

Special Circular Amendments to the Rules for MOUs for 2014

To all MOU Members

Dear Sirs,

This circular outlines amendments to the Rules for P&I cover for Mobile Offshore Units (Rules for MOUs) 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 2014.

1. Rule 1 – Interpretation

A new definition of the term Protective Co-assured has been introduced for the purpose of having a clearer distinction between the following categories: Co-assured, Protective Co-assured and Affiliates.

The amended definition of "Co-assured" and new definition of "Protective Co-assured" shall read as follows (amendments underlined):

*"Co-assured
Any person who is insured pursuant to Rule 46.1."*

*"Protective Co-assured
Any person who is insured pursuant to Rule 46.3."*

Further, a definition of the term "Insurance Premium Tax" has been inserted like we have done in the Rules for Ships. A new Rule 11A has been included codifying the Association's right of recourse in the event the Club has to pay in the first instance what is properly the liability of the member with regard to taxes and dues in respect of the premium payable to the Associations.

The new definition of "Insurance Premium Tax" shall read as follows (amendments underlined):

*"Insurance Premium Tax
Any taxes or other dues payable in respect of an entry of a Vessel in the Association in the country where the Vessel is registered, the country where the Member is resident, the country where the Member has a permanent place of business or in the country where the risk is located."*

Finally, with regard to the definition of the term "Vessel" the reference to "*production*" is deleted. The reason is that all equipment used as an integral part of the unit's operations shall fall within the scope of the term "Vessel". It shall not be restricted to equipment used as an integral part of "*production operation*" only.

The new definition of "Vessel" shall read as follows (amendment deleted):

Gard AS, P.O. Box 789 Stoa, NO-4809 Arendal, Norway Tel: +47 37 01 91 00, Fax: +47 37 02 48 10,
Outside office hours: +47 90 52 41 00

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

*“Vessel
any offshore unit, any other ship or vessel or mobile or temporarily fixed craft,
including the risers, flow lines, umbilicals, floating hoses, buoyancy floats or
tanks and mooring systems, or any other item or equipment used as an
integral part of the unit's ~~production~~ operations, or any part thereof as
accepted by and entered in the Association under these Rules or any other
description of unit noted in the Certificate of Entry.”*

2. Rules 2 – The cover

The existing Rule 2.3 states that the cover is limited to liabilities, losses, costs and expenses incurred by the Member “in direct connection with the operation of the Vessel”. In order to harmonize the Rules for MOUs with the Rules for Ships it will be added two new requirements. First, the relevant liability, loss or expense must have arisen in respect of the member's interest in the Vessel and, secondly, out of an event having occurred during the period of entry of the relevant Vessel in the Association.

Some other minor editorial changes are made in Rules 2.2 and 2.4. These amendments represent no material changes.

The amended Rule 2.2, 2.3 and 2.4 shall read as follows (amendments underlined):

“Rule 2 The cover

- 1 (...)
- 2 *The cover afforded by the Association to a Member shall be subject to the Articles of Association and to these Rules and to any special conditions agreed between the Association and the Member.*
- 3 *A Member is only covered in respect of liabilities, losses, costs and expenses incurred by him which arise*
 - a) *in direct connection with the operation of the Vessel, which will be deemed to include activity at one or more supply bases provided that such activity is in direct connection with the operation of the Vessel and transport between the Vessel and a supply base or a port or airport in the vicinity of the base;*
 - b) *in respect of the Member's interest in the Vessel; and*
 - c) *out of events occurring during the period of entry of the Vessel in the Association*
- 4 *Subject always to the provisions of Rule 2.3, the Association may in its absolute discretion exercise powers conferred in the Articles of Association to pay compensation in respect of a liability, loss, cost or expense which is not otherwise covered under these Rules.”*

3. Rule 5 – Certificate of Entry

In Rule 5.3 a minor change in the wording is made by deleting the word “shall” in the first part of the sentence.

The new Rule 5.3 shall read as follows (amendment deleted):

“3 *If the Association and a Member ~~shall~~ at any time agree a variation in the terms and conditions of the contract of insurance the Association shall issue an endorsement note stating the terms of such variation and the date from which such variation is to be effective.*”

4. Rule 6 – The Member’s duty of disclosure

In order to harmonize the wording with the Rules for Ships the words “*on the same Premium Rating*” are added in Rule 6.2.

