

## Amendments to Rules 2022

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 2022.

### RULES FOR SHIPS – P&I ENTRIES

#### Rule 1 – Interpretation

##### *Gender equality*

The Rules are currently not gender neutral in the way that they reference the Member as being male and in addition references to seafarers are in some cases articulated as “seamen”, assuming male gender. To account for this a new clause in Rule 1 stating that any words importing gender shall import all genders has been added.

The new Rule 1.7 shall read as follows (amendments reflected by strike-through/underlining):

“... ”

*7 Any words importing gender in these Rules shall import all genders.”*

##### *Knock for knock definition*

To have a unified interpretation of the term Knock for Knock throughout the Rules, the definition of Knock for Knock has been moved from Rule 78.5 to Rule 1. Also, to harmonize the wording of the Rules with the Pooling Agreement the Knock for Knock definition itself has been amended to make it clear that the reference to “other liabilities” includes wreck removal and pollution. The added wording “*and/or liability arising out of the ownership or operation of its own property*” is intended to capture wreck removal and oil pollution liabilities of the contracting parties but of those parties alone. In addition, in sub-clause (i) the word “*third*” has been deleted from the expression “*other third parties*” to remove ambiguity and clarify that it can refer to parties in the relevant contractor’s group. Finally, in sub-clause (iii) the word “*other*” has been deleted since it no longer serves any purpose. The Knock for Knock definition in Rule 1 shall read as follows (amendments of the current definition in Rule 78.5 is reflected by strike-through/underlining):

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

... ”

##### *Knock for Knock*

~~*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*
  - a 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/or;*
  - b liability arising out of the ownership or operation of its own property, and that*

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

- 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 40 - Liability for obstruction and wreck removal

To provide further clarity on what constitutes a “casualty” Rule 40 has been amended to read as follows (amendments reflected by strike-through/underlining):

“The Association shall cover:

- a costs and expenses incurred, relating to the raising, removal, destruction, lighting and marking of the Ship or of the wreck of the Ship or parts thereof or of its cargo lost, as a result of a casualty, when such raising, removal, destruction, lighting and marking is compulsory by law or the costs or expenses thereof are legally recoverable from the Member;
- b liability incurred by reason of the Ship or the wreck of the Ship or parts thereof, as a result of a casualty, causing an obstruction, provided that
  - i for the purpose of this rule, ‘casualty’ means collision, stranding, explosion, fire or similar fortuitous event;
  - ii recovery from the Association under this Rule shall be conditional upon the Member not having transferred his interest in the wreck otherwise than by abandonment; and
  - iii the realised value of the wreck and other property saved shall be credited to the Association.”

#### Rule 48 - Disinfection and quarantine expenses

The Covid-19 pandemic has highlighted that each Club has its own rule wording for cover for disinfection and quarantine expenses, resulting in slightly different scope of cover and some ambiguity. An IG model wording has been developed with the aim of clarifying the clubs’ scope of cover. To align the wording of Gard’s disinfection and quarantine rule with the IG model wording, Rule 48 has been amended as follows (amendments reflected by strike-through/underlining):

- “The Association shall cover extraordinary costs and expenses (in respect of quarantine, disinfection, fuel, insurance, stores, provisions and port charges) other than the Ship’s running costs and expenses, necessarily incurred by the Member in connection with as a direct consequence of a quarantine orders regarding the Ship or Crew or disinfection of the Ship or Crew, on account of an infectious diseases on board, provided always that there shall be no recovery except
- a where the Ship has been ordered to a port where the Member knew or ought to have known should have anticipated that she would be quarantined and/or would require disinfection (unless and to the extent that the Association shall in its absolute discretion determine otherwise), and
  - b in respect of expenses for loss of time, loss of market, delay or similar.”

#### Rule 56 – Non-marine personnel

Changes to the treatment of “accommodation units” were previously made to the IG Pooling Agreement and the Rules by, amongst other things, introducing an exclusion where accommodation units were moored or anchored within 500 m of any oil or gas production or exploration facility. However, this has proven to be less than ideal in practice, with the result that reference to the 500 meter exclusion will be removed altogether from the Pooling Agreement, leaving only a requirement that a contractual allocation of risk on terms no less favorable to the Member than Knock for Knock is approved.

