

Amendments to Rules 2021

The following amendments to the Rules for P&I and Defence cover for ships and other floating structures (“Rules for Ships”) and the Rules for P&I and Defence cover for mobile offshore units (“Rules for MOUs”) for both Assuranceforeningen Gard - gjensidig – and Gard P.& I. (Bermuda) Ltd. (collectively the “Associations” and individually the “Association”) have been endorsed by the Boards of Directors of the Associations and will enter into force at noon GMT on 20 February 2021.

RULES FOR SHIPS – P&I ENTRIES

New premium policy – introduction of an Owners’ General Discount

As announced in [Circular No. 12/2020](#), the Boards of Directors of the Associations decided earlier this year to change the Associations’ premium policy and to introduce an Owners’ General Discount with effect for the policy year commencing on 20 February 2021. The new call structure and terminology necessitated amendments to the Rules for Ships. The changes required are set out in more detail in Appendix I below.

The effect of changes in call structure and the introduction of Owners’ General Discounts can be summarized as follows:

- The Associations shall no longer be able to waive a proportion of the Estimated Total Call deferred for payment in later years, i.e. the Last Instalment, if the performance of the relevant policy year and the Associations’ financial position in general permit such a discount to be made in the premium.
- However, to give Members direct financial benefits of the Associations’ good performance, an Owners’ General Discount will be granted to mutual Members renewing their entries if the Associations’ financial position permits.
- The Owners’ General Discount will represent a saving of insurance costs for Members concerned and can be accounted for by Members in the year the premiums relate to.
- Fixed premium entries and new entries from Members not having ship(s) entered in the Associations will not be granted an Owners’ General Discount.
- Ships entered during the year by Members already having ship(s) entered in the Associations will receive an Owners’ General Discount *pro rata* according to the number of days entered that year.
- The term Supplementary Call, meaning premium to be levied in addition to the Estimated Total Call for the relevant ship for the relevant policy year, will be retained for the Associations to remain true mutual insurance associations. The right to levy Supplementary Calls counts as ‘tier 2’ capital under Solvency II.
- Due dates for the three premium instalments are changed.

The other changes in the Rules for Ships, not related to the new premium policy and the introduction of Owners’ General Discount, are summarized below.

Rule 27 – Liabilities in respect of Crew

A minor editorial change is made in Rule 27.1 a. The amendment represents no material change.

The amended Rule 27.1 (a) shall read (amendment underlined):

1. *The Association shall cover:*
 - a. *Liability to pay hospital, medical, maintenance, funeral and other costs and expenses incurred in relation to the injury to, or illness or death of, a member of the Crew, including costs and expenses of repatriating the member of the Crew and his personal effects, or sending home an urn of ashes or coffin and personal effects in the case of death, and costs and expenses necessarily incurred in sending a substitute to replace the repatriated or deceased member of the Crew ~~or dead man~~;*

Rule 28 – Liabilities in respect of passengers

To harmonize the Rules with the Pooling Agreement, existing Rule 28.1 c, referring to liability pursuant to mandatory law for loss caused by delay, is deleted. Mandatory law, such as for example the Athens Convention, does not place any obligation on the carrier to compensate passengers for delay. In general, standard terms of entry require that the contracts of carriage contain provisions excluding liability to passengers to the maximum extent permitted.

The amended Rule 28.1 shall read as follows (deleted text crossed out):

- 1 *The Association shall cover:*
 - a) *liability for injury to, or illness or death of, or loss of or damage to the effects of passengers and hospital, medical or funeral expenses incurred in relation to such injury, illness or death;*
 - b) *liability to pay damages or compensation to passengers on board the Ship where such liability arises in consequence of a casualty, including any liability to return passengers to their port of departure or to forward them to their port of destination and to pay for their maintenance ashore;*
 - c) ~~liability pursuant to mandatory rules of law for loss caused by delay in the carriage of passengers and their effects;~~
 - ce) *costs and expenses incurred as a direct consequence of complying with an order for the deportation of a passenger which would not have been incurred had no such order been made,*
provided that:
 - i) *the Association's liability under paragraphs (a) and (b) above shall not exceed what it would have been had the passage contract relieved the Member of liability to the maximum extent permitted by applicable law;*
 - ii) *the Association's liability under paragraph ~~(c)~~(c) above shall be subject to the provisos to Rule 27.2; and*
 - iii) *the cover shall be subject to proviso (iii) to Rule 27.1; and*
 - iv) *for the purpose of paragraph (b) above a casualty shall be defined as an incident or condition on board involving either collision, stranding, explosion, fire or any other cause affecting the physical condition of the Ship so as to render it incapable of safe navigation to its intended destination or a threat to the life, health or safety of passengers.*

Rule 34 – Cargo liability

A clarifying reference to electronic bills of lading is added to Rule 34.1 (i). To cover the mis-delivery risk, the cargo must be delivered to the person entitled to receive delivery under the electronic trading system. References is also made to the general exclusion regarding electronic trading systems in Rule 63.1 (j).

