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## **Frequently Asked Questions (FAQ) - Japan earthquake, tsunami and nuclear radiation risk**

(as at Noon CET, Tuesday 23<sup>th</sup> August 2011)

### **Introduction**

The situation at the Fukushima Daiichi nuclear power plant remains serious and we recommend members remain cautious when operating ships near the affected area. Accurate and up-to-date information on radiation levels, precautions and recommendations are available from the Japanese authorities, the International Maritime Organization (IMO), Flag States, the World Health Organization (WHO) and the International Atomic Energy Agency (IAEA).

Gard has received - and continues to receive - a number of enquiries from our members and clients concerning incidents, risks, trading aspects and insurance implications arising from the earthquake, tsunami and subsequent nuclear incidents in Japan. The purpose of this FAQ is to provide guidance in relation to these enquiries.

Since the insurance implications are very different for incidents arising directly from the earthquake and subsequent tsunami as opposed to risks and incidents concerning nuclear radiation, this FAQ seeks to distinguish clearly between these two aspects.

Members and clients should be aware that the factual situation in Japan is subject to change at short notice and hence both new issues may arise and the guidance to existing issues may change. In Annex 1 of this FAQ are links to various websites that provide useful information. *The FAQ, which first version was published on Friday 15<sup>th</sup> March 2011, has been updated to reflect the position as at Noon Central European Time on Tuesday 23<sup>th</sup> August 2011. It will be updated upon receipt of new important enquiries.*

## Contact details and status of service network

Gard's office in Tokyo is manned and operational. Gard (Japan) K.K. is able to provide assistance to members and clients. Contact details:

Gard (Japan) K.K.:	Office phone:	+81 3 3503 9291
	Emergency number:	+81 3 3503 9293
	Office fax:	+81 3 3503 9655
	Email:	<a href="mailto:gardjapan@gard.no">gardjapan@gard.no</a>

The correspondent offices of SCUA Far East in Kobe and Yokohama are also manned and operational. Members and clients are advised to contact these offices for enquiries relating to surveys, inspections, repairs and other assistance concerning ship incidents. Contact details:

SCUA Far East Co. Ltd., Kobe & Yokohama:	Office phone:	+81 78 272 1771
	Office fax:	+81 78 272 1781
	Email:	<a href="mailto:office@scua.co.jp">office@scua.co.jp</a>
	Web-site:	<a href="http://www.scua.co.jp">www.scua.co.jp</a>

Gard's loss prevention team may also assist on questions and matters of special importance or urgency. The loss prevention team can be contacted on [lp@gard.no](mailto:lp@gard.no) contact details for each individual in the loss prevention team can also be found on [www.gard.no](http://www.gard.no) under 'Preventing Losses'.

## Incidents and risks caused by the earthquake and tsunami:

### **Q1: Does the Hull and Machinery insurance provide cover for loss and damage to ships and other objects caused by the earthquake and consequent tsunami?**

Yes. Cover is available under all standard hull and machinery insurance terms for loss of or damage to the ship and other insured objects. Earthquakes and tsunamis are considered marine perils, which are not excluded under any standard hull and machinery terms.

Subject to the terms of the hull and machinery insurance, cover may also be available for any third party liability caused by ship collision or damage to fixed or floating objects, e.g. berths, fenders, quays etc. However, the earthquake and consequent tsunami would in all probability be considered an "Act of God" or "Force Majeure", which would provide the shipowner with a valid defense against such third party claims.

For any incident arising under a hull policy where Gard Marine is the claims leader, our clients are encouraged to contact us and the insurance broker as soon as possible to notify us of such incident, in order for us to assess the scope of cover and how best to provide assistance, arrange repairs etc.

### **Q2: Does the P&I insurance provide cover for liabilities, losses, costs and expenses caused by the earthquake and consequent tsunami?**

Yes. P&I cover is available in respect of liabilities, losses, costs and expenses incurred by the Member, which have been caused by the earthquake and consequent tsunami, subject to the Rules and terms of entry for the entered ship.