Corresponding changes has been made to the Rules such that Rule 56 will then read as follows (amendments reflected by strikethrough/underlining):

*“The Association shall not cover under a P&I entry liabilities, losses, costs or expenses incurred by the Member in respect of any of the following:*

- a personnel (other than marine crew) on board the Ship ~~(being an accommodation vessel)~~ employed otherwise than by the Member, where ~~either: the Ship is providing accommodation to such personnel in relation to their employment on or about an oil or gas exploration or production facility, unless a contractual allocation of such risk, on terms no less favourable to the Member than Knock for Knock, has been approved by the Association;~~  
~~I such Ship is moored or anchored within 500 meters from any oil or gas production or exploration facility; or~~  
~~II there has not been a contractual allocation of risks as between the Member and the employer of the personnel which has been approved by the Association;~~*
- b hotel and restaurant guests and other visitors and catering crew of the Ship when the Ship is moored (otherwise than on a temporary basis) and is open to the public as a hotel restaurant, bar or other place of entertainment.”*

### **Rule 58 - War risks**

To provide additional clarity that ransom payments for kidnapped crew are not covered under standard P&I, a specific exclusion for ransom payments have been added in Rule 58. However, the Association has discretion to cover the ransom if no cover is available under either the Kidnap & Ransom or War insurance covers. The discretionary authority will rest with the Board of Directors of the Association.

Rule 58 shall read as follows (amendments reflected by strike-through/underlining):

*“1 The Association shall not cover under a P&I entry liabilities, losses, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liabilities arise or such losses, costs or expenses are incurred was caused by:*

- a war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power or any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purpose of this paragraph (a), an act constitutes an act of terrorism, the Association shall in its absolute discretion determine that dispute and the Association’s decision shall be final);*
- b capture, seizure, arrest, restraint or detainment, (barratry and piracy excepted, provided always that ransom shall not be recoverable unless and to the extent the Association shall in its absolute discretion determine otherwise), and the consequences thereof or any attempt thereat;*
- c mines, torpedoes, bombs, rockets, shells, explosives, or other similar weapons of war (save for liabilities, costs or expenses which arise solely by reason of the transport of any such weapons, whether on board the entered Ship or not), provided always that this exclusion shall not apply to the use of such weapons, whether as a result of government order or with the agreement of the Association, where the reason for such use is the mitigation of liability, cost or expenses which would otherwise fall within the cover given by the Association.*

*2 ...”*

### **Rule 61 – Submarines, diving bells and divers**

To align the wording of Rule 61 with the IG Pooling Agreement it has been amended so that the exclusion is expressly extended to include ROVs.

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Rule 61 will then read as follows (amendments reflected by strike-through/underlining):

**“Rule 61            Submarines, diving bells, remotely operated underwater vehicles and divers**

*The Association shall not cover under a P&I entry liabilities, losses, costs or expenses arising out of*

- a the operation by the Member of submarines, mini-submarines, ~~or diving bells~~ or remotely operated underwater vehicles; or*
- b the activities of professional or commercial divers where the Member is responsible for such activities other than*
  - I activities arising out of salvage operations being conducted by the Ship where the divers form part of the crew of that Ship (or of diving bells or other similar equipment or craft operating from the Ship) and where the Member is responsible for the activities of such divers; and*
  - II incidental diving operations carried out in relation to the inspection, repair or maintenance of the Ship or in relation to damage caused by the Ship; and*
  - III recreational diving activities.”*

**Rule 78 - Cover for Co-Assureds and Affiliates**

*Rule 78.5 - Expansion of persons falling within the Co-assureds assumed responsibility*

As per today, under the Pooling Agreement and the Rules, protective co-insurance can only be given to the Member’s contracting party and their subcontractors. However, in the offshore industry it is normal that the Knock for Knock clause refers to the “Charterer’s Group” and this group often includes more parties than the subcontractors – also clients, co-venturers and affiliated companies.

To be aligned with market practice the group of persons that can be given protective co-insurance under the Pooling Agreement will be extended to include a wider group of persons within the scope of the contractor’s assumption of responsibility (not only subcontractors).