The new Rule 6.2 shall read as follows (amendments underlined):

“2 *Where the Member at the conclusion of the contract of insurance has neglected his duty of disclosure and the Association would not have accepted the entry at the Premium Rating agreed if the Member had made such disclosure as it was his duty to make, the Association is free from liability. Where the Association would have accepted the entry on the same Premium Rating but on other conditions, the Association shall only be liable to the extent that it is proved that any liability, loss, cost or expense would have been covered under those conditions the Association would have accepted.*”

5. Rule 9 - Survey

The Association has a right to survey the Vessel if required. Like in the Rules for Ships it is now suggested that also owners of MOUs shall have a duty to notify the Association before the Vessel leaves lay-up after having been laid-up for a period of more than six months in order to give the Club, if it wishes, an opportunity to inspect the unit.

The amended Rule 9.2 shall read as follows (amendments underlined):

“*Rule 9 Survey*

1 (...)

2 *Where the Vessel has been laid-up for a period exceeding six months, the Member shall give the Association not less than seven days’ notice prior to the Vessel leaving the place of lay-up for recommissioning, to afford the Association an opportunity to inspect the Vessel pursuant to Rule 9.1.*

3 (...)”

6. Rule 11 – Payment – inclusion of “Insurance Premium Tax” as part of the sums due for payment

We refer to the definition of the term “Insurance Premium Tax” above. A corresponding change has been made in Rule 11.

The amended Rule 11 shall read as follows (amendments underlined):

“Rule 11 Payment

1 (...)

2

3 *Any other sums debited by the Association to a Member, including*
Insurance Premium Tax for which the Member is liable,
reimbursement of deductibles, interest, costs or expenses, are due on
demand.

4

5 (...)”

7. New Rule 11A – Insurance Premium Tax

A new Rule 11A is introduced codifying the Association’s right of recourse where the Club has been forced to pay in the first instance what is properly the responsibility of the member.

The new Rule 11A shall read as follows (amendments underlined):

“Rule 11A Insurance Premium Tax

The Member shall indemnify the Association and hold it harmless in respect of any liability, cost or expense incurred or amount paid by the Association in respect of any Insurance Premium Tax for which the Member is liable.”

8. Rule 18 Liabilities in respect of crew

Rule 18 covers legal liabilities, costs and expenses incurred by the member in respect of Crew arising under terms of contract or provisions of a statute or national law. In order to harmonize the Rules for MOUs with the Rules for Ships (Rule 27) it has been introduced exclusions in respect loss of or damage to valuables carried on board unless the Association has been informed in advance and liabilities arising under contracts or indemnities between the Member and third parties not approved by the Association.

Finally, a new Rule 18.2 has been introduced covering the member’s obligation to repatriate a member of a Crew pursuant to a statutory enactment giving effect to the Maritime Labour Convention 2006 in line with the changes made last year in the Rules for Ships.

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

“Rule 18 Liabilities in respect of crew

1 *The Association shall cover:*

(a)

(...)

f) liability in respect of loss of or damage to the personal effects of a Crew member,

provided that under this Rule 18.1:

(...)

iii) the cover shall not include liabilities, costs or expenses arising out of the carriage of specie, bullion, precious or rare metals or stones, plate or other objects of a rare or precious nature, bank notes or other forms of currency, bonds or other negotiable instruments, whether the value is declared or not, unless the Association has been notified prior to any such carriage, and any directions made by the Association have been complied with;

iv) there shall be no recovery in relation to liability which arises under a contract of indemnity or guarantee between the Member and a third party.

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 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.”*

9. New Rule 19B – Refugees or persons saved at sea

A new Rule 19B is introduced covering costs and expenses in consequence of a Vessel having refugees or persons saved at sea on board.

The new Rule 19B shall read as follows (amendments underlined):

“Rule 19B Refugees or persons saved at sea

The Association shall cover costs and expenses directly and reasonably incurred in consequence of the Vessel having refugees or persons saved at

sea on board, but only to the extent that the Member is legally liable for the costs and expenses or they are incurred with the approval of the Association. The cover does not include consequential loss of profit or depreciation.