The amended Rule 34.1 (i) shall read as follows (amendment underlined):

1 The Association shall cover the following liabilities when and to the extent that they relate to cargo intended to be or being or having been carried on the Ship:

a) liability for loss, shortage, damage or other responsibility arising out of any breach by the Member, or by any person for whose acts, neglect or default he may be legally liable, of his obligation properly to load, handle, stow, carry, keep, care for, discharge or deliver the cargo or out of unseaworthiness or unfitness of the Ship;

b) liability for loss, shortage, damage or other responsibility in respect of cargo carried by a means of transport other than the Ship, when the liability arises under a through or transshipment Bill of Lading, or other form of contract, providing for carriage partly to be performed by the Ship,

provided that unless and to the extent that the Association in its discretion shall otherwise decide, the cover under this Rule 34.1 does not include:

i. liabilities, costs and expenses arising out of delivery of cargo under a negotiable Bill of Lading (including an electronic bill of lading) without production (or the equivalent thereof in the case of an electronic bill of lading) of that Bill of Lading by the person to whom delivery is made except where cargo has been carried on the Ship under either the terms of a non-negotiable Bill of Lading, waybill or other non-negotiable document, and has been properly delivered as required by that document, notwithstanding that the Member may be liable under the terms of a negotiable Bill of Lading issued by or on behalf of a party other than the Member providing for carriage in part upon the Ship and in part by another mode of transport; or under the terms of an approved electronic trading system and has been properly delivered to the person so entitled in accordance therewith.

Rule 47 Fines

The International Group Clubs have for many years provided cover for fines imposed in circumstances where there has been no intentional or reckless unlawful conduct on the part of the shipowner. This has included fines in respect of smuggling or other infringements of custom law. The scope of cover provided by the Clubs is to a large extent similar and has been broadly unchanged for more than twenty years. However, providing insurance as of right for smuggling fines may be deemed to undermine the intended corrective effect of such penalties. For that reason, smuggling fines will no longer be covered as of right under the International Group of P&I Clubs' Pooling Agreement.

The amended Rule 47 shall read as follows (amendment underlined):

1 The Association shall cover fines or other penalties imposed upon a Member (or, imposed upon a third party whom the Member is legally obliged to reimburse or whom the Member reimburses with the Agreement of the Association) in respect of the Ship by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:

a) short- or over-delivery of cargo, or 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 34 (other than fines or penalties arising from smuggling of goods or cargo or any attempt thereof);

b) breach of any immigration law or regulations;

c) the accidental escape or discharge of oil or any other substance or threat thereof, provided that the Member is insured for pollution liability by the Association under Rule 38, and subject to the applicable limit of liability under the P&I entry in respect of oil pollution risk;

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

2 The Association may, in its sole discretion, cover in whole or in part a fine or penalty other than those listed in Rule 47.1 above imposed upon the Member (or imposed upon a third party whom the Member is legally obliged to reimburse), provided the Member has satisfied

the Association that he took such steps as appear to the Association to be reasonable to avoid the event giving rise to the fine or penalty.

3 The Association shall be under no obligation to give reason for its decision pursuant to Rule 47.2 above.

Rule 58 – War risks

The reference in Rule 58.2 (iii) to the International Oil Pollution Compensation Fund 1992 (“IOPC Fund 1992”) is amended to the *International Oil Pollution Compensation Funds*. This will comprise both IOPC Fund 1992 which is relevant in relation to STOPIA and the 2003 Supplementary Fund being relevant in relation to TOPIA.

Further, the war risk exclusion carves out claims payable under blue cards and other statutory certificates but only to the extent that such liabilities are not recoverable under the member’s standard P&I war risk policies. To clarify that these conditions are applicable, whether or not the Member has chosen to take out primary war risk cover, it is proposed that the opening of the last paragraph of Rule 58.2 be amended as set out below.

The amended Rule 58.2 (iii) and Rule 58.2 the last paragraph shall read as follows (amendment underlined):

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

.....

(iii) an undertaking given by the Association to the International Oil Pollution Compensation Funds ~~1992~~ in connection with the Small Tanker Oil Pollution Indemnification Agreement (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

.....

to the extent such liabilities, costs and expenses are not or would not be recoverable ~~recovered~~ by the Member under standard P&I war risks policies of insurance had the Member entered into such policies of insurance and complied with all the terms and conditions thereof ~~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 59 – Specialist operations

To harmonize the wording of the Rule with the corresponding provision in the Pooling Agreement, ‘*decommissioning*’ has been added to the list of activities that are not covered.