The earthquake and tsunami would in all probability be considered an "Act of God" or "Force Majeure", which may provide the shipowner with a valid defense against third party liability,

e.g. in respect of cargo loss or damage. However, the shipowner may remain strictly liable under crew contracts to pay for medical care, death or disability compensation, repatriation etc., and cover is available for such liability. Cover is also available for a legal liability on the part of the shipowner to compensate third party property damage or wreck removal costs.

Members are encouraged to contact Gard as soon as possible concerning any incident which has occurred in order to assess the scope of cover and how best to handle potential third party claims. Furthermore, Members with Defence entries in Gard for ships otherwise affected by the tsunami damages to ports, e.g. closure of intended loading or discharging port(s), may contact their main Defence team contact for advice.

**Q3: Does the Loss of Hire insurance apply to loss of income caused by the earthquake and consequent tsunami?**

The Loss of Hire insurance covers loss due to the ship being wholly or partially deprived of income as a consequence of damage to the ship that is recoverable under the Hull and Machinery insurance terms.

If the Norwegian Marine Insurance Plan terms apply, the insurance also covers loss due to the ship being wholly or partially deprived of income because it has stranded; or is prevented by physical obstruction (other than ice) from leaving a port or similar area; or as a consequence of measures taken to salvage or remove damaged cargo; or as a consequence of an event that is allowed in general average pursuant to the 1994 York Antwerp Rules.

The loss of hire insurance does not cover losses resulting from delays caused by any other trade obstructions or constraints, if there is no damage to the ship.

**Q4: A vessel is employed in a liner trade scheduling calls at some of the Japanese ports that have been damaged by the tsunami and currently are inoperative. The vessel will therefore call at alternative Japanese ports. Would this represent unlawful deviation and can it lead to any restrictions in P&I cover?**

Firstly, Members are advised to contact their local agents for updated port information.

Whether or not a deviation is deemed to be lawful will have to be considered under the law that applies to the contract of carriage or charter party based on the facts and circumstances that caused the deviation.

It is considered unlikely that a carrier would be held liable for unlawful deviation of the ship if the original intended port of discharge is destroyed or so damaged as to be inoperative, as long as the steps taken by the ship owner to look after the cargo until it is correctly delivered are deemed to be appropriate and reasonable and in compliance with their legal obligations towards the cargo owners. If the change of port(s) is deemed to be lawful and hence does not represent a breach of contract, the P&I cover will remain in full force, subject to the Rules and the terms of entry.

If the change of port(s) is deemed to be an unlawful deviation, the P&I cover for cargo liabilities arising solely from such deviation is excluded if the deviation deprives the member of defences or rights of limitation he would otherwise have had. Gard's Rule for Ships 34 1 xi refers. However, cargo liabilities arising from such deviation (i.e. which would not have arisen but for the deviation) may be covered under additional insurance arranged by Gard, subject to timely notification and declaration of such deviation to the Underwriting Department. Members are advised to contact their main Underwriting contact in this regard.

It may be added that the additional costs and expenses, if any, incurred by the shipowner in using alternative ports to perform the contract of carriage, are considered extraordinary trading costs not covered by the P&I insurance.

**Q5: Is it possible that Japanese ports that have been affected by the tsunami, but which are partially operative, may be deemed as “unsafe” for the purpose of a charter party or contract of carriage due to floating or sunken debris etc., and if so, may the shipowner be entitled to refuse to call that port?**

Each case will depend on its own facts, the terms of the governing charter party or other contract as well as applicable law. However, as a general comment, a port may be considered unsafe if the port itself or the approaches to the port that necessarily would have to be transited in order to reach it, is exposed to such types and volumes of debris as would likely cause damage to the vessel.

