

Amendments to Rules 2017

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 2017.

Rules for Ships – P&I

Rule 27 – Liabilities in respect of crew

The Maritime Labour Convention, 2006 (MLC) entered into force on 20 August 2013. In April 2014 the International Labour Organization (ILO) agreed several amendments to the MLC to implement the principles agreed back in 2009 by the joint IMO/ILO financial security working group. These amendments entered into force on 18 January 2017.

After this date, ships that are subject to the MLC will be required to display certificates issued by an insurer or other financial security provider confirming that insurance or other financial security is in place for liabilities in respect of:

- outstanding wages and repatriation of seafarers together with incidental costs and expenses in accordance with MLC Regulation 2.5.2, Standard A2.5.2 and Guideline B2.5, and
- compensation for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 paragraph 1b and Guideline B4.2.

The Boards of all the Clubs in the International Group of P&I Clubs have decided that Clubs should provide the necessary certification on the terms set out in the [MLC Extension Clause 2016](#). As a result, the Rules of the Association have been amended.

In Rule 27 (3), the term Maritime Labour Convention 2006 is merely redefined to mean the ‘*Maritime Labour Convention 2006 as amended*’.

The new Rule 27.4 will read as follows (amendments underlined):

4 Where the Association has issued to a Member certificates of insurance or other financial security in respect of shipowners’ liability as required under Regulation 4.2, Standard A4.2.1 paragraph 1 (b) or Regulation 2.5 Standard A2.5.2 of the Maritime Labour Convention 2006 as amended (MLC Certificates), the Association shall discharge and pay on behalf of the Member the liabilities, losses, costs and expenses set out in and subject to the conditions in the Maritime Labour Convention Extension Clause 2016 included in Appendix IV, section 4, to these Rules. The terms and conditions of the Maritime Labour Convention Extension Clause 2016 shall be deemed to be part of the contract of insurance with a Member upon the approval by the Association of a Member’s application for MLC Certificates.”

Appendix IV Passengers and seamen

The new section 4 to Appendix IV shall read as follows (amendment underlined):

"4. MARITIME LABOUR CONVENTION EXTENSION CLAUSE 2016

1. Subject only to the other provisions of this MLC Extension ("the Extension"), the Association shall discharge and pay on the Member's behalf under the 2006 Maritime Labour Convention as amended (MLC 2006) or domestic legislation by a State Party implementing MLC 2006:

(a) Liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5 and Guideline B2.5; and

(b) Liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2 and Guideline B4.2.

2. The Member shall reimburse the Association in full:

(a) any claim paid under paragraph 1(a) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 27.1 and 2; and

(b) any claim paid under paragraph 1(b) save to the extent that such claim is in respect of liabilities, costs or expenses recoverable under Rule 27. 1 and 2.

3. There shall be no payment under paragraph 1(a) or paragraph 1(b) if and to the extent that the liability, cost or expense is recoverable under any social security scheme or fund, separate insurance or any other similar arrangement.

4. The Association shall not discharge or pay any liabilities, costs or expenses under paragraph 1(a) or paragraph 1(b), irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or the Member's servants or agents, where such liabilities, costs or expenses were directly or indirectly caused by or contributed to by or arise from:

(a) Any chemical, biological, bio-chemical or electromagnetic weapon

(b) The use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, computer virus or process or any other electronic system.

5. (a) The Extension may be cancelled in respect of War Risks by the Association on 30 days' notice to the Member (such cancellation becoming effective on the expiry of 30 days from midnight of the day on which notice of cancellation is issued).

(b) Whether or not such notice of cancellation has been given the Extension hereunder shall terminate automatically in respect of the War Risks:

(i) Upon 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;

(ii) In respect of any ship, in connection with which cover is granted hereunder, in the event of such ship being requisitioned either for title or use.

(c) The Extension excludes loss, damage, liability or expense arising from:

(i) The outbreak of war (whether there be a declaration of war or not) between any of the following: the UK, the USA, France, The Russian Federation, the People's Republic of China;

(ii) Requisition for title or use.

6. The Extension shall be subject to Rules 24.3, 25.4 and 77.2 and 3 and 73 in the Rules for Ships.

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For and on behalf of an entity of the Gard Group comprising, inter alia; Gard P. & I. (Bermuda) Ltd, Assuranceforeningen Gard - gjensidig - and Gard Marine & Energy Limited. Gard AS is registered as an insurance intermediary by the Norwegian Financial Supervisory Authority. Company Code : 982 132 789

7. Without prejudice to paragraph 5, cover under the Extension shall cease 30 days after notice of termination in accordance with either Regulation 2.5, Standard A2.5.2.11 or Regulation 4.2, Standard A4.2.12.

