Rights of Recourse

Member Circular No. 12/2025 **20 October 2025**

With effect from 20 February 2026, it will be a requirement under mutual P&I cover that Members preserve certain rights of recourse for the carriage of dangerous goods in contracts for carriage. Specifically, any liabilities that would not have arisen but for a waiver, a limitation of or a failure to incorporate rights of recourse for the carriage of dangerous goods which are found in Article IV Rule 6 of the Hague or Hague Visby Rules, will only be recoverable at the discretion of a Club Board/Committee.

This evolution in cover reflects the Group Clubs' support for laws that have automatic application to the contract for carriage, such as the Hague and Hague Visby Rules, representing a long-established and fair system, with the parties' rights and obligations being clearly defined, including the express right of the carrier to recover from a shipper in respect of the carriage of dangerous goods where notice that the goods are dangerous has not been given.[1] In contrast to contractually negotiated or implied rights, the carrier's right of recourse for the carriage of dangerous goods in these circumstances is one of strict liability that, in the majority of maritime jurisdictions, is automatically applicable under a bill of lading as a matter of statute/law, unless expressly waived or restricted by the carrier.

The requirement to uphold such rights of recourse is therefore simply an expression of the well-established principle of P&I cover that Members should contract on terms that are no less favourable than the Hague or Hague Visby Rules, a principle based on the premise that sharing risks requires a level playing field. The concept of mutuality would be breached if greater liabilities were to be incurred because a Member agreed less advantageous terms for commercial benefit.

Moreover, the liabilities that can be incurred through the carriage of dangerous goods are potentially very large. Several significant cases involving dangerous goods have impacted the Pool in recent years. In such circumstances, where Group Club Members share these risks, Members ought to contract on terms which preserve these rights of recourse, thus ensuring the Group Clubs are not hindered from recovering where losses are caused by dangerous goods. The Group Clubs' aim is to be proactive in guarding against such instances, particularly given the high-profile cases already presented to the Pool.

On a broader note, Group Clubs seek to promote safety in shipping including safety of seafarers, the environment and property, as well as sustainability in the value chain to which shipping belongs, all of which support the proposition that suitable safeguards ought to be in place regarding the shipment of dangerous goods, and accordingly that Members' rights of recourse be preserved.

[1] For the avoidance of doubt, references in this Circular to "dangerous goods" are not aimed at situations where the carrier is made expressly aware of the dangerous nature of the cargo and has thus accepted the risk of such danger.

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The FAQs that follow provide further information about this change to Club cover, and its implications. All Clubs in the International Group have issued a similarly worded circular.

If you have any questions to the above, please contact Christen Guddal, Gard, Arendal or Tim Howse, Gard London.

Yours faithfully,
GARD AS

Rolf Thore Roppestad
Chief Executive Officer

Rights of Recourse
Frequently Asked Questions

1. What constitutes a waiver of rights of recourse?

For the purposes of club cover, a waiver will be broadly interpreted, and will include a waiver, a limitation of or a failure to incorporate rights of recourse for the carriage of dangerous goods.

2. To which contracts does the requirement to uphold rights of recourse apply?

The requirement applies to all contracts for carriage, including, but not limited, to bills of lading, charterparties, service contracts, and shippers' terms and conditions.

It is recognised that the rights of recourse available under Article IV, Rule 6 of the Hague or Hague Visby Rules do not apply as a matter of statute/law to all contracts for carriage, in the same way as to bills of lading. However, the Rules are often contractually incorporated into other contracts for carriage, for example by way of a clause paramount, which would also incorporate rights of recourse. Additionally, equivalent rights may be available to the carrier under other applicable laws – for example, by operation of national legislation which enacts equivalent provisions, by way of the Hamburg Rules, or under the law of the contract for carriage.

The requirement is therefore to be applied to all contracts for carriage, as if a Member had entered into a bill of lading contract incorporating Article IV Rule 6 of the Hague or Hague Visby Rules, or any equivalent provision under other applicable law.

3. What is the position if a waiver is contained in an ancillary contract?

For the avoidance of doubt, any waiver will be subject to the requirement whether it is contained in the relevant contract for carriage itself, or in an ancillary or related contract having the effect of overriding the relevant terms of the contract for carriage. An example might be where a bill of lading does not contain a waiver but a set of shipper's terms is incorporated into the bill of lading and those terms do include such a waiver. In such an example, the waiver would be caught by the requirement.

4. Which losses are caught by this requirement?

All losses arising in respect of contracts for carriage by sea are caught by this requirement, not just loss or damage to cargo. For example, to the extent that an explosion of dangerous goods on board an insured vessel leads to personal

injury, death, pollution, and wreck removal of the vessel, then cover for such losses is prejudiced if they would have been recoverable but for the waiver.

5. What is the effect on cover where the carrier has waived rights of recourse in the contract for carriage?

In such circumstances, to the extent that any liability is attributable to the waiver of rights of recourse, cover is not available as of right, but only at the discretion of a Club Board/Committee. Any obligation arising under a blue card will be met but the relevant club may thereafter seek a recovery for the liability incurred from the Member in question.

6. How is the requirement to be applied if a Member is prevented by law from relying on rights of recourse?

If it is possible for a Member to conclude a contract for carriage which incorporates these rights of recourse, then a Member should do so. If, however, a Member can demonstrate that it is prevented from relying on such rights of recourse due to mandatorily applicable law, then the requirement will not apply.

7. When will the change in cover come into effect?

The change will come into effect at noon GMT on 20 February 2026.

8. How will the requirement work for new contracts or for existing contracts where a Member's obligations extend beyond 20 February 2026?

The Group Clubs recognise that for existing contracts for carriage which extend beyond 20 February 2026, Members will need to make arrangements for the purchase of additional cover. For new contracts entered into on or after 20 February 2026, additional cover will also be required for such liabilities. This additional insurance can be arranged by contacting your usual club underwriting contact.