Non-exhaustive examples of other aspects are whether the earthquake and tsunami have caused:

- changes to the condition of the seabed in areas liable to such changes, e.g. mud/sand banks or similar. Such changes would not be marked on any charts and or (yet) included in any notice to mariners.
- loss of or damage to coastal navigation aids needed to arrive and depart safely from ports;
- substantial reduction in port call and departure services, e.g. harbour tugs and pilots, which are necessary to ensure a reasonably level of safety during arrival or departure.

Some website links containing information concerning availability of Japanese ports are included in *Annex 1* of this FAQ document. Members and clients are encouraged to review the information.

The test concerning whether a port is safe or not is generally a question of fact. Under English law (and we understand that this standard is very similar to what is applied under US law) it is held that:

*“A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.”* (“The Eastern City”),

Whether a shipowner is entitled to refuse to proceed to a port pursuant to the charterer’s order needs to be analyzed on the merits based on available information and the terms of the charter party or other contract. Members with Defence entries for the relevant ships in Gard are advised to contact their main Defence team contact for advice.

**Q6: Where can I find useful legal advice concerning various contractual or other issues arising from the Japanese natural disaster?**

Legal issues may arise under shipping contracts or the applicable law of the jurisdictions to which ships trade e.g. to load or discharge cargo. Most charter parties are subject to English law and some of our main legal advisors in England have published *general* advice on their websites. Links to those websites are included in *Annex 1* of this FAQ document. Members and clients are encouraged to review the information and otherwise to seek advice from local legal advisors in the relevant trade jurisdictions. Members with Defence entries for the relevant ships in Gard are also advised to contact their main Defence team contact for advice.

**Incidents and risks caused by nuclear radiation:**

**Q7: How serious is the risk of nuclear radiation exposure for ships trading to Japanese ports?**

The Japanese Government continues to maintain a 30 km exclusion zone around the Fukushima Daiichi nuclear power plant but informs that radiation emissions have been reduced to a fraction of those in March. Publicly available information as of August 2011 indicates that the Japanese Government may lift an evacuation advisory for some areas near the power plant in the near future, however, there is currently no information found on how, or if, this lift will affect the current situation for ship transits or port calls for the exclusion zone.

The Japan Coast Guard still maintains their navigation warning which designates the area within 20 kilometers of Fukushima Daiichi nuclear power plant as a 'Restricted Area' based on the Act on Special Measures Concerning Nuclear Emergency Preparedness, while permitting entry into waters between 20 and 30 kilometers of Fukushima Daiichi nuclear power plant, subject to preparedness for emergency evacuation. (See Q16 below regarding special requirements for vessels that enter into the Japanese defined 'Restricted Area'.)

Members and clients must assess the level of risk based on available and developing information, and are advised to comply with advice, instructions and restrictions laid down by Japanese authorities and/or the Flag State of the ship.

Please refer to *Annex 1* for websites which, inter alia, will provide information as to any change in evacuation/exclusion zones, as well as a link to updated navigation warnings. Members and clients are also advised to contact the local agents for updated information.

Gard is not in a position to provide advice on which sea routes that may or should be followed when passing through Japanese waters apart from the above.

**Q8: Where can updated and reliable information concerning the risk of nuclear radiation in Japan be found?**

The advice is to follow official news briefings and make use of the information and advice published by the Japanese and other competent authorities.

In addition, Flag State administrations, shipowners' associations and the IMO may distribute valuable information.

Local agents will be able to give advice on the operational conditions in the relevant ports.

Some website links containing information concerning different aspects of the situation are included in *Annex 1* of this FAQ document. Members and clients are encouraged to review the information.

**Q9: The master and crew are very worried about the nuclear radiation hazard in Japan and refuse to call any Japan East Coast ports. Are they entitled to refuse?**

Members and clients are advised to comply with advice, instructions and restrictions laid down by Japanese authorities and the Flag State of the ship. If the Flag State of the ship has imposed stricter rules concerning voyage routes or port calls than follows from decisions made by the Japanese authorities, such rules must be observed and complied with.

