

Amendments to Rules 2020

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 2020.

RULES FOR SHIPS

Rule 56 – Non-marine personnel

To harmonize the wording of the Rules for Ships with the corresponding clause in the Pooling Agreement, some minor adjustments are made in Rule 56 (a) regarding cover for non-marine personnel on accommodation units.

Rule 56 shall read as follows (amendments stroked out/underlined):

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 (being an accommodation vessel) employed otherwise than by the Member ~~unless~~ where either:

(i) such Ship is moored or anchored within more than 500 meters from any oil or gas production or exploration facility; or

and

(ii) there has not been a contractual allocation of risks as between the Member and the employer of the personnel which 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 59 – Specialist operations

To add clarity and to harmonize the wording of the Rules with the Pooling Agreement, the words ‘or the threat thereof’ are added in sub-section (iii) of Rule 59 c.

Rule 59 shall read as follows (amendment underlined):

The Association shall not cover under a P&I entry liabilities, losses, costs and expenses incurred by the Member during the course of performing dredging, blasting, pile-driving, well intervention, cable or pipelaying, construction, installation or maintenance work, core sampling, depositing of spoil and power generation to the extent that such liabilities, losses, costs and expenses arise as a consequence of:

- a) claims brought by any party for whose benefit the work has been performed, or by any third party (whether connected with any party for whose benefit the work has been performed or not), in respect of the specialist nature of the operations; or*
- b) the failure to perform such specialist operations by the Member or the fitness for purpose and quality of the Member's work, products or services, including any defect in the Member's work, products or services; or*
- c) any loss of or damage to the contract work,*

provided that this exclusion shall not apply to liabilities, losses, costs and expenses incurred by the Member in respect of:

- i) loss of life, injury or illness of crew and other personnel on board the Ship;*
- ii) the wreck removal of the Ship; or*
- iii) oil pollution from the Ship or the threat thereof*

but only to the extent that such liabilities, costs and expenses are within the cover available under any other Rule or the terms of entry agreed.

Rule 73 Nuclear perils

The numbering of the sub-sections of Rule 73.1 is changed to harmonize the wording of the nuclear risk exclusion clause with the corresponding provision in the Pooling Agreement. This is merely an editorial change where part of the existing sub-section (a) has become a new sub-section (b). The existing sub-sections (b) and (c) have been re-numbered to sub-sections (c) and (d), respectively.

Rule 73 shall read as follows (amendments stroked out/underlined):

- 1 *The Association shall not cover any liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:*

a) ionising radiations from or contamination by radioactivity from ~~or the radioactive, toxic, explosive or other hazardous or contaminating properties of~~ any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel

b) the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof

c) any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter,

other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo on the Ship.

- 2 *The exclusion in Rule 73.1 above shall not apply to liabilities, costs and expenses of a Member insofar*”

Rule 78.5 Protective co-assured (knock for knock)

A co-assured under a ‘Knock for Knock’ agreement shall only be covered in respect of liabilities and losses to the extent such liabilities would be covered under the Member’s entry if born by the Member. To emphasize this principle, a clarification has been added.

Rule 78.5 shall read as follows (amendment underlined):

The cover afforded to a Co-assured who has entered into a contract with the Member for the provision of services to or by the Ship, and any sub-contractor of the Co-assured shall extend only to liabilities, losses, costs and expenses which are to be borne by the Member under the terms of the contract and which to the extent only they would, if borne by the Member, be recoverable by the Member from the Association, provided that

- a) the contract has been approved by the Association, and*
- b) the contract provides that each party shall be similarly responsible for any loss or damage to its own (or its sub-contractors’) property or loss of life or personal injury to its own (or its sub-contractors’) personnel.*

It has been agreed among the parties to the Pooling Agreement that a contract will satisfy the definition of Knock for Knock in the Pooling Agreement even if it contains a reciprocal gross negligence ‘carve out’ (i.e. a provision excluding from knock for knock agreement claims arising out of gross negligence).

Appendix V to the Rules

The standard deductible in respect of cost and expenses regarding rescuing migrants, refugees and other people at sea falling within Rule 31 (Diversion expenses) and Rule 32 (Stowaways, refugees and persons saved at sea) can now be waived by the Association in its discretion on a case by case basis when it is deemed reasonable.

Appendix V, section 2 (a) (vii) shall read as follows (amendment underlined):

2 P&I entries

- a) The standard deductibles for liabilities, losses, costs and expenses incurred by all the assured under any one P&I entry are as follows (subject to paragraphs 2(b) and (c) below):*

.....

