

# Amendments to Rules 2024

Member Circular No. 16/2023

January 2024

The following amendments to the Rules for P&I and Defence cover for ships and other floating structures (“Rules for Ships”) and the Rules for P&I and Defence cover for mobile offshore units (“Rules for MOUs”) for both Assuranceforeningen Gard – gjensidig – and Gard P. & I. (Bermuda) Ltd. (collectively the “Associations” and individually the “Association”) have been endorsed by the Boards of Directors of the Associations and will enter into force at noon GMT on 20 February 2024.

## RULES FOR SHIPS – P&I ENTRIES

### Rule 34 – Cargo liability

The International Group (IG) Pooling Agreement (the “Pooling Agreement”) has been amended to require the insured owner not to waive or otherwise prejudice those rights of recourse against third parties as presently exist under contracts of carriage where the Hague/Hague Visby Rules or other mandatorily applicable provisions apply. To align the Rules with the Pooling Agreement, Rule 34 has been amended. The relevant parts of Rule 34 as amended read as follows (amendments reflected by strikethrough and/or underlining):

*“1 The Association shall cover the following liabilities when and to the extent that they relate to cargo intended to be or being or having been carried on the Ship:*

- a liability for loss, shortage, damage or other responsibility arising out of any breach by the Member, or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the Ship;*
- b liability for loss, shortage, damage or other responsibility in respect of cargo carried by a means of transport other than the Ship, when the liability arises under a through or transshipment Bill of Lading, or other form of contract, providing for carriage partly to be performed by the Ship,*

*provided that unless and to the extent that the Association in its discretion shall otherwise decide, the cover under this Rule 34.1 does not include:*

*[...]*

- iii liabilities, costs and expenses which would not have been incurred by the Member if the cargo had been carried on terms no less favourable to the Member than those laid down in the Hague or Hague-Visby Rules, save where the contract of carriage is on terms less favourable to the Member than those laid down in the Hague or Hague-Visby Rules solely because of the relevant terms of carriage being of mandatory application;*
- iv liabilities, costs and expenses which would not have been incurred or borne by the Member but for its waiver or limitation of rights of recourse that would otherwise have been available under the contract of carriage in accordance with the Hague or Hague Visby Rules and/or mandatorily applicable law.*

*This applies notwithstanding and without prejudice to Rule 82.1.b;*

- ivv liabilities, costs and expenses arising out of the discharge of cargo at a port or place other than that stipulated in the contract of carriage;*

*[...]*”

## Gard P&I Member Circular No. 16/2023, January 2024

### Rule 47 – Fines

Fines for the accidental escape or discharge of oil or any other substance are recoverable under Rule 47.1. There has been an agreement amongst the IG P&I Clubs on the interpretation of the term “accidental” in respect of the Pooling Agreement, and Rule 47.1 has been amended to reflect this agreed interpretation to read as follows (amendments reflected by strikethrough and/or underlining):

- “1 The Association shall cover fines or other penalties imposed upon a Member (or, imposed upon a third party whom the Member is legally obliged to reimburse or whom the Member reimburses with the Agreement of the Association) in respect of the Ship by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:*
- a short- or over-delivery of cargo, or failure to comply with regulations concerning the declaration of goods, or documentation of cargo, provided that the Member is insured by the Association for cargo liability under Rule 34 (other than fines or penalties arising from smuggling of goods or cargo or any attempt thereat);*
  - b breach of any immigration law or regulations;*
  - c the accidental escape or discharge of oil or any other substance or threat thereof, provided that the Member is insured for pollution liability by the Association under Rule 38, and subject to the applicable limit of liability under the P&I entry in respect of oil pollution risk. An escape or discharge in this context is accidental if it is not the proximate result of an act or omission done with intent to discharge any substance from the Ship or a reckless act or omission done (irrespective of intent) with knowledge that an escape or discharge from the Ship would probably result.*
- [...]”*

