

# BIMCO Special Circular

The Baltic and International Maritime Council ©



No. 4, 29 October 1997

## BIMCO General Clause Paramount - revised

The greater adherence on a worldwide basis to the Hague-Visby Rules prompted BIMCO's Documentary Committee in 1996 to initiate a review of its General Clause Paramount as applied to a number of bills of lading, waybills and voyage charter parties issued by BIMCO.

The actual drafting work was entrusted to a small sub-committee composed of experts in the maritime legal field. The new edition of the General Clause Paramount as reproduced below and endorsed by the International Group of P & I Clubs was officially adopted by BIMCO's Documentary Committee in June 1997.

### "General Clause Paramount

**The International Convention for the Unification of Certain Rules of Law relating to Bills of Lading signed at Brussels on 24 August 1924 ("the Hague Rules") as amended by the Protocol signed at Brussels on 23 February 1968 ("the Hague-Visby Rules") and as enacted in the country of shipment shall apply to this Contract. When the Hague-Visby Rules are not enacted in the country of shipment, the corresponding legislation of the country of destination shall apply, irrespective of whether such legislation may only regulate outbound shipments.**

**When there is no enactment of the Hague-Visby Rules in either the country of shipment or in the country of destination, the Hague-Visby Rules shall apply to this Contract save where the Hague Rules as enacted in the country of shipment or if no such enactment is in place, the Hague Rules as enacted in the country of destination apply compulsorily to this Contract.**

**The Protocol signed at Brussels on 21 December 1979 ("the SDR Protocol 1979") shall apply where the Hague-Visby Rules apply, whether mandatorily or by this Contract.**

**The Carrier shall in no case be responsible for loss of or damage to cargo arising prior to loading, after discharging, or while the cargo is in the charge of another carrier, or with respect to deck cargo and live animals."**

The General Clause Paramount has been revised bearing in mind that the Hague-Visby Rules shall be the recognised liability regime covering the particular contract of carriage. The Paramount Clause has the following main components:

- 1) The Hague-Visby Rules as enacted in the country of shipment shall apply to the contract of carriage. If no such enactment is in place the corresponding legislation of the country of destination shall apply.

P.t.o.

2) However, in those trades where the Hague-Visby Rules are not applicable mandatorily or otherwise, the Hague Rules (when compulsorily applicable in the country of shipment or destination) shall apply.

3) In all other trades, i.e. where neither the Hague-Visby Rules nor the Hague Rules apply compulsorily, the terms of the Hague-Visby Rules shall apply.

4) The SDR Protocol 1979 which replaces the old limitation amount of Frs.10.000 per package or unit, or Frs. 30 kilo as provided in the Hague-Visby Rules by 666.67 SDR's per package or 2 SDR's per kilo shall apply to the contract of carriage to the extent possible.

Thus, the first paragraph of the General Clause Paramount refers to the Hague-Visby Rules as the governing liability regime providing a clear choice of law as regards which jurisdiction's Hague-Visby Rules shall apply in trades between two Hague-Visby Rules countries. The wording *irrespective of whether such legislation may only regulate outbound shipments* at the very end of this paragraph is meant to make sure that, in a voyage from a non-Hague-Visby Rules state to a jurisdiction which only applies the Hague-Visby Rules to outward shipments, such Rules will still apply.

The second paragraph includes a fall back provision in line with 3) above effectively providing that in the trades where the Hague-Visby Rules are neither applicable in the country of shipment nor in the country of destination the terms of the Hague-Visby Rules apply. The only exception to this general rule is, however, where the Hague Rules are compulsorily applicable in either the country of shipment or destination, in which case the Hague Rules prevail. Accordingly, due respect has been paid to those states still signatories to the Hague Rules. In the event of clean Hague Rules trades the choice of law provision provides which jurisdiction's Hague Rules shall apply.

The third paragraph takes care of another of the key components as mentioned under 4) which is that the SDR Protocol 1979 shall also apply in those trades where they are not mandatorily applicable. It is to be realised, however, that those states which are signatories to the Hague-Visby Rules but not the SDR Protocol 1979 may, irrespective of what is provided in this Clause, apply the old limitation rules.

The fourth paragraph expressly exonerates the carrier from all liability for loss or damage to the cargo before loading and after discharge and to deck cargo and live animals. It is realised that this provision may not be upheld in all jurisdictions applying the Hague- or Hague-Visby Rules. Thus, for instance, it will be considered invalid under the Scandinavian maritime codes which contain rules compulsorily applicable when the cargo is in the custody of the carrier in the port, i.e. outside the "tackle-to-tackle" period and for deck cargo and live animals.

The revised General Clause Paramount will be incorporated in BIMCO's standard bills of lading, waybills and voyage charter parties where appropriate upon the development or revision of such documents.