*vii) **Other P&I liabilities etc.***

All liabilities, losses, costs and expenses covered under any Rule, other than Rules 27, 28, 29, 34, 36.1(a), 37(a), 38 and 47 and arising out of any one event: USD 7,000, save that deductible(s) in relation to liabilities, losses costs and expenses covered under Rules 31 and 32 can be waived by the Association in its sole discretion on a case by case basis where the Member has incurred the relevant costs and expenses due to rescuing or attempts to rescue migrants, refugees or other people at sea.

RULES FOR MOBILE OFFSHORE UNITS

Rule 1 – Interpretation

The definition of the term 'Vessel' is slightly amended to clarify and codify existing underwriting practice that equipment and items used as an integral part of the unit's operation will only be covered if agreed in the terms of entry in each particular case.

Rule 1 (definition of 'Vessel') shall read as follows (amendment underlined):

Vessel - any offshore unit, any other ship or vessel or mobile or temporarily fixed craft, including the mooring systems, as entered in the Association, provided that the term 'Vessel' shall, in these Rules, include other items and equipment used as an integral part of the unit's operation when agreed in each particular case and noted in the Certificate of Entry.

Rule 29 - Fines

To clarify that the cover for pollution fines only includes fines related to pollution originating from the insured Vessel, the words "from the Vessel" are added in Rule 29. 1. c). No changes are made in Rule 29. 2 and 3.

Rule 29. 1. shall read as follows (amendment underlined):

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:

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;

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;

d) smuggling or any infringement of any custom law or regulation other than in relation to cargo carried on the vessel.

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Rule 55 Nuclear perils

The wording of Rule 55 has been harmonized with the corresponding exclusion in the reinsurance contract. This includes the references to so-called 'excepted matters' and liabilities under guarantees and certificates issued pursuant to certain identified regional or international liability and compensation regimes. Further, it has been clarified that liabilities and losses caused by or arising from so-called 'naturally occurring radioactive material' (commonly referred to as 'NORM'), typically such as sludge or mud generated by the drilling operation, shall be within the scope of cover. The clarification has been codified in the proviso in the end of Rule 55.1 exempting certain categories of liabilities and losses from the nuclear risk exclusion.

Rule 55 shall read as follows (amendments underlined):

55 Nuclear perils

1. *The Association shall not cover liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from:*

a) *ionising radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel*

b) *the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof*

c) *any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter*

d) *the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter*

other than liabilities, costs and expenses arising out of carriage of "excepted matter" (as defined in the Nuclear Installations Act 1965 of the United Kingdom or any regulations made thereunder) as cargo on the Vessel or liabilities, costs and expenses arising out of the use or presence on board the Vessel of equipment or substances containing low-radiation industrial radioactive isotopes customarily used in the offshore industry or naturally occurring radioactive material caused by the operation of the Vessel, provided always that such equipment and/or substances are carried, kept and used in accordance with statutory rules and regulations governing the carriage, custody and use of such equipment and/or substances.

2. *The exclusion in Rule 55.1 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:*

a) *guarantee or other undertaking given by the Association to the Federal Maritime Commission under Section 2 of US Public Law 89-777, and any amendments thereto, and/or*

b) *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 thereto, and/or*

c) *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), and any amendments thereto, and/or*

d) *a certificate issued by the Association in compliance with Article 7 of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001, and any amendments thereto, and/or*

e) *a non-war certificate issued by the Association in compliance with either Article IV bis 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, and any amendments thereto, and/or*

- f) a certificate issued by the Association in compliance with article 12 of the Nairobi International Convention on the Removal of Wrecks, 2007, and any amendments thereto

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. Where any such guarantee, undertaking or certificate is provided by the Association on behalf of the Member as guarantor or otherwise, the Member agrees that any payment by the Association thereunder in discharge of the said liabilities, costs and expenses shall, to the extent of any amount recovered under any other policy of insurance or extension to the cover provided by the Association, be by way of loan and that there shall be assigned to the Association to the extent and on the terms that it determines in its discretion to be practicable all the rights of the Member under any other insurance and against any third party.

If you have any questions, please contact [Kjetil Eivindstad](#), Senior Vice President, in Gard AS, Arendal, Norway.

Yours faithfully,
GARD AS



Rolf Thore Roppestad
Chief Executive Officer