### Rule 49 – Confiscation of the Ship

Rule 49 provides for discretionary cover against confiscation by reason of an infringement of any customs law or customs regulations. Past experience has shown that ships may also be confiscated due to smuggling activity which does not fall within the category “*infringement of any custom law or customs regulations*”. It has not been the intention to limit Rule 49 in this way, and in order to align Rule 49 with the Pooling Agreement, the wording has been amended to read as follows (amendments reflected by strikethrough and/or underlining):

- “The Association may, in its discretion, authorise payment, in whole or in part, of a Member’s claim for loss of the Ship following confiscation of the Ship by any legally empowered court, tribunal or authority resulting from smuggling or by reason of the infringement of any customs laws or customs regulations, ~~or any fines involving such confiscation,~~ but only provided that:*
- a the amount recoverable from the Association shall under no circumstances exceed the market value of the Ship without commitment at the date of the confiscation;*
  - b the Member shall have satisfied the Association that he took all such steps as appear to the Association to be reasonable to ~~prevent~~ avoid the ~~infringement of the customs law or regulation~~ event giving rise to the confiscation;*
  - c no such claim shall be considered by the Association until such time as the Member has been ~~irrevocably~~ permanently deprived of his interest in the Ship;*
  - d the Association shall be under no obligation to give reasons for its decision.”*

### Rule 56 – Non-marine personnel

An issue has arisen concerning the interpretation of the provision in the Pooling Agreement corresponding to Rule 56, in particular whether the expressions “*on board*” and “*on or about*” introduce an ambiguity as to the location of the non-marine personnel at the time of the claim. To remove the potential ambiguity identified and to align the Rules with the Pooling Agreement, the wording of Rule 56 has been amended to read as follows (amendments reflected by strikethrough and/or underlining):

## Gard P&I Member Circular No. 16/2023, January 2024

*“The Association shall not cover under a P&I entry liabilities, losses, costs or expenses incurred by the Member in respect of any of the following:*

- a personnel (other than marine crew) ~~on board the Ship~~ employed otherwise than by the Member, where the Ship is providing accommodation to such personnel in relation to their employment on ~~or about~~ an oil or gas exploration or production facility, unless a contractual allocation of such risk, on terms no less favourable to the Member than Knock for Knock, has been approved by the Association;*
- b hotel and restaurant guests and other visitors and catering crew of the Ship when the Ship is moored (otherwise than on a temporary basis) and is open to the public as a hotel restaurant, bar or other place of entertainment.”*

### **Rule 68 – Disputes with the Association and other Members – unpaid sums**

Rule 68.1 deals with disputes between the Member and the Association and/or other risk carriers in the Gard group under the Defence cover. The legal structure of Gard has changed over the years and the current wording does not reflect that. The wording of Rule 68 has therefore been revised to exclude all combinations of disputes between the Member and the Gard entities, including *inter alia* claims against the Member’s Hull & Machinery insurer if that insurer is a company within the Gard group of companies. The amended Rule 68 reads as follows (amendments reflected by strikethrough and/or underlining):

- “1 The Association will not cover under a Defence entry costs of cases against the Association itself, its subsidiaries, other Gard group companies, agents, representatives or servants.*
- 2 No cover shall be available under Defence entries to either party where a dispute arises between Joint Members, Co-assureds, affiliates or associates of the Member or Co-assureds or any combination thereof.*
- 3 No Member shall be entitled to cover under a Defence entry so long as Estimated Total Calls, or Supplementary Calls or other sums of whatsoever nature owed to the Association, whether in respect of Defence or P&I cover or otherwise, remain unpaid.”*

### **Rule 84 – Recoveries from third parties**

Rule 84 regulates recoveries from third parties. The provision under Rule 84 determining the distribution of recovered costs between the Association and the Member under a Defence entry has been amended in order to simplify the provision, to better reflect existing practice, increase the Association’s possibility to determine the level of recovery, and increase the Association’s flexibility to assist Members in more challenging matters. The amended Rule 84 reads as follows (amendments reflected by strikethrough and/or underlining):