The amended Rule 59 shall read as follows (amendment underlined):

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

.....

Rule 60.1 – Drilling, production vessels, barges

The opening sentence is amended to harmonize the wording with the corresponding clarification in the Pooling Agreement.

The amended Rule 60.1 shall read as follows (deleted text crossed out/new text underlined):

1 For a Ship ~~drilling vessels, barges and any other vessels or barges employed to carrying out~~ drilling or production operations in connection with oil or gas exploration or production, 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*

Rule 73 – Nuclear risks

Reference is made to the explanatory notes under Rule 58 above. For the same reason, a similar change is made in Rule 73.2 (v) regarding cover for nuclear risks.

The amended Rule 73.2 (v) shall read as follows (amendment underlined):

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:

.....

v) an undertaking given by the Association to the International Oil Pollution Compensation Funds ~~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 ...

Rule 78.3 – Lessor to be co-assured

Rule 78.3, listing the principal categories of co-assureds, such as ship managers, holding companies and mortgagees, is amended to codify established practice. Ships are now often financed through a lease structure rather than conventional mortgage secured lending. The finance institution's security in this structure will be ownership through a 'special purpose vehicle' lessor (being the registered owner) controlled by the finance institution. While the Member in such a structure normally will be the bareboat charterer (lessee), the lessor as registered owner of the ship should qualify to be listed as a co-assured. This is also laid down in the Pooling Agreement.

The amended Rule 78.3 c shall read as follows (amendment underlined):

- ... 3 The cover afforded to a Co-assured in categories (a), (b) and (c) below shall extend only to liabilities, losses, costs and expenses (or, in respect of Defence cover, to costs incurred in connection with claims) arising out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners (or, in the case of a Charterer's Entry, charterers):*
- a) any person interested in the operation, management or manning of the Ship;*
 - 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 Ship or finance institution (or its subsidiary or affiliate) as the owner leasing the Ship to the Member. ...

Rule 78.5 – Protective co-assured – knock for knock agreement

Cover pursuant to the Protective Co-assured clause in Rule 78.5 is available if the Member and the co-assured party have entered into a contract for the provision of services by or to the insured ship containing a so-called Knock for Knock agreement. In short, it means that each party shall be responsible for any loss or damage to his own ship, cargo or property and for the loss of life or personal injury to his own personnel, without any recourse against the other. To harmonize the standard terms of entry with the corresponding wording of the Pooling Agreement, changes are made in Rule 78.5.

The amended Rule 78.5 shall read as follows (amendment underlined):

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

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

For the purpose of this Rule 78.5 a Knock for Knock agreement means a provision or provisions stipulating that

- i. each party to a contract shall be similarly responsible for loss of or damage to, and/or death of or injury to, any of its own property or personnel, and/or the property or personnel of its contractors and/or of its and their sub-contractors and/or of other third parties, and that*
- ii. such responsibility shall be without recourse to the other party and arise notwithstanding any fault or neglect of any party and that*
- iii. each party shall, in respect of those losses, damages or other liabilities for which it has assumed responsibility, correspondingly indemnify the other against any liability that that party shall incur in relation thereto.*

Rule 78.6 – Other categories of co-assured (misdirected arrow cover)

A minor editorial change in the wording is made to clarify that the co-assured will not be in a more favorable position than the Member. This is achieved by adding the words 'to the extent such amount' to the clause specifying the extent of the liabilities recoverable by the member.

The amended Rule 78.6 shall read as follows (Amendment underlined):

... 6 The cover afforded to all other categories of Co-assured, other than those referred to in Rules 78.3, 78.4 and 78.5, shall only extend insofar as such Co-assured may be found liable to pay in the first instance for loss or damage which is properly the responsibility of the Member (or, in the case of Defence cover, insofar as such Co-assured may be required to resist a claim arising from such a liability), and nothing herein contained shall be construed as extending cover in respect of any amount to the extent such amount ~~which~~ would not have been recoverable from the Association by the Member had the claim in respect of such loss or damage been made or enforced against him. ...

Rule 79 – Joint Members, Co-assureds, Affiliates and Fleet Entries

The decision of the Supreme Court of the United Kingdom in *The Ocean Victory* case¹ created a small risk that, where there was no express indemnity from the charterer under a bareboat charter, a liability incurred by an owner in respect of, for example, pollution under the CLC, could not be claimed against the bareboat charterer on the basis that an “insurance solution” had been agreed between them, so that the charterer had no liability to the owner.

As a protection against this legal risk, the Pooling Agreement has been amended to clarify that co-assurance does not exclude any liability a co-assured may have to the owner or *vice versa*. In other words, the club’s payment of compensation to the Member would operate only as satisfaction but not as an exclusion or discharge of the underlying liability of the co-assured or joint member. To give effect to this arrangement, it is proposed that there should be added a new sub-paragraph 5 to Rule 79.