8. Any dispute arising out of or in connection with the Extension shall be resolved in accordance with Rules 90 and 91.

9. For the purpose of the Extension:

"Member" means any insured party who is liable for the payment of calls, contributions, premium or other sums due under the terms of entry

"Seafarer" shall have the same meaning as in MLC 2006.

"War Risks" means the risks set out in Rule 58."

Rule 38 Pollution

STOPIA and TOPIA will be updated during the 2017 policy year. While the wording in Rule 38 (2) is wide enough to include any updated version of STOPIA, the current wording of Rule 38 (3) is not considered wide enough to reflect amendments to TOPIA.

The amended Rule 38 (3) shall read as follows (amendments underlined):

"3 A Member insured in respect of a Ship which is eligible for entry in the Tanker Oil Pollution Indemnification Agreement, including any addendum to, or variation or replacement of such agreement ("TOPIA") shall, unless the Association otherwise agrees in writing, be a party to TOPIA for the period of entry of that Ship in the Association. Unless the Association has agreed in writing or unless the Association in its discretion otherwise determines, there shall be no cover under this Rule 38 in respect of such a Ship so long as the Member is not a party to TOPIA."

Appendix III – Oil pollution – section 2 limit of insurance

While the existing Appendix III, section 2 b, makes reference to the limit of USD 350 million in respect of a charterer named as co-assured under an owner's entry (see Rule 78 (4)), no separate reference is made to a Consortium Claim as defined in Appendix II, section 5. Similar to claims by a charterer co-assured under an owner's entry, Consortium Claims in respect of oil pollution shall be included in the overall limit of USD 1 billion.

The amended Appendix III, section 2, shall read as follows (amendments underlined):

"2 Limit of insurance for Owner's Entries

a) The cover afforded for oil pollution for Owner's Entries is limited pursuant to Rule 53.1 in accordance with this paragraph 2.

b) Cover afforded to a charterer co-insured under an Owner's Entry as described in Rule 78.4, and for a Consortium Claim as described in Appendix II, section 5, to these Rules, is limited to whichever is the lesser of the Limitation Amount (if any) and USD 350 million each incident or occurrence each Owner's Entry.

c) The limit of insurance for any and all claims in respect of oil pollution, including claims under paragraph 2 (b) above in this Appendix III, is USD 1 billion each incident or occurrence each Owner's Entry, provided that if the total amount of claims against a Member in respect of oil pollution following any one incident or occurrence exceeds USD 1 billion the Association will not be liable to make any payment in respect of the amount by which any such claims exceed USD 1 billion."

Rule 58 War risks

Rule 58 (2) is amended to mirror the wording of the war risk exclusion in the Pooling Agreement. Some details are corrected but are not intended to represent any material change of practice. The amended Rule 58 (2) shall read as follows (amendments 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 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
- (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) 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. 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.”

Rule 60 – Drilling, production and accommodation vessels, barges and heavy lift vessels

It has been difficult in practice to operate the current exclusion linked to the actual establishment of a connection between the entered Ship and the well. This has in particular been the case with regard to unintentional or emergency disconnections. For that reason, a change has been agreed in the Pooling Agreement. The exclusion shall now apply continuously from the time the connection was established until the final disconnection from the well under the terms of contract agreed.

The amended Rule 60 (1) shall read as follows (amendments underlined)¹:

“1. For drilling vessels, barges and any other vessels or barges employed to carry out drilling or production operations in connection with oil or gas exploration or production, including accommodation units moored or positioned on site as an integral part of any such operations, the Association shall not cover under a P&I entry any liabilities, losses, costs or expenses arising out of or during drilling or production operations, provided that for the purpose of this Rule 60.1

- (a) the Ship shall be deemed to be carrying out production operations if, inter alia, it is a storage tanker or other vessel engaged in the storage of oil, and either:
 - i. the oil is transferred directly from a producing well to the storage vessel; or
 - ii. the storage vessel has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage vessel other than by natural venting; and
- (b) in respect of any Ship employed to carry out production operations in connection with oil or gas production, the exclusion in this Rule 60.1 shall apply from the time that a connection, whether directly or indirectly, has been established between the Ship and the well pursuant to a contract under which the ship is employed, until such time that the ship is finally disconnected from the well in accordance with that contract.

¹ The existing Rule 60 (1) (ii), subsections (b) and (c) have been deleted.

Rule 63 – Excluded losses (York Antwerp Rules 2016)

The York Antwerp Rules 2016 were adopted by the CMI Assembly at its conference in New York in May 2016. Rule 63 (1) (i) has been amended to reflect the changes.

