

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Merchant Shipping(Liner Conferences) Act 1982, CHAPTER II. (See end of Document for details)

SCHEDULE

THE TEXT OF THE CODE

PART ONE

CHAPTER II

RELATIONS AMONG MEMBER LINES

Article 1 Membership

- 1 Any national shipping line shall have the right to be a full member of a conference which serves the foreign trade of its country, subject to the criteria set out in article 1, paragraph 2. Shipping lines which are not national lines in any trade of a conference shall have the right to become full members of that conference, subject to the criteria set out in article 1, paragraphs 2 and 3, and to the provisions regarding the share of trade as set out in article 2 as regards third-country shipping lines.
- 2 A shipping line applying for membership of a conference shall furnish evidence of its ability and intention, which may include the use of chartered tonnage, provided the criteria of this paragraph are met, to operate a regular, adequate and efficient service on a long-term basis as defined in the conference agreement within the framework of the conference, shall undertake to abide by all the terms and conditions of the conference agreement, and shall deposit a financial guarantee to cover any outstanding financial obligation in the event of subsequent withdrawal, suspension or expulsion from membership, if so required under the conference agreement.
- 3 In considering an application for membership by a shipping line which is not a national line in any trade of the conference concerned, in addition to the provisions of article 1, paragraph 2, the following criteria,*inter alia*, should be taken into account:
 - (a) The existing volume of the trade on the route or routes served by the conference and prospects for its growth;
 - (b) The adequacy of shipping space for the existing and prospective volume of trade on the route or routes served by the conference;
 - (c) The probable effect of admission of the shipping line to the conference on the efficiency and quality of the conference service;
 - (d) The current participation of the shipping line in trade on the same route or routes outside the framework of a conference; and
 - (e) The current participation of the shipping line on the same route or routes within the framework of another conference.

The above criteria shall not be applied so as to subvert the implementation of the provisions relating to participation in trade set out in article 2.
- 4 An application for admission or readmission to membership shall be promptly decided upon and the decision communicated by a conference to an applicant promptly, and in no case later than six months from the date of application. When a shipping line is refused admission or readmission the conference shall, at the same time, give in writing the grounds for such refusal.

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- 5 When considering applications for admission, a conference shall take into account the views put forward by shippers and shippers' organizations of the countries whose trade is carried by the conference, as well as the views of appropriate authorities if they so request.
- 6 In addition to the criteria for admission set out in article 1, paragraph 2, a shipping line applying for re-admission shall also give evidence of having fulfilled its obligations in accordance with article 4, paragraphs 1 and 4. The conference may give special scrutiny to the circumstances under which the line left the conference.

Article 2 Participation in Trade

- 1 Any shipping line admitted to membership of a conference shall have sailing and loading rights in the trades covered by that conference.
- 2 When a conference operates a pool, all shipping lines members of the conference serving the trade covered by the pool shall have the right to participate in the pool for that trade.
- 3 For the purpose of determining the share of trade which member lines shall have the right to acquire, the national shipping lines of each country, irrespective of the number of lines, shall be regarded as a single group of shipping lines for that country.
- 4 When determining a share of trade within a pool of individual member lines and/or groups of national shipping lines in accordance with article 2, paragraph 2, the following principles regarding their right to participation in the trade carried by the conference shall be observed, unless otherwise mutually agreed:
- (a) The group of national shipping lines of each of two countries the foreign trade between which is carried by the conference shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference;
 - (b) Third-country shipping lines, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade.
- 5 If, for any one of the countries whose trade is carried by a conference, there are no national shipping lines participating in the carriage of that trade, the share of the trade to which national shipping lines of that country would be entitled under article 2, paragraph 4 shall be distributed among the individual member lines participating in the trade in proportion to their respective share.
- 6 If the national shipping lines of one country decide not to carry their full share of the trade, that portion of their share of the trade which they do not carry shall be distributed among the individual member lines participating in the trade in proportion to their respective shares.
- 7 If the national shipping lines of the countries concerned do not participate in the trade between those countries covered by a conference, the shares of trade carried by the conference between those countries shall be allocated between the participating member lines of third countries by commercial negotiations between those lines.
- 8 The national shipping lines of a region, members of a conference, at one end of the trade covered by the conference, may redistribute amongst themselves by mutual agreement the shares in trades allocated to them, in accordance with article 2, paragraphs 4 to 7 inclusive.