- “1 When the Member has a right of recourse against a third party for any liability, loss, cost or expense covered by the Association, the Association shall be subrogated to the Member’s right of recourse upon payment by the Association to or on behalf of the Member in respect of the liability, loss, cost or expense.*
- 2 Where the Association has made a payment in respect of any liability, loss, cost or expense to or on behalf of a Member, the whole of any recovery from a third party in respect of the case to which that liability, loss, cost or expense relates shall be credited and paid to the Association up to an amount corresponding to the sum paid by the Association together with any interest element on that sum comprised in the recovery, provided however, that*
  - a where because of a deductible in his terms of entry the Member has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made; and*
  - b the Association shall retain the whole amount of any award of costs in respect of its own handling of any case; ~~and~~*
  - ~~c In respect of a Defence Entry, any recovery whatsoever from any third party (the “Recovery”) shall be applied as follows and in the following order:~~*

Gard P&I Member Circular No. 16/2023, January 2024

- ~~i — first, if and to the extent a maximum deductible is agreed, the Recovery shall be credited and paid to the Association up to an amount corresponding to a fair recovery (in the Association's discretion) of legal and other costs and expenses paid or agreed to be paid by the Association, in excess of the Members maximum deductible, together with any interest element on that sum comprised in the Recovery;~~
  - ~~ii — secondly, if and to the extent the Association only has agreed to cover a percentage of legal and other costs or expenses incurred by or on behalf of the Member, the Association shall be credited and paid a proportion of the Recovery corresponding to the percentage of legal and other costs and expenses the Association has agreed to cover pursuant to these Rules and the terms of entry agreed;~~
  - ~~iii — finally when the requirements in (i) and (ii) above have been satisfied the Recovery shall be applied against the Member's minimum deductible.~~
- 3 a** In respect of any recovery whatsoever under a Defence entry the Association shall determine, at its sole discretion, what part of that recovery represents a reasonable amount (the "Reasonable Amount") that should be allocated to costs and expenses (the "Costs"), regardless of whether any specific agreement, award or order as to costs has been made, and regardless of whether the recovery has been agreed by settlement or decided by a court or other competent authority. When determining the Reasonable Amount, the Association may take into account the proportion of the realistic claim plus interest and Costs that has been recovered and any other matters which the Association considers relevant. Once the Reasonable Amount has been established the Member will be given due credit, if applicable, for the corresponding contribution it has made to the Costs incurred by way of deductible in line with the agreed deductible structure.
- b** Subject to Rule 84.2 84.3 a, all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member.
- 4** ~~Where a Member settles or compromises a claim within its Defence cover for a lump sum, the Association shall determine what part of that lump sum shall be deemed attributable to legal and other costs and expenses irrespective of the provisions of the settlement or compromise and, where relevant, the lump sum shall be treated as a Recovery pursuant to Rule 84.2 c."~~

### Rule 90 – Governing law

Rule 90 excludes from application the Norwegian Insurance Contracts Act of 16 June 1989, however, certain provisions of this act apply mandatorily. The wording has been amended to clarify that these mandatory provisions are not (and cannot be) excluded. The amended Rule 90 reads (amendments reflected by strikethrough and/or underlining):

*"The legal relationship between the Association and the Member shall be governed by these Rules and Norwegian law, but the provisions of the Insurance Contracts Act of 16th June 1989 shall not apply unless mandatory."*

### RULES FOR MOUS – P&I ENTRIES

#### MOU Rule 29 – Fines

Reference is made to the changes to Rule 47 of the Rules for Ships. Similar changes have been made to MOU Rule 29, which following the amendments reads as follows (amendments reflected by strikethrough and/or underlining):

- "1** The Association shall cover fines imposed upon the Member in respect of the Vessel by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:

## Gard P&I Member Circular No. 16/2023, January 2024

- a failure to comply with regulations concerning the declaration of goods, or documentation of cargo, provided that the Member is insured by the Association for cargo liability under Rule 26 (other than fines or penalties arising from smuggling of goods or cargo or any attempt thereat);*
  - b breach of any immigration law or regulations;*
  - c the accidental escape or discharge from the Vessel of oil or any other substance, provided that the Member is insured for pollution liability by the Association under Rule 25. An escape or discharge in this context is accidental if it is not the proximate result of an act or omission done with intent to discharge any substance from the Vessel or a reckless act or omission done (irrespective of intent) with knowledge that an escape or discharge from the Vessel would probably result.*
- [...]"