The amended Rule 63 (1) (i) shall read as follows (amendments underlined):

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

a –h (...)

(i) liabilities, losses, costs or expenses which would have been recoverable in general average if the York Antwerp Rules 1994 or the York Antwerp Rules 2016 had been incorporated into the charterparty or the contract of carriage;”

Rule 73 Nuclear perils

Rule 73 (2) is amended to mirror the wording of the war risk exclusion in the Pooling Agreement. Some details are corrected but are not intended to represent any material change of practice.

The amended Rule 73 (2) shall read as follows (amendments 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 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, 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. 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.”

Rule 87 Payment first by Member

In Rule 87 (3), the term Maritime Labour Convention 2006 is merely redefined to mean the ‘*Maritime Labour Convention 2006 as amended*’.

The amended Rule 87 (3) shall read as follows (amendment underlined):

“3. Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew, or in respect of repatriation under any statutory enactment giving effect to the Maritime Labour Convention 2006 as amended or any materially similar enactment, the Association shall discharge or pay such claim on the Member’s behalf directly to such member of the Crew or dependent thereof, provided always that; (a) the member of the Crew or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated; and (b) the amount payable by the Association shall under no circumstances exceed the amount which the Member would otherwise have been able to recover from the Association under the Rules and the Member’s terms of entry, and (c) with regard to liability, costs and expenses falling within Rule 27.3 any payment made by the Association shall be made as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such payment.”

Rules for MOUs – P&I

Rule 18 Liabilities in respect of crew

Similar to the ‘Rules for Ships’ the term Maritime Labour Convention 2006 has been redefined to ‘*Maritime Labour Convention 2006 as amended*’.

The amended Rule 18 (2) shall read as follows (amendments underlined):

“2 The Association shall cover liability to repatriate a member of the Crew pursuant to any statutory enactment giving effect to the Maritime Labour Convention 2006 as amended or any materially similar enactment, provided always that there shall be no recovery in respect of liabilities arising out of the termination of any agreement, or the sale of the Vessel, or any other act of the Member in respect of the Vessel, save and to the extent permitted by this Rule 18.2 in respect of the Member’s liability for such expense under the Maritime Labour Convention 2006 as amended.”

Rules 24 and 34 – Wreck removal and clean-up costs

Rule 34 is amended to clarify that the cover does not include liabilities, costs and expenses relating to clean-up and removal of equipment lost as a result of an incident or occurrence having occurred after the relevant equipment having been deployed from the Vessel.

The amended Rules 24 and 34 shall read as follows (amendments underlined):

Rule 24 Liability for obstruction, wreck removal and clean up costs

The Association shall cover:

a) (...)

b) liability incurred by reason of the Vessel or the wreck of the Vessel or parts thereof, as a result of a casualty, causing an obstruction, provided that

i)(...)

ii) the realised value of the wreck and other property saved shall be credited to the Association.

In no circumstances shall cover under this Rule extend to any costs relating to removal or clean-up of any part of the drilling or production equipment lost or deposited on the seabed once the equipment has been deployed for drilling or production. For the purpose of this Rule equipment shall be considered deployed from the time installation of the equipment, or any part of the equipment, for drilling or production has commenced’

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For and on behalf of an entity of the Gard Group comprising, inter alia; Gard P. & I. (Bermuda) Ltd,
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Rule 34 Excluded removal and clean-up costs

The Association shall not cover any costs relating to removal or clean-up of debris lost or deposited on the seabed during operations, unless such costs are recoverable under Rule 24.

Rule 55 Payment first by Member

Similar to the 'Rules for Ships' the term Maritime Labour Convention 2006 has been redefined to '*Maritime Labour Convention 2006 as amended*'.

The amended Rule 55 (3) shall read as follows (amendments underlined):

"3 Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew or in respect of repatriation under any statutory enactment giving effect to the 2006 Maritime Labour Convention as amended or any materially similar enactment the Association shall discharge or pay such claim on the Member's behalf directly to such member of the Crew or dependent thereof, provided always that:

- (a) the member of the Crew or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated;*
- (b) the amount payable by the Association shall under no circumstances exceed the amount which the Member would otherwise have been able to recover from the Association under the Rules and the Member's terms of entry; and*
- (c) with regard to liability, costs and expenses falling within Rule 18.2 above any payment made by the Association shall be made as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such payment."*

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If you have any questions or comments, please contact [Kjetil Eivindstad](#) or [Malin Petre Gustavi](#) in Arendal, Norway.

Yours faithfully,

GARD AS



Rolf Thore Roppestad
Chief Executive Officer