The new Rule 79.5 shall read as follows:

... 5 The liability of Joint Members, Co-assureds, Affiliates and the Member to each other shall not be excluded nor discharged by reason of co-assurance. Any payment to the Member in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion or discharge of the liability of such person to the Member.

Rule 86 – Currency of payments

To enable the Associations fully to discharge its obligations to a Member in respect of liabilities, losses, costs or expenses falling within the scope of cover when the premium currency cannot be used, the Associations may in its sole discretion make payments to the member in another currency than the agreed premium currency.

The amended Rule 86. 1 and 2 shall read as follows (amendments underlined):

1 Unless the Association in its sole discretion otherwise decides, the Association shall make all payments for liabilities, losses, costs and expenses covered by the Association in the currency in which the Member's Estimated Total Call is calculated (the "premium currency").
2 Where the Member has made a payment in respect of any liability, loss, cost or expense which is covered by the Association in a currency other than the premium currency, that payment shall be converted into the premium currency, or such other currency as the Association in its sole discretion decides, at the rate of exchange ruling on the day payment was made by the Member.

.....

Appendix VI – Rules on Overspill Claims and Overspill Calls and related matters

To bring the definition into line with the Pooling Agreement, a change has been made to ensure that ships of less than 500 tons do not contribute disproportionately to a possible Overspill Claim.

The amended definition of Convention Limit shall read as follows (amendment underlined):

Convention Limit

In respect of a ship, the limit of liability of the shipowner of that ship for claims (other than claims for loss of life or personal injury) at the Overspill Claim Date, calculated in accordance with Article 6, paragraph 1(b) (but applying 334 Units of Account to each ton up to 500 tons) of the International Convention on Limitation of Liability for Maritime Claims 1976 (the Convention) and converted from Special Drawing Rights into United States Dollars at the rate of exchange conclusively certified by the Association as being the rate prevailing on the Overspill Claim Date, provided that

¹ 2017 1 Lloyd’s Rep 521.

- a) when a ship is entered for a proportion (the "relevant proportion") of its tonnage only, the Convention Limit shall be the relevant proportion of the limit of liability calculated and converted as aforesaid, and
- b) each ship shall be deemed to be a seagoing ship to which the Convention applies, notwithstanding any provision in the Convention to the contrary.

RULES FOR SHIPS – DEFENCE ENTRIES

Rule 10 – Setting of Estimated total Calls

All Defence entries for both owners and charterers shall hereafter be on the basis of a fixed premium. This necessitates a change in Rule 10. 2.

The amended Rule 10.2 shall read as follows (amendment underlined):

Rule 10 Setting of Estimated Total Calls

- 1.
- 2 A Ship may be entered on the basis of a fixed premium in an amount agreed between the Association and the Member. A Defence entry shall always be on a fixed premium basis. The provisions of Rules 12, 13, 15, 16, 17, 18 and 19 shall not apply to fixed premium entries.
- 3

Rules 66 – Alterations and conversions disputes

Currently defence cover in respect of 'conversion of or alteration to' the insured ship is dependent on a separate agreement between the Member and the Association to extend the cover to include such claims being made latest when the contract for the conversion or alteration is signed. Based on a review of the special terms for 'conversion' and 'alteration' disputes as set out in Rule 66, it has been decided to distinguish between, on the one hand, an 'alteration' and, on the other hand, a 'conversion'.

An 'alteration' will normally not involve major construction work changing the basic character or structure of the ship it is applied to. Thus, 'alteration' disputes do not represent a special risk necessitating special terms of cover. For this reason, 'alteration' risk no longer requires a separate agreement being made as to terms of cover before the relevant contract with the yard which shall perform the work is concluded.

On the other hand, 'conversion' disputes can be compared with shipbuilding disputes and will typically involve major construction work resulting in substantial changes to the insured ship. By nature such cases are challenging and can be both expensive and time consuming. For this reason, 'conversion' disputes should remain subject to special terms as specified in Rule 66.

Against this background, 'alteration' risk has been moved to Rule 66 (d) as set out below. The references to 'alterations' in Rule 66 (c) has been deleted. The effect of this amendment is that cover for 'alteration' disputes (in contrast to 'conversion' disputes) no longer is dependent on a separate agreement being made as to terms of cover latest when the contract with the yard is made.