### **MOU Rule 40 – Other excluded losses / Appendix II / Appendix III**

To align the Rules for MOUs with relevant reinsurance arrangements, two amendments have been made to the Rules for MOUs. First, to make the Five Powers War Exclusion apply generally and not only to war risks, amendments have been made to MOU Rule 40 and Appendices II and III. Secondly, as the World Health Organisation has decided that Covid is no longer a public health emergency of international concern, Covid is no longer excluded by the standard market Communicable Disease Exclusion Clause. In order to maintain the exclusion related to Covid an additional exclusion has been included in the relevant reinsurance and in order to align with the reinsurance, Gard's MOU Rule 40 and Appendix III have been amended. To this end, the following changes have been made:

#### Changes to Appendix II of the Rules for MOUs:

The Five Powers War Exclusion clause has been removed from Appendix II of the Rules for MOUs, which following the amendment reads as follows (amendments reflected by strikethrough and/or underlining):

"[...]"

#### **Scope of cover**

[...]"

#### ***Five Powers War Exclusion***

*The War Risk P&I Cover excludes loss damage liability or expense arising from*

- ~~a the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;~~*
- ~~b requisition either for title or use.~~*

#### ***JLC Territorial and Conflict Exclusion Clause***

[...]"

#### Changes to Appendix III of the Rules for MOUs:

The heading of Appendix III has been amended to read as follows (amendments reflected by strikethrough and/or underlining):

**"Appendix III Marine Cyber Endorsement, and Communicable Disease Exclusion, Coronavirus Exclusion, and Five Powers War Exclusion (Rule 40.3)"**

The Covid Exclusion clause and the Five Powers War Exclusion clause have been inserted after the Communicable Disease Exclusion Clause, however, in the Five Powers War Exclusion clause the words "*The War Risk P&I Cover*" have been replaced by "*This insurance*" and commas have been inserted compared to the previous wording in Appendix II. Following the amendments, the relevant parts of Appendix III read as follows (amendments reflected by strikethrough and/or underlining):

Gard P&I Member Circular No. 16/2023, January 2024

[...]

**Communicable Disease Exclusion**

[...]

JL2021-014 – 8th March 2021

**Coronavirus Exclusion (for use on marine and energy liability policies)**

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

This insurance excludes coverage for:

- 1 any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:
  - a Coronavirus disease (COVID-19);
  - b Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or
  - c any mutation or variation of SARS-CoV-2;or from any fear or threat of a, b or c above;
- 2 any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a, b or c above;
- 3 any liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of a, b or c above or the fear or the threat thereof.

All other terms, conditions and limitations of the insurance remain the same.

LMA5395 – 9 April 2020

**Five Powers War Exclusion**

This insurance excludes loss, damage, liability, or expense arising from

- a the outbreak of war (whether there be a declaration of war or not) between any of the following: United Kingdom, United States of America, France, the Russian Federation, the People's Republic of China;
- b requisition either for title or use."

Changes to MOU Rule 40:

MOU Rule 40.3 has been amended to read as follows (amendments reflected by strikethrough and/or underlining):

- "3 The cover shall be subject to the Marine Cyber Endorsement (LMA 5403) ~~and, the Communicable Disease Exclusion Clause (JL2021-014), the Coronavirus Exclusion (LMA 5395), and the Five Powers War Exclusion as specified in Appendix III. These clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith."~~

**MOU Rule 47 – Disputes with the Association and other Members – unpaid sums**

Reference is made to the changes to Rule 68 of the Rules for Ships. Similar changes have been made to MOU Rule 47, which following the amendment reads as follows (amendments reflected by strikethrough and/or underlining):

- "1 The Association will not cover under a Defence entry costs of cases against the Association itself, its subsidiaries, other Gard group companies, agents, representatives or servants.
- 2 No cover shall be available under Defence entries to either party where a dispute arises between Joint Members, affiliates or associates of the Member or any combination thereof.
- 3 No Member shall be entitled to cover under a Defence entry so long as premiums or other sums of whatsoever nature owed to the Association, whether in respect of Defence or P&I cover or otherwise, remain unpaid.
- ~~4 All monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member."~~