10. Rule 22 – Pollution

Rule 22 is changed in line with market practice. It is only pollution arising in consequence of the discharge or escape of oil from the Vessel which is covered under this Rule.

The amended Rule 22 shall read as follows (amendments underlined):

“Rule 22 Pollution

The Association shall cover liabilities, costs and expenses (excluding fines) arising in consequence of the discharge or escape from the Vessel of oil or any other pollution or the threat of such discharge or escape.”

11. Rule 25 – Salvage

The 2011 Lloyd’s Open Form of Salvage Agreement (LOF 2011) has been added to the list of approved salvage agreements.

The amended Rule 25 shall read as follows (amendments underlined):

“Rule 25 Salvage

The Association shall cover liability for special compensation awarded to a salvor

- a) (...)
- b) *pursuant to Article 14 of the International Convention on Salvage 1989, as incorporated into Lloyd's Open Form of Salvage Agreement (1980, 1990, 1995, 2000 or 2011), or into any other salvage contract approved by the Association: or*

(...).”

12. Rule 26 – Fines

Rule 26.1 has been edited for the purpose of emphasizing that only fines imposed upon the member by a court or other authority of a competent jurisdiction shall fall within the scope of cover. The wording has otherwise been edited to correspond with the wording of the Rules for Ships.

The amended Rule 26.1 shall read as follows (amendments underlined):

“Rule 26 Fines

- 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 23;
- b) breach of any immigration law or regulations;
- c) the accidental escape or discharge of oil or any other substance, provided that the Member is insured for pollution liability by the Association under Rule 22;
- d) smuggling or any infringement of any custom law or regulation other than in relation to cargo carried on the vessel.”

13. Rule 36 – Other excluded losses

A new sub-paragraph 2 in Rule 36 is introduced excluding from cover liabilities incurred as a result of the escape from a land based area of substances having previously been carried on the Vessel, whether as cargo, stores or waste.

The new Rule 36 shall read as follows (amendments underlined):

“Rule 36 Other excluded losses

1 (...)

2 Unless and to the extent that the Association in its sole discretion shall otherwise decide, the Association shall not cover any liability, loss, damage, cost or expense, including, without limitation, liability for the cost of any remedial works or clean-up operations, arising as a result of the presence in, or the escape or discharge or threat of escape or discharge from, any land based dump, site storage or disposal facility of any substance previously carried on the Vessel whether as cargo, fuel, stores or waste and whether at any time mixed in whole or in part with any other substance whatsoever.”

14. Rule 46 – Co-insurance

The current Rules for MOUs deal with so-called protective co-insurance which is a common concept between the parties involved in the offshore business. However, in contrast to the Rules for Ships, the current Rules for MOUs does not contain provisions governing the naming of persons/companies involved in the management and operation of the Vessel as Co-assured(s). This will typically be entities such as technical managers, commercial manager or crew managers performing functions on behalf of the owner.

We have in recent years experienced a need to accommodate members’ wishes to name such persons/companies involved in the operation of the Vessel as Co-assureds in the same way as we are doing under the Rules for Ship. Thus, it is introduced changes in Rule 46 harmonizing the terms of cover for MOUs with standard terms of entry for ships.

Further, the status of a Protective Co-assured has been clarified and codified in accordance current practice.