If the Flag State of the ship and/or the authorities of the domicile of the master or crew, has issued specific rules, travel precautions or other recommendations concerning which steps the citizens of that State ought to take in relation to the situation in Japan, Members and clients are advised to obtain information from the relevant authorities on how this affects the rights and obligations of their crew. Such general rules, precautions or recommendations may not by themselves mean that the master or crew would be entitled under their contract of employment to refuse to continue the voyage to any Japanese port.

It is unlikely that the master and crew would be relieved from their professional duties *solely* from having formed a perception of nuclear radiation exposure and consequent health risks, unless backed up by available and up to date information from a reliable, official source. It is therefore unlikely that the master and crew would be in their right to refuse to continue a voyage to any Japanese port or through Japanese waters in such circumstances.

Members and clients are advised to ensure best possible that the master and crew receive up to date information from reliable, official sources concerning the nuclear radiation risks in the relevant part(s) of Japan, so as to avoid that concerns arise on board due to lacking or inaccurate information.

Members and clients are again referred to *Annex 1* of this FAQ document for a useful but non-exclusive compilation of such resources for their information.

**Q10: Does the P&I insurance provide cover for liabilities, losses, costs and expenses caused by nuclear risks?**

No. P&I cover is not available under the Rules in respect of liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from nuclear risks. All P&I Clubs in the International Group have similar rules in this respect, which is due to a similar exclusion being imposed under the International Group General Excess of Loss Reinsurance Contract and the Pooling Agreement.

It should however be noted that the exclusion from cover for nuclear risks only extends to liabilities, losses, costs and expenses caused or contributed by such risks. P&I cover is therefore available for liabilities, losses, costs and expenses arising from incidents that are not caused or contributed by nuclear radiation, even if the ship, crew and/or cargo may have been exposed to nuclear radiation at the material time.

Members are referred to the Gard Guidance to the Rules for further information concerning the exclusion from cover of nuclear risks. A fully updated version of the Guidance is available on the Gard website under the tab "Sharing Knowledge". For ease of reference, Rule 73.1 of the Gard Rules for Ships is quoted below:

*“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 the radioactive, toxic, explosive or other hazardous or contaminating properties of:*
  - i. *any nuclear fuel or any nuclear waste or the combustion of nuclear fuel, or*
  - ii. *any nuclear installation, reactor or other nuclear assembly or nuclear component thereof; or*
- b. *any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter,*
- c. *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”*

**Q11: Does the hull and machinery insurance provide cover for losses, damages or costs caused by nuclear risks?**

No. All standard hull and machinery terms include the so-called RACE II clause [full style being: Institute Radioactive Contamination, Chemical, Biological, Biochemical And Electromagnetic Weapons Exclusion Clause (cl. 370)] which excludes nuclear risks and which is imposed by reinsurers of marine risks. For example, see § 2-9 second paragraph (b) of the Norwegian Marine Insurance Plan, which is quoted below for ease of reference:

*“The insurance does not cover perils covered by the RACE II clause:*

- (i) *ionising radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;*
- (ii) *the radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;*
- (iii) *any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter;*
- (iv) *the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter;*
- (v) *any chemical, biological, bio-chemical, or electromagnetic weapon.”*

**Q12: Does the hull and machinery insurance provide cover for nuclear radiation contamination of vessel hulls / equipment, and costs incurred to clean or other de-contamination?**

No. Hull damage caused by nuclear radiation contamination and consequent costs of cleaning/de-contamination are not covered under standard hull and machinery insurance terms. This follows from the RACE II exclusion clause set out above.

**Q13: If crew members are exposed to nuclear radiation and suffer illness, injury or death as a result – will the shipowner’s liabilities be covered by P&I?**

No. P&I cover is not available under the Rules in respect of liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from nuclear radiation. The exclusion to this effect is found in Rule 73.1 in the Gard Rules for Ships – see Q10 above. The exclusion applies both to crew on board the ship and any crew member contractually obliged to serve on board the ship being exposed to nuclear radiation whilst travelling to or from the ship.