**Gard P&I Member Circular No. 16/2023, January 2024**

**MOU Rule 64 – Recoveries from third parties**

Reference is made to the changes to Rule 84 of the Rules for Ships. Similar changes have been made to MOU Rule 64, which following the amendment reads as follows (amendments reflected by strikethrough and/or underlining):

- ~~“1~~ *When the Member has a right of recourse against a third party for any liability, loss, cost or expense covered by the Association, the Association shall be subrogated to the Member’s right of recourse upon payment by the Association to or on behalf of the Member in respect of the liability, loss, cost or expense.*
- 2** *Where the Association has made a payment in respect of any liability, loss, cost or expense to or on behalf of a Member, the whole of any recovery from a third party in respect of the case to which that liability, loss, cost or expense relates shall be credited and paid to the Association up to an amount corresponding to the sum paid by the Association together with any interest element on that sum comprised in the recovery, provided however, that*
- a** *where because of a deductible in his terms of entry the Member has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made; and*
- b** *the Association shall retain the whole amount of any award of costs in respect of its own handling of any case; ~~and~~*
- ~~c~~ *In respect of a Defence Entry, any recovery whatsoever from any third party (the “Recovery”) shall be applied as follows and in the following order:*
- i* ~~first, if and to the extent a maximum deductible is agreed, the Recovery shall be credited and paid to the Association up to an amount corresponding to a fair recovery (in the Association’s discretion) of legal and other costs and expenses paid or agreed to be paid by the Association, in excess of the Members maximum deductible, together with any interest element on that sum comprised in the Recovery;~~
- ii* ~~secondly, if and to the extent the Association only has agreed to cover a percentage of legal and other costs or expenses incurred by or on behalf of the Member, the Association shall be credited and paid a proportion of the Recovery corresponding to the percentage of legal and other costs and expenses the Association has agreed to cover pursuant to these Rules and the terms of entry agreed;~~
- iii* ~~finally when the requirements in (i) and (ii) above have been satisfied the Recovery shall be applied against the Member’s minimum deductible.~~
- 3** *a* *In respect of any recovery whatsoever under a Defence entry the Association shall determine, at its sole discretion, what part of that recovery represents a reasonable amount (the “Reasonable Amount”) that should be allocated to costs and expenses (the “Costs”), regardless of whether any specific agreement, award or order as to costs has been made, and regardless of whether the recovery has been agreed by settlement or decided by a court or other competent authority. When determining the Reasonable Amount, the Association may take into account the proportion of the realistic claim plus interest and Costs that has been recovered and any other matters which the Association considers relevant. Once the Reasonable Amount has been established the Member will be given due credit, if applicable, for the corresponding contribution it has made to the Costs incurred by way of deductible in line with the agreed deductible structure.*
- b* *Subject to Rule 64.2 64.3 a, all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member.*
- ~~4~~ *Where a Member settles or compromises a claim within its Defence cover for a lump sum, the Association shall determine what part of that lump sum shall be deemed attributable to legal and other costs and expenses irrespective of the provisions of the settlement or compromise and, where relevant, the lump sum shall be treated as a Recovery pursuant to Rule 64.2 c.”*

**Gard P&I Member Circular No. 16/2023, January 2024**

**MOU Rule 70 – Governing law**

Reference is made to the changes to Rule 90 of the Rules for Ships. Similar changes have been made to MOU Rule 70, which following the amendment reads as follows (amendments reflected by strikethrough and/or underlining):

*“The legal relationship between the Association and the Member shall be governed by these Rules and Norwegian law, but the provisions of the Insurance Contracts Act of 16th June 1989 shall not apply unless mandatory.”*

Updated Rules for Ships and Rules for MOUs will be published on [www.gard.no](http://www.gard.no) prior to the renewal date of 20 February 2024.

If you have any questions, please contact [Ingvild Høgenes Nilsen](#) or [Tore Svinøy](#), Gard, Arendal.

Yours faithfully,  
**GARD AS**



Rolf Thore Roppestad  
Chief Executive Officer