The amended Rule 66 shall read as follows (amendment underlined):

Rule 66 – Cases pertaining to acquisition or disposal of the Ship

The Association shall cover legal and other costs necessarily incurred in establishing or resisting claims in connection with:

- a) *building, purchase or mortgaging of the Ship, including claims in connection with the future employment of the Ship being built or purchased, provided always that the Ship has been entered in the Association for Defence cover at the latest on signing the relevant contract governing the building or purchase;*
- b) *sale of the entered Ship;*

- c) ~~conversion of or alterations to the Ship, including claims in connection with the future employment of the Ship being subject to conversion or alteration, provided always that a separate agreement, pursuant to which the Association agrees to provide Defence cover for such legal and other costs has been entered into with the Association at the latest on the signing of the relevant contract for the conversion of or the alterations to the Ship;~~
- d) alterations to the Ship, including claims in connection with the future employment of the Ship being subject to alteration.

Rule 70 – Limitation

The current general limit of USD 10 million was introduced with effect from 20 February 2001. The general limit has now been increased to USD 15 million to meet members' needs and market expectations.

No changes are made as to the special limits for ship building, conversion and alteration disputes subject to Rule 66. The special limit remains USD 1 million per event.

The amended Rule 70.1 shall read as follows (amendment underlined):

1 The Association shall not be obliged to compensate under a Defence entry legal and other costs falling within the scope of Rule 65 and legal and other costs incurred in establishing or resisting claims in connection with purchase and sale of the Ship, including claims in connection with the future employment of Ship being purchased, falling within the scope of Rule 66 (a) and (b) in excess of USD ~~40~~ 15 million per event. ...

RULES FOR MOUS – P&I ENTRIES

Rule 11 Payments

Reference is made to the proposed changes in Rule 20 in the Rules for Ships. Similar changes are made in the Rules for MOUs.

The amended Rule 11.1 (a) shall read as follows (amendment underlined):

- 1 Premiums are due in three instalments as follows:*
- a) for the period 20th February - 20th June, on 15th March;*
 - b) for the period 20th June - 20th October, on 15th September ~~5th July~~;*
 - c) for the period 20th October - 20th February, on 15th November*

Rule 19 – Liabilities in respect of crew

Reference is made to the proposed changes in Rule 27.1 (a) in the Rules for Ships as set out above. Similar changes are made in the Rules for MOUs.

The amended Rule 19.1 (a) shall read as follows (amendment underlined):

- 1. The Association shall cover:*
 - a. Liability to pay hospital, medical, maintenance, funeral and other costs and expenses incurred in relation to the injury to, or illness or death of, a member of the Crew, including costs and expenses of repatriating the member of the Crew and his personal effects, or sending home an urn of ashes or coffin and personal effects in the case of death, and costs and expenses necessarily incurred in sending a substitute to replace the repatriated or deceased member of the Crew ~~or dead man~~; ...*

Rule 29 Fines

Reference is made to the proposed changes in Rule 47 in the Rules for Ships as set out above. Similar changes are made in the Rules for MOUs.

The amended Rule 29 shall read as follows (amendment underlined):

1 The Association shall cover fines imposed upon the Member in respect of the Vessel by any court, tribunal or other authority of competent jurisdiction for or in respect of any of the following:

a) failure to comply with regulations concerning the declaration of goods, or documentation of cargo, provided that the Member is insured by the Association for cargo liability under Rule 26 (other than fines or penalties arising from smuggling of goods or cargo or any attempt thereat);;

b) breach of any immigration law or regulations;

c) the accidental escape or discharge from the vessel of oil or any other substance, provided that the Member is insured for pollution liability by the Association under Rule 25;

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

2 The Association may, in its sole discretion, cover in whole or in part

a) a fine other than those listed in Rule 29.1 above imposed upon the Member, provided the Member has satisfied the Association that he took steps as appear to the Association to be reasonable to avoid the event giving rise to the fine or penalty;

b) any fine imposed not upon the Member but the master or Crew member of the Vessel or on any other servant or agent of the Member or on another party, provided that the Member has been compelled by law to pay or reimburse such fine or that the Association determines that it was reasonable for the Member to have paid or reimbursed the same.

3 The Association shall be under no obligation to give reasons for its decision pursuant to Rule 29.2 above.

New Rule 33A – Disinfection and quarantine expenses

In contrast to the Rules for Ships, the Rules for Mobile Offshore Units do not list disinfection and quarantine expenses as a named risk falling within the scope of standard P&I cover. Although the Rules for MOUs are modelled on the Rules for Ships, the disinfection and quarantine risk was not treated as a realistic exposure for Mobile Offshore Units which the MOU cover originally was designed for.

Unfortunately, the outbreak of Covid-19 demonstrates that also MOUs can be exposed to disinfection and quarantine costs. To meet Members and clients' needs, the scope of standard P&I cover for MOUs has been extended to include the disinfection and quarantine risk.

In order not to alter the numbering of a large part of the standard terms, a new Rule 33A is added based on Rule 48 in the Rules for Ships. The explanatory notes in the Guidance to the Rules for Rule 48 in the Rules for Ships are valid for the new Rule 33A in the Rules for MOUs.

