional branches of the organisation and random inspection of ships for the purpose of auditing the organisation's performance.

(6) Every recognised organisation shall make available the results of its quality system management review to the Committee on an annual basis.

(7) Where the Administration discovers, during the exercise of its inspection rights and obligations as a port State control administration—

- (a) the issue of valid certificates by organisations acting on behalf of a flag State to a ship which does not fulfill the relevant requirements of the international conventions; or
- (b) any failure of a ship carrying a valid class certificate and relating to items covered by that certificate,

and the ship represents—

- (i) a serious threat to safety and the environment; or
- (ii) shows evidence of particularly negligent behavior of the recognised organisations,

the Administration shall produce a report and forward it to the UK-MCA for onward transmission to the Commission and to inform other Member States and the flag State concerned.

(8) In acting under subregulation (7), the recognised organisation concerned shall be advised of the case at the time of the initial inspection so that it can take appropriate follow-up action immediately.

Standards for ship's construction and maintenance.

15. The Administration shall ensure that ships flying its flag are designed, constructed and maintained, in relation to hull, machinery and electrical installation and control installation, in compliance with—

- (a) the requirements of a classification society which is recognised by the Administration in accordance with the provisions of these Regulations; or
- (b) the approved standards specified in Merchant Shipping Notice MSN No. M. 1672

Duties of consultation and cooperation.

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16. Every recognised organisation shall—
- (a) consult with each other periodically with a view to maintaining equivalence of their technical standards and the implementation thereof in line with the provisions of IMO Resolution A. 847(20) on guidelines to assist flag States in the implementation of IMO instruments;
 - (b) provide the Commission with periodic reports on fundamental progress in standards.
 - (c) demonstrate willingness to cooperate with port state control administrations when a ship of their class is concerned, in particular, in order to facilitate the rectification of reported deficiencies or other discrepancies.

Information and certification.

- 17.(1) Every recognised organisation shall provide—
- (a) to all Member States Administrations which have granted any of the authorisations provided for in Article 3 of the Directive; and
 - (b) to the Commission,
- all relevant information about their classed fleet, transfers, changes, suspensions and withdrawals of class, irrespective of the flag the ships fly.
- (2) Every recognised organisation shall communicate to the Sirenac information system for port State control inspections information on—
- (a) transfers,
 - (b) changes,
 - (c) suspensions,
 - (d) withdrawals of class,
 - (e) all overdue surveys,
 - (f) all overdue recommendations,
 - (g) conditions of class, and

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- (h) operating conditions or operating restrictions issued against its classed vessels,

irrespective of the flag the ships fly.

(3) The information referred to in subregulations (1) and (2) shall be published on the website, if any, of the recognised organisation.

(4) The recognised organisations shall not issue certificates to a ship, irrespective of its flag, which has been de-classed or is changing class for safety reasons before giving the opportunity to the Administration of the flag State to give its opinion within a reasonable time in order to determine whether a full inspection is necessary.

(5) Where class is transferred from one recognised organisation to another, the organisation from which class has been transferred (“the losing organisation”) shall inform the organisation obtaining class (“the gaining organisation”) of all–

- (a) overdue surveys,
- (b) overdue recommendations,
- (c) conditions of class, and
- (d) operating conditions or operating restrictions issued against the vessel.

(6) The losing organisation shall provide the gaining organisation with the complete history file of the ship.

(7) The gaining organisation may issue certificates of the ship only after all overdue surveys have been satisfactorily completed and all overdue recommendations or conditions of class previously issued against the vessel have been completed as specified by the losing organisation.

(8) The gaining organisation shall, before issuing certificates to the ship–

- (a) advise the losing organisation of the date of issue of the certificates; and
- (b) confirm the date, location and action taken to satisfy each overdue survey, overdue recommendation and overdue condition of class.

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(9) It shall be the duty of the recognised organisations to cooperate with each other in properly implementing the provisions of subregulations (5) to (8).

