

## Amendments to Rules 2018

Dear Sirs,

This Circular outlines the amendments to the Rules for Ships and the Rules for Mobile Offshore Units of both Assuranceforeningen Gard - gjensidig – and Gard P.& I. (Bermuda) Ltd (collectively the “Associations” and individually the “Association”), which will enter into force at noon GMT on 20 February 2018.

### Rules for Ships – P&I

#### *Rule 46 Measure to avert or minimise a loss*

Rule 46 codifies the “sue and labour” principles that extraordinary costs and expenses incurred by a Member on or after the occurrence of a casualty or event for the purpose of avoiding or minimizing liabilities, losses, costs and expenses that would otherwise have been recoverable, can be compensated by the Association. An amendment has now been made to meet the need also to compensate a Member being liable for extraordinary costs and expenses incurred by a third party for the same purpose, i.e. of avoiding or minimizing liabilities and losses falling within the scope of the Member’s cover.

The amended Rule 46 shall read as follows (amendment underlined):

#### **“Rule 46 Measures to avert or minimize loss**

*The Association shall cover:*

**a) extraordinary costs and expenses reasonably incurred on or after the occurrence of a casualty or event, including liability for such extraordinary costs and expenses incurred by a third party, for the purpose of avoiding or minimizing any liability on the Association, other than:**

***i costs and expenses claimable in general average;***

***ii costs and expenses relating to the Ship being overloaded or the cargo being incorrectly stowed;***

***iii costs and expenses resulting from measures that have been or could have been accomplished by the Crew or by reasonable use of the Ship or its equipment;***

***iv costs and expenses resulting from making the Ship seaworthy for receiving cargo;***

***b) losses, costs and expenses incurred at the direction of the Association.”***

### *Rule 58 War risk*

Ships subject to the Maritime Labour Convention 2006 ('MLC') are required to display certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place for the shipowner's liability in respect of outstanding wages to and repatriation and compensation for death or long-term disability of seafarers. A new sub-section 2 (vi) has been added to Rule 58 to clarify that the war risk exclusion shall not apply to liabilities of a Member insofar as they fall within the scope of cover (see Rules 27 (1) and 27 (2)) and are discharged by the Associations pursuant to a demand under a certificate or other financial security as set out below. This will in practice be the case regarding liabilities in respect of death and long-term disability under Regulation 4.2 of the MLC. Liabilities in respect of repatriation and back wages under Regulation 2.5.2 of the MLC fall outside standard club cover and is subject to specific terms set out in Appendix IV to the Rules.<sup>1</sup>

The amended Rule 58 (2) shall read as follows (amendment underlined):

*"2 The exclusion in Rule 58.1 above shall not apply to liabilities, costs and expenses of a Member insofar only as they are discharged by the Association on behalf of the Member pursuant to a demand made under*

*(i) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or*

*(ii) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or*

*(iii) an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement (STOPIA), or, except where such liabilities, costs and expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement as amended (TOPIA), or*

*(iv) a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001*

*(v) a certificate issued by an Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007, or*

*(vi) a certificate under Regulation 4.2, Standard A 4.2.1, paragraph 1 (b) of the Maritime Labour Convention as amended*

*to the extent such liabilities, costs and expenses are not recovered by the Member under any other policy of insurance or any extension to the cover provided by the Association ...".*

### *Rule 63 Excluded losses*

The York Antwerp Rules (YAR) have recently been amended but the old and new versions, YAR 1994 and YAR 2016, respectively, are still used in contracts of carriage and charterparties. Thus, the wording of Rule 63 (1) (i) is simplified by just making a reference to the 'unamended York Antwerp Rules'.

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<sup>1</sup> As to certificates of insurance or financial security and cover in respect of the Shipowner's liability under the MLC in general, references are made to Rule 27(3) and Rule 27(4) in the Rules for Ships; the special limit of insurance set out in Appendix IV (section 3) to the Rules; and the Maritime Labour Convention Extension Clause 2016 included in Appendix IV, section 4, to the Rules.

Rule 63 (1) (i) shall read as follows (amendment underlined):

*"1. The Association shall not cover under a P&I entry, except where and to the extent that they form part of a claim for expenses under Rule 46 (measure to avert or minimise a loss):*

.....

- (i) *Liabilities, losses, costs or expenses which would have been recoverable in general average if the unamended York Antwerp Rules had been incorporated into the charter party or the contract of carriage.*

#### *Rule 73 Nuclear risk*

A reference to non-war certificates issued pursuant to the Athens Convention has been added in sub-section (iii) below in order to harmonize the Rules with the terms of the Pooling Agreement.

The amended Rule 73 (2) shall read as follows (amendment underlined):

*2. The exclusion in Rule 73.1 above shall not apply to liabilities, costs and expenses of a Member insofar only as they are discharged by the Association on behalf of the Member pursuant to a demand made under:*

*(i) a guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, or*

*(ii) a certificate issued by the Association in compliance with Article VII of the International Conventions on Civil Liability for Oil Pollution Damage 1969 or 1992 or any amendments thereof, or*

*(iii) a non-war certificate issued by the Association in compliance with either Article IV b is of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002 and Guidelines for its implementation or Regulation (EC) No. 392/2009 of the European Parliament and of the Council which gives effect thereto, or*

*(iv) a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, or*

*(v) an undertaking given by the Association to the International Oil Pollution Compensation Fund 1992 in connection with the Small Tanker Oil Pollution Indemnification Agreement as amended (STOPIA), or, except where such liabilities, costs and expenses arise from or are caused by an act of terrorism, the Tanker Oil Pollution Indemnification Agreement as amended (TOPIA), or*

*(vi) a certificate issued by an Association in compliance with Article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007*

*to the extent such liabilities, costs and expenses are not recovered by the Member under any other policy of insurance or any extension to the cover provided by the Association..."*

#### **Rules for mobile offshore units**

##### *Rule 29 Measures to avert or minimise a loss*

We refer to the changes in respect of Rule 46 in the Rules for Ships above. A similar amendment is made in the Rules for mobile offshore units.

The amended Rule 29 shall read as follows (amendment underlined):

**“Rule 29 Measures to avert or minimize loss**

*The Association shall cover:*

**a)** *extraordinary costs and expenses reasonably incurred on or after the occurrence of a casualty or event, including liability for such extraordinary costs and expenses incurred by a third party, for the purpose of avoiding or minimizing any liability on the Association, other than:*

- i) costs and expenses resulting from measures that have been or could have been accomplished by the Crew or by reasonable use of the Vessel or its equipment;*
  - ii) loss resulting from non-fulfilment, or delay in fulfilment, of a contract or of an agreement for the sale of the Vessel;*
  - iii) cost and expenses relating to the regaining of control of the well which is being drilled or worked over or serviced by the Vessel.*
- b)** *losses, costs and expenses incurred at the direction of the Association*

If you have any questions, please contact [Kjetil Eivindstad](#), Chief Legal Counsel, in Arendal, Norway.

Yours faithfully,  
**GARD AS**



Rolf Thore Roppestad  
Chief Executive Officer