The new Rule 33A shall read as follows:

Rule 33A Disinfection and quarantine expenses

The Association shall cover costs and expenses, other than the Vessel's running costs and expenses, incurred by the Member in connection with quarantine orders or disinfection of the Vessel or Crew on account of infectious diseases on board, except where the Vessel has been ordered to a port where the Member knew or should have anticipated that she would be quarantined.

Rule 40 – Other excluded losses

To harmonize the standard terms of cover with market practice and the governing reinsurance arrangement, a reference to the Marine Cyber Endorsement and the Coronavirus Exclusion clause has been added in the new Rule 40.3. The wording of the two new clauses is included in a new Appendix III to the Rules for MOUs (see below).

The new Rule 40.3 shall read as follows:

3. The cover shall be subject to the Marine Cyber Endorsement (LMA 5403) and Coronavirus Exclusion (LMA 5395) as specified in Appendix III. These clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.

Rule 58 - Cover for Co-assureds and Protective Co-Assureds

Reference is made to the proposed changes in Rule 78.3 (c) in the Rules for Ships as set out above. Similar changes are made in the Rules for MOUs.

The amended Rule 58.2 (c) shall read as follows (amendments underlined):

.....
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 or finance institution (or its subsidiary or affiliate) as the owner leasing the Vessel to the Member. ...

Rule 60 - Joint Members, Co-assureds, Affiliates and Fleet Entries

Reference is made to the proposed changes in Rule 79.5 in the Rules for Ships as set out above. Similar changes are made in the Rules for MOUs.

The new Rule 60.6 shall read as follows (amendments underlined):

... 5 The liability of Joint Members, Co-assureds, Affiliates and the Member to each other shall not be excluded nor discharged by reason of co-assurance. Any payment to the Member in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion or discharge of the liability of such person to the Member. ...

Rule 66 – Currency of payments

Reference is made to the proposed changes in Rule 86.1 and 2 in the Rules for Ships as set out above. Similar changes are made in the Rules for MOUs.

The amended Rule 66.1 and 2 shall read as follows (amendments underlined):

... 1 Unless the Association in its sole discretion otherwise decides, the Association shall make all payments for liabilities, losses, costs and expenses covered by the Association in the currency in which the Member's Estimated Total Call is calculated (the "premium currency").
2 Where the Member has made a payment in respect of any liability, loss, cost or expense which is covered by the Association in a currency other than the premium currency, that payment shall be converted into the premium currency, or such other currency as the Association in its sole discretion decides, at the rate of exchange ruling on the day payment was made by the Member. ...

Appendix III – Marine Cyber Endorsement and Coronavirus Exclusion

The wordings of the Marine Cyber Endorsement and Coronavirus Exclusion referred to in the new Rule 40.3 above, are included in the new Appendix III to the Rules for MOUs.

The new Appendix III shall read as follows:

Appendix III – Marine Cyber Endorsement and Coronavirus Exclusion (Rule 40.3)

MARINE CYBER ENDORSEMENT

1 Subject only to paragraph 3 below, in no case shall this insurance cover loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from the use or operation, as a means for inflicting harm, of any computer, computer system, computer software programme, malicious code, computer virus, computer process or any other electronic system.

2 Subject to the conditions, limitations and exclusions of the policy to which this clause attaches, the indemnity otherwise recoverable hereunder shall not be prejudiced by the use or operation of any computer, computer system, computer software programme, computer process or any other electronic system, if such use or operation is not as a means for inflicting harm.

3 Where this clause is endorsed on policies covering risks of war, civil war, revolution, rebellion, insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power, or terrorism or any person acting from a political motive, paragraph 1 shall not operate to exclude losses (which would otherwise be covered) arising from the use of any computer, computer system or computer software programme or any other electronic system in the launch and/or guidance system and/or firing mechanism of any weapon or missile.

LMA5403 11 November 2019

CORONAVIRUS EXCLUSION

This clause shall be paramount and shall override anything contained in this insurance inconsistent therewith.

This insurance excludes coverage for:

- 1) any loss, damage, liability, cost, or expense directly arising from the transmission or alleged transmission of:
 - a) Coronavirus disease (COVID-19);
 - b) Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2); or
 - c) any mutation or variation of SARS-CoV-2; orfrom any fear or threat of a), b) or c) above;
- 2) any liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for a), b) or c) above;
- 3) any liability for or loss, cost or expense arising out of any loss of revenue, loss of hire, business interruption, loss of market, delay or any indirect financial loss, howsoever described, as a result of any of a), b) or c) above or the fear or the threat thereof.

All other terms, conditions and limitations of the insurance remain the same.