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- 9 Subject to the provisions of article 2, paragraphs 4 to 8 inclusive regarding shares of trade among individual shipping lines or groups of shipping lines, pooling or trade-sharing agreements shall be reviewed by the conference periodically, at intervals to be stipulated in those agreements and in accordance with criteria to be specified in the conference agreement.
- 10 The application of the present article shall commence as soon as possible after entry into force of the present Convention and shall be completed within a transition period which in no case shall be longer than two years, taking into account the specific situation in each of the trades concerned.
- 11 Shipping lines members of a conference shall be entitled to operate chartered ships to fulfil their conference obligations.
- 12 The criteria for sharing and the revision of shares as set out in article 2, paragraphs 1 to 11 inclusive shall apply when, in the absence of a pool, there exists berthing, sailing and/or any other form of cargo allocation agreement.
- 13 Where no pooling, berthing, sailing or other trade participation agreements exist in a conference, either group of national shipping lines, members of the conference, may require that pooling arrangements be introduced, in respect of the trade between their countries carried by the conference, in conformity with the provisions of article 2, paragraph 4; or alternatively they may require that the sailings be so adjusted as to provide an opportunity to these lines to enjoy substantially the same rights to participate in the trade between those two countries carried by the conference as they would have enjoyed under the provisions of article 2, paragraph 4. Any such request shall be considered and decided by the conference. If there is no agreement to institute such a pool or adjustment of sailings among the members of the conference, the groups of national shipping lines of the countries at both ends of the trade shall have a majority vote in deciding to establish such a pool or adjustment of sailings. The matter shall be decided upon within a period not exceeding six months from the receipt of the request.
- 14 In the event of a disagreement between the national shipping lines of the countries at either end whose trade is served by the conference with regard to whether or not pooling shall be introduced, they may require that within the conference sailings be so adjusted as to provide an opportunity to these lines to enjoy substantially the same rights to participate in the trade between those two countries carried by the conference as they would have enjoyed under the provisions of article 2, paragraph 4. In the event that there are no national shipping lines in one of the countries whose trade is served by the conference, the national shipping line or lines of the other country may make the same request. The conference shall use its best endeavours to meet this request. If, however, this request is not met, the appropriate authorities of the countries at both ends of the trade may take up the matter if they so wish and make their views known to the parties concerned for their consideration. If no agreement is reached, the dispute shall be dealt with in accordance with the procedures established in this Code.
- 15 Other shipping lines, members of a conference, may also request that pooling or sailing agreements be introduced, and the request shall be considered by the conference in accordance with the relevant provisions of this Code.
- 16 A conference shall provide for appropriate measures in any conference pooling agreement to cover cases where the cargo has been shut out by a member line for any reason excepting late presentation by the shipper. Such agreement shall provide that a vessel with unbooked space, capable of being used, be allowed to lift the

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cargo, even in excess of the pool share of the line in the trade, if otherwise the cargo would be shut out and delayed beyond a period set by the conference.

- 17 The provisions of article 2, paragraphs 1 to 16 inclusive concern all goods regardless of their origin, their destination or the use for which they are intended, with the exception of military equipment for national defence purposes.

Article 3 Decision-making Procedures

The decision-making procedures embodied in a conference agreement shall be based on the equality of all the full member lines; these procedures shall ensure that the voting rules do not hinder the proper work of the conference and the service of the trade and shall define the matters on which decisions will be made by unanimity. However, a decision cannot be taken in respect of matters defined in a conference agreement relating to the trade between two countries without the consent of the national shipping lines of those two countries.

Article 4 Sanctions

- 1 A shipping line member of a conference shall be entitled, subject to the provisions regarding withdrawal which are embodied in pool schemes and/or cargo-sharing arrangements, to secure its release, without penalty, from the terms of the conference agreement after giving three months' notice, unless the conference agreement provides for a different time period, although it shall be required to fulfil its obligations as a member of the conference up to the date of its release.
- 2 A conference may, upon notice to be specified in the conference agreement, suspend or expel a member for significant failure to abide by the terms and conditions of the conference agreement.
- 3 No expulsion or suspension shall become effective until a statement in writing of the reasons therefor has been given and until any dispute has been settled as provided in chapter VI.
- 4 Upon withdrawal or expulsion, the line concerned shall be required to pay its share of the outstanding financial obligations of the conference, up to the date of its withdrawal or expulsion. In cases of withdrawal, suspension or expulsion, the line shall not be relieved of its own financial obligations under the conference agreement or of any of its obligations towards shippers.

Article 5 Self-Policing

- 1 A conference shall adopt and keep up to date an illustrative list, which shall be as comprehensive as possible, of practices which are regarded as malpractices and/or breaches of the conference agreement and shall provide effective self-policing machinery to deal with them, with specific provisions requiring:
- (a) The fixing of penalties or a range of penalties for malpractices or breaches, to be commensurate with their seriousness;
 - (b) The examination and impartial review of an adjudication of complaints, and/or decisions taken on complaints, against malpractices or breaches, by a person or body unconnected with any of the shipping lines members of the conference or their affiliates, on request by the conference or any other party concerned;
 - (c) The reporting, on request, on the action taken in connection with complaints against malpractices and/or breaches, and on a basis of

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anonymity for the parties concerned, to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

- (2) Shipping lines and conferences are entitled to the full co-operation of shippers and shippers' organizations in the endeavour to combat malpractices and breaches.

Article 6 Conference Agreements

All conference agreements, pooling, berthing and sailing rights agreements and amendments or other documents directly related to, and which affect, such agreements shall be made available on request to the appropriate authorities of the countries whose trade is served by the conference and of the countries whose shipping lines are members of the conference.

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