

Amendments to the Rules for Ships for 2015

Dear Sirs,

This circular outlines amendments to the Rules for Ships 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 2015.

Rule 8 - Classification and certification of the Ship

It is a condition for cover under Rule 8.1 that the Ship is classed with a classification society which has been approved by the Association throughout the period of entry.

A clarification is added to harmonize the Rule with the practice under the Pooling Agreement, being the legal framework for the IG Clubs' reinsurance program, allowing the Association on a discretionary basis to waive the class requirement in individual cases.

The amended Rule 8.1 shall read as follows (amendments underlined):

"8 Classification and certification of the Ship

1. Unless otherwise agreed in writing between the Member and the Association it shall be a condition of the insurance of the Ship that:
 - a. [...]"

Rule 35 - Extra handling costs

Rule 35 (b) has been amended to be more in line with the practice of other P&I Clubs. First, the scope of cover is clarified to include extra storing costs and expenses incurred by the carrier when rejected goods need to be disposed of. Secondly, the term "consignee" is replaced with the expression "person entitled to delivery" being a slightly wider term.

Finally, Rule 35 (b) (i) is amended, limiting the Associations' right to refuse recovery under this Rule only to cases where the Member actually is able to recover extra costs and expenses from another party. This proposed amendment means in practice that the counter party risk, i.e. the risk of not being able to collect a claim for extra handling costs because a third party debtor is insolvent etc., is moved from the Member to the Association.

The amended Rule 35 shall read as follows (amendments underlined):

Rule 35 Extra handling costs

The Association shall cover extra costs and expenses, in excess of the costs and expenses which would otherwise have been incurred:

- a) [...]

b) in discharging or disposing, including storing, of cargo which has been rejected, by the person entitled to delivery provided that there shall be no recovery under this Rule 35 of extra costs and expenses which:

- i) the Member is able to recover from any other party, or*
- ii) are excepted from cover under Rule 46(a), or*
- iii) form part of the daily running costs and expenses of the Ship.*

Rule 53 – Limitations – Oil pollution, passengers and seamen and Appendix III – Oil Pollution

To give effect to the decision by the IG to abolish the levying of a special Voyage Premium for US oil pollution cover the existing Rule 53.2 and Appendix III, section 1, (c) and section 3 will be deleted. The existing Rule 53.3 will now become the new Rule 53.2.

The amended Rule 53 shall read as follows:

“Rule 53 Limitations - oil pollution, passengers and seamen

1 The Association's liability under an Owner's Entry for any and all claims in respect of oil pollution (including claims resulting from attempts to reduce or prevent oil pollution) shall be limited to such sum or sums and be subject to such terms and conditions as are set out in Appendix III.

2 The Association's liability under an Owner's Entry for any and all claims which arise in respect of passenger and seamen shall be limited to such sum or sums and be subject to such terms and conditions as are set out in Appendix IV.”

Rule 57 - Liability occurring during through transports

A clarification is added in Rule 57 (a) stating that the cover for passengers during through transport, as for example carriage to and from the Ship in port, will include liability for loss of or damage to the effects of the passengers.

The amended Rule 57 (a) shall read as follows (amendment underlined):

“The Association shall not cover under a P&I entry:

a) liabilities, losses, costs or expenses incurred by the Member in respect of death, personal injury, loss or damage to property, delay or other consequential loss sustained by any passenger by reason of carriage of that passenger by air or during any through carriage whilst the passenger is in the care of another carrier or during carriage to or from the Ship, except liability for illness, injury or death of or loss of' or damage to the effects of' passengers during:

- (i,) carriage to and from the Ship in its own boats, or in port by means of other boats, or*
- (ii)”*

Rule 58 - War risks

The Nairobi International Convention on the Removal of Wrecks 2007 will enter into force 15 April 2015. The Convention includes compulsory insurance provisions equivalent to those in CLC and the Bunkers Convention and blue cards need to be issued.¹

Accordingly, a new wording has been inserted into Rule 58.2 and the new provision read as follows (amendments underlined):

Rule 58 War risks

1 [...]

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) [...]

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

[...]

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

For ships engaged in drilling or production operations in connection with oil and gas exploration and production Rule 60 excludes from the standard P&I cover liabilities, losses, costs and expenses arising out of or during such operations or activities. The exclusion mirrors the terms of the Pooling Agreement being the contractual basis for the IG Clubs' collective purchase of market reinsurance. The scope of the exclusion has recently been clarified and the proposed amendment is intended to give effect to this clarification.

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

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

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:

(i) for the purpose of this Rule 60.1 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 the oil is transferred directly from a

¹ See GARD Circular No. 12/2014

producing well to the storage tanker or the storage tanker has oil and gas separation equipment on board and gas is being separated from oil whilst on board the storage tanker other than by natural venting.

(“ii) 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:

a) from the time that a connection, whether directly or indirectly, has been established between the Ship and the well until such time that the Ship has been disconnected from the well as part of a planned procedure to leave the site for the purpose of navigation to shore or to another production site; or

b) where the Ship is unintentionally, as well as intentionally, as an emergency response, disconnected from the well; or

c) where the Ship remains connected to the well, but the production is shut down, whether or not as an emergency response

Rule 84 - Recoveries from third parties

Rule 84 (2) (c) determines how recoveries of legal and other costs and expenses from third parties are to be applied in Defence cases. Since the deductible structure in some cases may deviate from standard terms Rule 84 (2) (c) is amended to secure that recoveries of costs are handled in line with the agreed deductible structure.

The amended Rule 84 shall read as follows:

“Rule 84 Recoveries from third parties

1. [...]
2. *Where the Association has made a payment in respect of any liability, loss, cost or expense to or on behalf of a Member, the whole of any recovery from a third party in respect of that liability, loss, cost or expense shall be credited and paid to the Association up to an amount corresponding to the sum paid by the Association together with any interest element on that sum comprised in the recovery, provided however, that*

a) [...]

b) [...]

c) In respect of a Defence Entry, any recovery from a third party in respect of legal and other costs or expenses (the “Recovery”) shall be applied as follows and in the following order:

(i) first, if and to the extent a maximum deductible is agreed, the Recovery shall be credited and paid to the Association up to an amount corresponding

to the sum of legal and other costs and expenses paid by the Association, in excess of the Members maximum deductible, together with any interest element on that sum comprised in the Recovery;

(ii) secondly, if and to the extent the Association only has agreed to cover a percentage of legal and other costs or expenses incurred by the Member, the Association shall be credited and paid a proportion of the Recovery corresponding to the percentage of legal and other costs and expenses the Association has agreed to cover pursuant to these Rules and the terms of entry agreed;

(iii) finally when the requirements in (i) and (ii) above have been satisfied the Recovery shall be applied against the Members minimum deductible.

1. (...)”

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

Yours faithfully,
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Rolf Thore Roppestad
Chief Executive Officer