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regulation 4

MINIMUM CRITERIA FOR ORGANIZATIONS

Section A.
GENERAL MINIMUM CRITERIA

1. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
2. The organisation must have in its class a fleet of at least 1,000 ocean-going vessels (over 100 GRT) totalling no less than 5 million GRT.
3. The organisation must employ a technical staff commensurate with the number of vessels classed. As a minimum, 100 exclusive surveyors are needed to meet the requirements in paragraph 2.
4. The organisation must have comprehensive rules and regulations for the design, construction and periodic survey of merchant ships, published and continually upgraded and improved through research and development programmes.
5. The organisation must have its register of vessels published on an annual basis or maintained in an electronic base accessible to the public.
6. The organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The organisation must not be substantially dependent on a single commercial enterprise for its revenue. The recognised organisation must not carry out statutory work if it is identical with or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.
7. The organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the Administration, in so far as they cover matters falling within the scope of the Directive.

Section B.
SPECIFIC MINIMUM CRITERIA

1. The organisation is established with—

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- (a) a significant technical, managerial, support and research staff commensurate to the tasks and the vessels classed, catering also for capability – developing and upholding rules and regulations;
 - (b) world-wide coverage by its exclusive technical staff or through exclusive technical staff of other recognised organisations.
2. The organisation is governed by a code of ethics.
3. The organisation is managed and administered in such a way as to ensure the confidentiality of information required by the Administration.
4. The organisation is prepared to provide relevant information to the Administration, to the Commission and to the interested parties.
5. The organisation's management has defined and documented its policy and objectives for, and commitment to, quality and has ensured that this policy is understood, implemented and maintained at all levels in the organisation. The organisation's policy must refer to safety and pollution prevention performance targets and indicators.
6. The organisation has developed, implemented and maintains an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN 45004 (inspection bodies) and with EN 29001, as interpreted by the IACS Quality System Certification Scheme Requirements, and which, *inter alia*, ensures that–
- (a) the organisation's rules and regulations are established and maintained in a systematic manner;
 - (b) the organisation's rules and regulations are complied with and an internal system to measure the quality of service in relation to these rules and regulations is put in place;
 - (c) the requirements of the statutory work for which the organisation is authorised are satisfied and an internal system to measure the quality of service in relation to the compliance with the international conventions is put in place;
 - (d) the responsibilities, authorities and interrelation of personnel whose work affects the quality of the organisation's services are defined and documented;
 - (e) all work is carried out under controlled conditions;

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- (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed directly by the organisation;
- (g) the requirements of the statutory work for which the organisation is authorised are only carried out by its exclusive surveyors or by exclusive surveyors of other recognised organisations; in all cases, the exclusive surveyors must have an extensive knowledge of the particular type of ship on which they carry out the statutory work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
- (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
- (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;
- (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
- (k) the statutory surveys and inspections required by the Harmonised System of Survey and Certification for which the organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.746(18) on Survey Guidelines under the Harmonised System of Survey and Certification;
- (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the society and between the recognised organisations and their surveyors.

7. The organisation must demonstrate ability–

- (a) to develop and keep updated a full and adequate set of own rules and regulations on hull, machinery and electrical and control equipment having the quality of internationally recognised technical standards on the basis of which SOLAS Convention and Passenger Ship Safety Certificates (as regards adequacy of ship structure and essential shipboard machinery

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systems) and Load Line Certificates (as regards adequacy of ship strength) can be issued;

- (b) to carry out all inspections and surveys required by the international conventions for the issue of certificates, including the necessary means of assessing – through the use of qualified professional staff and in accordance with the provisions set out in the Annex to IMO Resolution A.788(19) on guidelines on implementation of the International Safety Management (ISM) Code by Administrations – the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.

8. The organisation is subject to certification of its quality system by an independent body of auditors recognised by the Administration of the State in which it is located.

9. The organisation must allow participation in the development of its rules and regulations by representatives of the Administration and other parties concerned.