LMA5395
09 April 2020

RULES FOR MOUS – DEFENCE ENTRIES

Rules 45 – Alterations and conversions disputes

Reference is made to the proposed changes in relation to Rule 66 in the Rules for Ships regarding defence cover in respect of 'alteration' and 'conversion' disputes. For the same reasons, similar changes are made in the Rules for MOUs.

Further, an editorial item only but to harmonize the terms of defence cover for MOUs with the standard cover for ship, the sentence "...including claims in connection with the future employment of the Vessel being built or purchased..." has been added in Rule 45 a, c and d.

The amended Rule 45 shall read as follows (amendment underlined):

Rule 45 – Cases pertaining to acquisition or disposal of the Vessel

The Association shall cover legal and other costs necessarily incurred in establishing or resisting claims in connection with:

- a) *building, purchase or mortgaging of the Vessel, including claims in connection with the future employment of the Vessel being built or purchased, provided always that the Vessel has been entered in the Association for Defence cover at the latest on signing the relevant contract governing the building or purchase;*
- b) *sale of the entered Vessel;*
- c) *conversion of ~~or alterations~~ to the Vessel, including claims in connection with the future employment of the Vessel being subject to conversion or alteration provided always that a separate agreement, pursuant to which the Association agrees to provide Defence cover for such legal and other costs has been entered into with the Association at the latest on the signing of the relevant contract for the conversion of ~~or the alterations~~ to the Vessel;*
- d) *alterations to the Vessel, including claims in connection with the future employment of the Vessel being subject to alteration.*

No change is made in the general limit for defence cover for MOUs. The limit remains USD 1 million per event. See Rule 49.

Updated Rules for Ships and Rules for MOUs will be published on www.gard.no prior to the renewal date 20 February 2021.

If you have any questions, please contact Kjetil Eivindstad, Senior Vice President, kjetil.eivindstad@gard.no in Gard, Arendal.

Yours faithfully,
GARD AS



Rolf Thore Roppestad
Chief Executive Officer

APPENDIX I

Re: New premium policy – introduction of Owners' General Discount - changes in the Rules for P&I and Defence cover for ships and other floating structures (Rules for Ships)

Introduction

The changes involve Rule 1 (Definitions) and certain provisions in Part I, chapter 4 (Premiums and calls). Some minor adjustments are made in Rules 24, 26 and 68.

The amended wordings of the relevant provisions are set out below (deleted text is crossed out and new text underlined):

Part I – Chapter 1 – Introductory provisions

Rule 1 Interpretation

1 In these Rules the following words or expressions shall have the following meanings:

.....

'Owners' General Discount' – a general discount in the Estimated Total Call for a Policy Year (other than a fixed premium entry) determined by the Association pursuant to Rule 12.1.

Last Instalment

~~the proportion of the Estimated Total Call for a Policy Year in respect of an entry (other than a fixed premium entry) which shall be deferred for payment in later years in accordance with Rule 12.~~

.....

Part I - Chapter 4 – Premiums and Calls

Rule 10 Setting of Estimated Total Calls

1 Each Ship's Estimated Total Call shall be set taking into account all matters, including the Member's loss record, which the Association may consider relevant in assessing the degree of risk involved. All Ships under the same management may at the discretion of the Association be deemed, for the purpose of determining the loss record or otherwise for the determination of Estimated Total Call, to be owned by one Member.

2 A Ship may be entered on the basis of a fixed premium in an amount agreed between the Association and the Member. A Defence entry shall always be on a fixed premium basis. The provisions of Rules 12, 13, 15, 16, 17, 18 and 19 shall not apply to fixed premium entries.

3 The Association may, in its discretion, levy an additional fixed premium for cover made available pursuant to Rule 2.2. The provisions of Rule 12 shall not apply to any such fixed premium.

Rule 12 Estimated Total Calls and Owners' General Discount ~~Last Instalments~~

1 Before the commencement of each Policy Year, the Association shall decide whether and to what extent the Members renewing their entries in the Association shall be granted an Owners' General Discount in what percentage of the Estimated Total Calls of all Ships entered for that year, is to be collected during that Policy Year and what proportion shall be deferred for call in later years (the Last Instalment).

2 ~~The Association may at any time after the end of the Policy Year call for the Last Instalment in whole or in part. All Last Instalments so made shall be calculated pro rata of the Estimated Total Calls in the relevant Policy Year.~~

23 Notification of the Owners' General Discount in the Estimated Total Call to be granted Members renewing their entries in the Association proportion of the Estimated Total Calls to be collected during the Policy year to which it relates and the Last Instalment deferred for payment in later years shall, if practicable, be given to Members one calendar months before

~~the commencement of the Policy Year to which the Estimated Total Call relates, prior to 20th January.~~

~~34 A Ship entered in the course of the Policy Year shall pay a daily pro rata proportion of the stipulated Estimated Total Call adjusted for the Owners' General Discount if the Member is entitled to such discount pursuant to Rule 12.1., including the Last Instalment, for the year.~~

.....