**Q14: How can the shipowner get assistance to better understand, protect against and measure nuclear radiation exposure for his crew, cargo and the vessel?**

The World Health Organization has published information concerning the current risk of radiation-related health problems in Japan. See the following link:  
[www.who.int/hac/crises/jpn/faqs/en/index.html](http://www.who.int/hac/crises/jpn/faqs/en/index.html).

The shipowner is advised to contact the local agent and/or P&I correspondent in order to check which local advice is available and which facilities are available to protect against and/or measure the degree of radioactive contamination.

**Q15: If a decision is made to deviate in order to avert or minimize the risk of being exposed to nuclear radiation – would this (a) represent unlawful deviation, (b) lead to any restrictions in P&I cover and (c) give the member a right of recovery deviation costs under the P&I insurance?**

Whether or not a deviation is deemed to be lawful will have to be considered under the law that applies to the contract of carriage or charter party based on the facts and circumstances that caused the deviation. It is questionable whether a deviation made to avert a *perceived* risk of exposure to nuclear radiation (whether perceived by those on board the ship or ashore) would be considered lawful unless it could be demonstrated that the perception of the risk was reasonable based on available information issued by competent authorities regarding the risk exposure.

If such deviation as set out above is deemed to be lawful and hence does not represent a breach of contract such as to deprive the member of defences or rights of limitation he would otherwise have had, the P&I cover will remain in full force, subject to the Rules and the terms of entry.

If such deviation as set out above is deemed to be unlawful, the P&I cover for cargo liabilities arising solely from such deviation are excluded. However, cargo liabilities arising from such deviation (i.e. which would not have arisen but for the deviation) may be covered under additional insurance arranged by Gard, subject to timely notification and declaration of such deviation to the Underwriting Department. Members are advised to contact their main Underwriting contact in this regard.

The member does not have a right of recovery for deviation costs under the P&I insurance, save for costs incurred to divert the ship for the purpose of securing treatment for an injured or sick person on board, or searching for a person missing from the ship or saving persons at sea. Deviation to avoid nuclear radiation is, by implication, made to avoid exposure to risks that are excluded under the terms of the P&I insurance. Cover is not available for costs incurred to avoid such risks.

**Q16: Would cargo liabilities resulting from exposure to nuclear radiation be covered by P&I?**

No. P&I cover is not available under the Rules in respect of liabilities, losses, costs or expenses directly or indirectly caused by or contributed to by or arising from nuclear radiation. The exclusion to this effect is found in Rule 73.1 in the Gard Rules for Ships – see Q10 above.

Members and clients are advised to assess the level of risk of the ship and/or cargo being affected by radiation based on available and developing information, and to comply with guidelines and instructions provided by Japanese authorities, as well as those of the Flag State and the authorities in the ports/countries of discharge. For example, on 7 June 2011, the U.S. Maritime Administration issued an advisory that:

*“Vessels that enter into the Japanese defined ‘Restricted Area’ may be subject to additional screening by the USCG if the U.S. is their first port call after departing the Restricted Area. The U.S. Coast Guard requires the vessel’s master to submit transit information, including the date and total time within the Precautionary Area, to the cognizant U.S. Coast Guard Captain of the Port using the comment block on the 96-Hour Advanced Notice of Arrival.”*

The full advisory note is found under the following link:

[http://www.marad.dot.gov/news\\_room\\_landing\\_page/maritime\\_advisories/advisory/advisory2\\_011-03.htm](http://www.marad.dot.gov/news_room_landing_page/maritime_advisories/advisory/advisory2_011-03.htm)

In an effort to avoid delays and port entry refusals by foreign port state authorities, the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT) have established guidelines on radiation measurement for export containers and ships in ports (effective as of 28 April 2011). An outline of the measurement scheme is found under the following link: <http://www.mlit.go.jp/common/000143415.pdf>.