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

Rule 46 Cover for Co-assureds and Protective Co-assureds

- 1 The Association may agree, subject to the provisions of this Rule 46 and to such other terms as may be required to extend the cover afforded by the Association to the Member to any person who is named in the Certificate of Entry as a Co-assured.
- 2 The cover afforded to a Co-assured in categories (a), (b) and (c) below shall extend only to liabilities, losses, costs and expenses arising out of operations and/or activities customarily carried on by or at the risk and responsibility of the owner of the Vessel:
 - a. any person interested in the operation, management or manning of the Vessel;
 - b. the holding company or the beneficial owner of the Member or of any Co-assured falling within category a) above;
 - c. any mortgagee of the Vessel.
- 3 Where a Member enters into a charterparty or other contract for the employment of the Vessel (the "Charterparty"), the other party to the Charterparty and its co-ventures, affiliates and associates and any other interested parties may, by agreement with the Association, be named in the Certificate of Entry as a Protective Co-assured under the Member's cover.
- 4 The Co-assured and Protective Co-assured shall not be entitled to Membership of the Association
- 5 The Protective Co-assured party may recover from the Association any liabilities, costs and expenses which are incurred by it and which
 - a. are to be borne by the Member under the terms of the Charterparty; and
 - b. would, if borne by the Member, be recoverable by the Member from the Association.
- 6 The Protective Co-assured party may not recover from the Association any liabilities, costs and expenses which are to be borne by the Protective Co-assured party under the terms of the Charterparty.
- 7 The Association agrees to waive any rights of subrogation it may have against the Protective Co-insured party in respect of liabilities, costs and expenses which are to be borne by the Member under the terms of the Charterparty.
- 8 Provided that an address for notification has been advised to the Association, the Association undertakes to give the Protective Co-insured party notice in writing with the same period of notice as to the Member in all cases where the Association terminates the entry. If termination is attributable to the failure by the Member to pay when due and demanded any premium or other amount due from him to the Association, the Association undertakes not to exercise such rights without giving the Protective Co-assured party thirty (30) days' notice in writing.

15. Rule 55 – Payment first by Member

In the new Rule 18.2 cover for the Member's obligation to repatriate a member of a Crew pursuant to a statutory enactment giving effect to the Maritime Labour Convention 2006 has been introduced. As a result of this changes are required in Rule 55.3 exempting claims relating to repatriation pursuant to the Maritime Labour Convention from the "pay to be paid" principle. Furthermore, the Association is given a right of recourse against the member in respect of claims falling within the new Rule 18.2 similar to the terms agreed under the Rules for Ships.

The amended Rule 55.3 shall read as follows (amendments underlined):

"Rule 55 Payment first by Member

- 1) (...)
- 2) (...)
- 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 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.**

16. Rule 56 – Payments and undertakings to third parties

A provision is included given the Association an express right to be indemnified by the Protective Co-assured in respect of any liability incurred or payment made by the Association to a third party which are to be borne by a Protective Co-assured under the terms of the Charterparty.

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

“Rule 56 Payments and undertakings to third parties

(...)

4 The Protective Co-assured shall indemnify the Association for any liability incurred or any payment made by the Association to a third party which are to be borne by the Protective Co-assured under the terms of the Charterparty.”

17. Appendix II –War Risk

The details of the additional war risk insurance are now included in Appendix II in the Rules for MOUs.

In the current war risk insurance for MOUs there is a sub-limit of USD 150 million. From the Policy Year 2014 this has been changed and the maximum limit of cover is now equal to the maximum policy limit for P&I risks agreed between the individual member and the Association in the relevant contract of insurance.

The new Appendix II shall read as follows (amendments underlined):

“Appendix II. Additional insurances - War risks

The Association has arranged additional War Risk P&I Cover for the benefit of Members insured for P&I risks pursuant to the Rules for P&I cover for Mobile Offshore Units. The terms and conditions for this additional War Risk P&I Cover are as follows:

War Risks P&I Cover for Mobile Offshore Units (the “War Risks P&I Cover”)

The War Risks P&I cover afforded is subject to the Rules for P&I cover for Mobile Offshore Units (the “Rules”), save that the war risks exclusion in Rule 41 shall not apply. The War Risk P&I Cover shall apply to liabilities. Losses costs and expenses as set out in Chapter 6 of the Rules caused by war risks as defined in Rule 41. Such cover will include liability or loss in excess of the amounts recoverable under the Vessel's Hull and Machinery and/or Crew/Marine War Risks Insurance and any P&I inclusion clauses applicable thereto, but subject always to any special terms of entry agreed between the Association and the individual Member and set out in the relevant Vessel's Certificate of Entry. The maximum limit of cover is equal to the maximum policy limit for P&I risk.

Notice of Cancellation - Automatic Termination of Cover

The War Risks P&I cover is subject to the Institute Notice of Cancellation, Automatic Termination of Cover and War and Nuclear Exclusions Clause - Hulls etc. CL359 dated 1 January 1995. “

If you have any questions or comments, please contact Gard's legal department.

Yours faithfully,
GARD AS

A handwritten signature in blue ink that reads 'Rolf Thore Roppestad'.

Rolf Thore Roppestad
Chief Executive Officer