Rule 14 Determination of Estimated Total Calls, Owners' General Discount and Supplementary Calls etc.

The Association may determine Estimated Total Calls, Owners' General Discount and Supplementary Calls and variations in the Estimated Total Calls and Owners' General Discounts, either generally for all entries or separately for any entry or category of entries.

Rule 15 Release Calls

When an entry is terminated or shall cease, the Association may, without awaiting the fixing of any Last Instalments and Supplementary Calls, determine an additional premium for each open Policy Year based on, but not limited to, the anticipated rate(s) of Last Instalments and Supplementary Calls for each year. Upon payment of such Release Calls, the Member shall be released from all liabilities for further Last Instalments and Supplementary Calls in respect of the said entry and shall under no circumstances be entitled to participate in the distribution of any surplus decided upon thereafter.

Rule 16 Closing of Policy Years

1 The Association may decide to close a Policy Year at such time as it deems expedient.
2 No further Last Instalments and Supplementary Calls, other than Overspill Calls, shall be levied in respect of a closed Policy Year.

.....

Rule 19 Reserves

1 The Association may establish and maintain such reserves as it may deem appropriate and may decide that any part of such reserves shall be applied to reduce Last Instalments and Supplementary Calls including Overspill Calls.
2 Reserve funds may not be distributed to the Members except as provided for in the Articles of Association.

Rule 20 Payment

1 Subject to Rule 20.3, ~~the proportion of the Estimated Total Calls which shall be collected during the Policy Year to which it relates pursuant to Rule 12.1 is~~ are due in three instalments as follows:

- a) for the period 20th February - 20th June, on 15th March;
- b) for the period 20th June - 20th October, on 15th September ~~5th July~~;
- c) for the period 20th October - 20th February, on 15th November.

2 Where the Ship is entered in the course of a Policy Year, a pro rata proportion of the Estimated Total Calls to be collected during the Policy Year to which it relates for the four-monthly period in which it is entered is due at once, with the remaining instalments, if any, due at the times specified in Rule 20.1.

3 ~~The proportion of the Estimated Total Calls which shall be collected during the Policy Year to which it relate for Defence cover and generally~~ of less than USD 5,000 (or the equivalent in any other currency, as determined by the Association) per Ship are due in full on 15th ~~20th~~ March.

4 Fixed premiums are due on inception of cover.

5 ~~Last Instalments and Supplementary Calls, other than Release Calls, are due on the date specified by the Association.~~

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

7 If any sums due to the Association from the Member are not paid on or before the due date interest is chargeable on such unpaid sums at such rate as the Association may from time to time determine.

8 Members' Estimated Total Calls, ~~Last Instalments~~, Supplementary Calls, Overspill Calls, other premiums and other sums which cannot be collected shall be deemed to be an expense of the Association.

.....

Part I – Chapter 5 Termination and cesser

Rule 24 Termination by the Association

1 The Association may terminate the entry with effect from the end of the Policy Year in respect of one or more Ships by giving written notice thereof prior to 20th January.

2 The Association may also terminate the insurance of any or all of the Ships entered by a Member:

- a) without notice, where a casualty or other event has been brought about by wilful misconduct on the part of the Member, as defined in Rule 72;
- b) on three days' notice, where the Member has failed to pay when due and demanded any Estimated Total Call, ~~Last Instalment~~, Supplementary Call or other amount due from him to the Association;

.....

Rule 26 Effect of cesser or termination

1 Where the insurance ceases or is terminated, the Member shall remain liable for all Estimated Total Calls, ~~Last Instalments~~, Supplementary Calls, Overspill Calls and other premiums in respect of the then current Policy Year pro rata for the period up to the date of cesser or termination, and for all Estimated Total Calls, ~~Last Instalments~~, Supplementary Calls, Overspill Calls and premiums in respect of prior Policy Years.

2 The Association shall be under no liability whatsoever by reason of anything occurring after cessation or termination.

.....

Part IV – Defence cover

Chapter 2 Limitations etc. on Defence cover

Rule 68 Disputes with the Association and other Members - unpaid sums

1 The Association will not cover under a Defence entry costs of cases against the Association itself, its subsidiaries, agents, representatives or servants.

2 No cover shall be available under Defence entries to either party where a dispute arises between Joint Members, Co-assureds, affiliates or associates of the Member or Co-assureds or any combination thereof.

3 No Member shall be entitled to cover under a Defence entry so long as Estimated Total Calls, ~~Last Instalments~~ or Supplementary Calls or other sums of whatsoever nature owed to the Association, whether in respect of Defence or P&I cover or otherwise, remain unpaid.

.....