Although many countries have not made it compulsory for vessels coming from Japan or carrying cargo loaded in Japan to make a declaration to their port authorities, it has still proven beneficial for Captains to have available relevant documents for attestation of proper radiation measurements. It is therefore important to consider implementation of the above referenced measurement scheme when visiting Japanese ports or entering Japanese waters. Members and clients should also be aware that some countries may carry out sampling of ballast water (e.g. Saudi Arabia) and hence, vessels ballasting in affected Japanese areas must consider de-ballasting en route.

Members and clients are advised to contact their port agents and/or the local P&I correspondent to obtain updated information concerning local requirements and precautionary measures in respect of radiation risks, including whether radiation measurements are required to be arranged.

**Q17: Is there any indication that the exception in Rule 73.2 from the exclusion in Rule 73.1 may be applied? What, if any, is the relevance of Rule 73.2 to the situation in Japan?**

Rule 73.2 essentially provides that the exclusion in Rule 73.1 shall not apply to liabilities, costs and expenses discharged by the Club on behalf of the Member pursuant to a demand under certain named statutory guarantees, undertakings and/or certificates provided by the Club, either in relation to cargo or bunker oil spills from tankers, bunker oil spills from other vessels or illness, injury or death of passengers travelling to or from ports in the United States.

Liabilities which fall within the scope of Rule 73.2 are therefore not excluded even if they arise from nuclear risk. However, the provision makes clear that the Club shall be entitled to

seek recovery of what has been paid under such guarantee, undertaking or certificate if and to the extent that the member is entitled to recover in respect of the subject liability under any other insurance.

It is not envisaged by Gard at this time that a situation may arise which will give rise to application of Rule 73.2.

**Q18: How can the shipowner determine whether or not he is entitled under the terms of the bill of lading, charter party or other contract of affreightment to refuse: transiting certain sea areas, call certain ports, continue loading or discharging or to load cargo perceived as dangerous - due to the risk of nuclear radiation?**

The rights and obligations of the parties to shipping contracts will depend on the factual situation, which must be assessed based on best possible available information and expert advice at the time the decision is made; the terms of contract and the applicable law. It is not possible to provide any “catch all” advice in this regard. Each issue must be assessed on its own merits.

BIMCO has recently published a “[BIMCO Radiation Risk Clause for Time Charter Parties](#)” which seeks to regulate the rights and obligations of, respectively, owners and time charterers in relation to radiation risks.

Members with Defence entries for the relevant ships in Gard are advised to contact their main Defence team contact for advice. It has been decided that, subject to prior agreement with the Defence contact as to the need to obtain external legal advice, as well as subject to the terms of the Defence entry of the respective ship, including the applicable deductible, Gard will compensate reasonable costs incurred to obtain external legal advice concerning preventive clarification of contractual rights and obligations under shipping contracts pertaining to nuclear risks, so as to assist Members to minimize the risk of disputes arising.

**Q19: Is it possible that a Japanese port may be deemed as “unsafe” for the purpose of a charter party or contract of carriage due to the risk of exposure to nuclear radiation, and if so, is the shipowner entitled to refuse to call (or leave early from) that port?**

Each case will depend on its own facts, the terms of the governing charter party or other contract as well as applicable law. However, as a general comment, it may be possible to show that a port is unsafe if the port itself or the approaches to the port that necessarily would have to be transited is exposed to such levels of nuclear radiation as could cause harm to the crew, cargo and/or the vessel. In such circumstances a shipowner may have a right to refuse to call that port, or to leave early from that port in order to avoid nuclear radiation exposure.

The test concerning whether a port is safe or not is generally a question of fact. Under English law (and we understand that this standard is very similar to what is applied under US law) it is held that: “*A port will not be safe unless, in the relevant period of time, the particular ship can reach it, use it and return from it without, in the absence of some abnormal occurrence, being exposed to danger which cannot be avoided by good navigation and seamanship.*” (“*The Eastern City*”),

Whether a shipowner is entitled to refuse to proceed to a port pursuant to the charterer’s order needs to be analyzed on the merits based on available information and the terms of the charter party or other contract.

BIMCO has recently published a "[BIMCO Radiation Risk Clause for Time Charter Parties](#)" which seeks to regulate the rights and obligations of, respectively, owners and time charterers in relation to radiation risks.

Members with Defence entries for the relevant ships in Gard are advised to contact their main Defence team contact for advice.

**Q20: Does the Defence cover apply to costs incurred to pursue or defend against claims or disputes arising from nuclear risks?**

Gard has decided to extend the Defence cover to include legal and other costs incurred in establishing or resisting claims as specified in Rules 65 and 66 of the Gard Rules for Ships 2011, which arise in connection with the Fukushima nuclear power plant incident in Japan in March 2011 only, subject to a special limit of USD 1 million per event. Further details in this regard are provided in our Member Circular 3/11, a link to which is provided below: <http://www.gard.no/ikbViewer/Content/14786128/MemberCircular3-2011revised.pdf>

Please note, however, that Defence cover is not generally available under the Rules in respect of nuclear risks, due to the operation of the exclusion in Rule 73.1 in the Gard Rules for Ships – see Q10 above.

**Q21: How does the P&I cover respond if a ship takes on board radioactive ballast water in Japanese waters and this is discharged in some other location and causes loss or damage?**

Cover is not available in respect of liabilities, losses, costs or expenses arising from the contamination or other damage caused by radioactive ballast water. The exclusion to this effect is found in Rule 73.1 in the Gard Rules for Ships – see Q10 above. Such liabilities would not fall within the scope of Rule 73.2 concerning statutory guarantees, undertakings or certificates (for which see Q17 above), because there is no international convention in force concerning liability for ballast water damage under which the P&I clubs provide such guarantees.

**Q22: Will the risk of further earthquakes, tsunamis or nuclear radiation per se lead to termination or cessation of the P&I insurance?**

No. The P&I insurance remains valid and in force. Subject to the Rules and the terms of entry, Members are covered for all P&I risks without the imposition of any geographic or trade restrictions for the entered ship.

**Q23: Will Gard impose any additional premium for ships trading to Japan?**

No. As concerns the P&I insurance no geographical trading limits and consequent imposition of additional premium apply. However, Members who consider to deviate from the originally intended route or port calls may be in need of additional insurance and are therefore advised to timely notify our Underwriting Department in this regard.

Hull and Machinery or Loss of Hire insurance terms may impose certain trading limits for the insured ship, and breach of such trading limits may give the insurer the right to deny or limit cover in respect of losses occurring as a result of such breach. In the event, save for the exclusion zone established by the Japanese authorities in the Fukushima area, Japanese waters

or ports are not likely to be subject to any trading limits. No additional hull and machinery or loss of hire premium will be imposed by trading to Japanese ports.

**Q24: Will there be a joint circular or other written advice from the International Group?**

All the Clubs in International Group are monitoring the situation closely, but at this stage, given the flux of change and the time that would be needed to coordinate a joint advice across 13 Clubs each Club has preferred to advise its own Members. Gard may, however, exchange views with the other Clubs on specific issues.

## **Annex 1:**

### **Selected websites with information concerning the Japan earthquake, tsunami, nuclear incidents, radiation and affected ports and transport**

Members and clients are advised to follow official news briefings and make use of the information and advice published by the Japanese and other competent authorities. The following websites contains information that may prove useful in this regard, but the list does not purport to represent an exhaustive list of information sources:

The website from the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT), provides various information related to the Great East Japan Earthquake, with particular attention on the status of the transportation system as well as on measurements of radioactivity. See the link: [http://www.mlit.go.jp/page/kanbo01\\_hy\\_001411.html](http://www.mlit.go.jp/page/kanbo01_hy_001411.html).

On the page which opens one can access:

- a table in English with information as to transport infrastructure by clicking on “[Current Status of transport infrastructure \(Overview\)](#)”
- a map showing status of ports (and other transport) by clicking on “[Recovery of Transportation \(Detailed map\)](#).”

With respect to radiological information on ports and maritime transportation, see the link: [http://www.mlit.go.jp/en/maritime/maritime\\_fr1\\_000007.html](http://www.mlit.go.jp/en/maritime/maritime_fr1_000007.html)

The need for the information on radiation dose rate for containers or ships from Japan has been on the increase overseas since the aftermath of the damage of the Fukushima nuclear power plant. In the face of this, MLIT has developed the guideline on radiation measurement for export containers and ships in order to provide foreign port authorities with proper access to accurate data (see also Q16 above). The measurement scheme became effective 28 April, 2011. Links to the guidelines (revised 3 August 2011) can be found below:

- [Guideline on Radiation Measurement for Export Containers in Ports](#)
- [Guideline for Measurement of Dose Rate for Ships in Port](#)

Attestation is issued when measurement of dose rate for ships has been conducted at the following ports in accordance with the guidelines (as of 8 July 2011):

- Port of Yokohama
- Port of Tokyo
- Port of Kawasaki
- Port of Kashima
- Port of Ibaraki
- Port of Onahama
- Port of Sendaishiogama

Consequences of the earthquakes and subsequent tsunami may involve changes to the condition of the seabed, damaged breakwaters, and loss of or damage to coastal navigation aids (see Q5 above). Since such changes would not be marked on any charts, members should be especially aware of this fact when calling at Japanese ports; that the content of their onboard charts may not reflect the actual situation in Japan. Notices to Mariners about these matters will be issued as soon as survey results are received by the Japanese authorities. Notices to Mariners Website:

<http://www1.kaiho.mlit.go.jp/TUHO/tuhoue.html>

NAVAREA warnings are disseminated by the designated NAVAREA coordinators and can be downloaded via relevant links on the webpage: <http://weather.gmdss.org/navareas.html>. In particular see information under [NAVAREA XI JAPAN](#).

The International Maritime Organization (IMO) has issued a circular letter addressing concerns related to radiation levels and also advising ship masters to comply with the latest navigational warnings issued by the NAVAREA XI Coordinator (Japan). The IMO circular letter can be found on: <http://www.imo.org/MediaCentre/HotTopics/Documents/3175-Rev-2.pdf>.

Flag State administrations and shipowners' associations may distribute important information, e.g. concerning restrictions or precautionary advice laid down by the Flag State, e.g. see websites of US Maritime Administration on [www.marad.dot.gov](http://www.marad.dot.gov).

Other useful links:

[Japan Government Incident Website](#) – Latest countermeasures taken by the Government of Japan

[Japan Meteorological Agency](#) – Tsunami warnings/ Advisories

[Japan Nuclear and Industrial Safety Agency](#) – Status reports from the Japanese Ministry of Economy, Trade and Industry concerning Fukushima Daiichi

[Japan Coast Guard Navigation Warnings](#) - Reports of missing/moved navigational aids at Japan including coastal areas affected by the tsunami (see 2nd RCG; 3rd RCG)

[International Atomic Energy Agency](#) - Link to “IEAA News Centre” which provides periodical “Japan Earthquake Update” reports, as well as Fukushima Nuclear Accident Update Log.

[World Health organization](#) – FAQs: Japan nuclear concerns and current risk of radiation-related health problems in Japan. Advice on protective measures.

The web links below lead to general advice under English law concerning legal issues arising for the shipping and trade industries, published by, respectively, law firm Ince & Co, London and Holman, Fenwick & Willan, London:

<http://www.incelaw.com/documents/pdf/Strands/Shipping/Article/the-japanese-natural-disaster-and-its-consequences.pdf>

<http://www.hfw.com/publications/client-briefings/japan-disasters-impact-on-shipping>

Gard's loss prevention team may assist on questions and matters of special importance or urgency. The loss prevention team can be contacted on [lp@gard.no](mailto:lp@gard.no) contact details for each individual in the loss prevention team can also be found on [www.gard.no](http://www.gard.no) under ‘Preventing Losses’.

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