In order to be aligned with the Pooling Agreement similar changes have been in Rule 78.5, which shall read as follows (amendments reflected by strike-through/underlining):

- “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 ~~subcontractor of person in the Co-assured’s group,~~ 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 in respect of any and all persons in the Co-assured’s group”*

*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 – Co-assurance under the affiliated charterer’s cover*

Co-assurance under the Pooling Agreement has till now only been available to persons co-assured under an Entry with an Insured Owner. Therefore, in situations where an affiliated charterer employed

a commercial manager or operator, that manager or operator could not be a co-assured of that affiliated charterer. Accordingly, the Pooling Agreement has been extended to allow co-assurance under the affiliated charterer's cover in the nature of a misdirected arrow.

To harmonize the Rules with the Pooling Agreement Rule 78.6 has been amended as follows (amendments reflected by strike-through/underlining):

*"6 The cover afforded to all other categories of Co-assureds, 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 either the Member or, as appropriate, an affiliated charterer pursuant to Rule 78.4 (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 would not have been recoverable from the Association by either the Member or, as appropriate, an affiliated charterer pursuant to Rule 78.4, had the claim in respect of such loss or damage been made or enforced against him."*

#### *Rule 78.8 – Effect of indemnification of co-assured pursuant to 78.6*

Rule 78.8 is intended to protect the Association against the risk that multiple recovery claims may be brought against the Association in respect of the same third-party liabilities, losses, costs or expenses by different parties that are either insured by, or offered protection by, the Association under the contract of insurance. Therefore, once the Association has indemnified a Co-assured (other than a Co-assured that is insured pursuant to Rules 78.3. and 78.4), or an Affiliate, for a claim, it has no further liability to indemnify any other person whatsoever, including the Member, in relation to that same claim, or the loss or damage in respect of which the claim was brought.

As co-assurance under Rule 78.6 has been extended to allow co-assurance under the affiliated charterer's cover, there is a need to also amend Rule 78.8 to be in line with the Pooling Agreement and to avoid reducing the Member's cover by payments made to a co-assured of the affiliated charterer.

Rule 78.8 shall read as follows (amendments reflected by strikethrough/underlining):

*"8 To the extent that the Association has indemnified a Co-assured (other than a Co-assured in the categories referred to in Rules 78.3 and 78.4) or an Affiliate in respect of a claim, it shall not be under any further liability and shall not make any further payment to any person whatsoever, including, where co-assured under the Member's entry, the Member, or, where co-assured under the affiliated charterer's cover afforded pursuant to Rule 78.4, that charterer, in respect of that claim or of the loss or damage in respect of which that claim was brought."*

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

Rule 79 has been amended to distinguish between, on the one hand, co-assureds involved in the operation and management of the ship as per Rule 78.3 and associated charterers as per Rule 78.4 (jointly referred to as "ordinary co-assureds"), and, on the other hand, other categories of co-assureds such as protective co-assureds (Rule 78.5) and misdirected arrow co-assureds (Rule 78.6) (jointly referred to as "«other categories of co-assureds»").

There is no requirement in the Pooling Agreement that other categories of co-assureds shall be jointly and severally liable for sums due under the terms of entry. To align the Rules with the Pooling Agreement, Rule 79 has therefore been amended as follows (amendments reflected by strike-through/underlining):

*“1 Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 78.5 and 78.6) insured on any one entry shall be jointly and severally liable for all sums due to the Association in respect of such entry. Members, Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 78.5 and 78.6) insured on any entry in respect of one or more Ship(s) forming part of a Fleet Entry shall be jointly and severally liable in respect of all sums due to the Association in respect of any or all Ships forming part of the Fleet Entry. For the purpose of this section a Fleet Entry shall mean the entry of more than one Ship by one or more Members on the basis that those Ships shall be treated together as a fleet.  
2...”*

## **Rule 84 - Recoveries from third parties**

Minor changes have been made to Rule 84 in order to remove any potential ambiguity in the wording and to codify the Club’s existing practice on the interpretation of the Rule in relation to Defence cover. The changes make it clearer that the Association is entitled to a recovery even where there is no costs order in favor of the Member or regardless of the wording of a settlement agreement.

Rule 84 the following amendments have been made (reflected by strike-through/underlining):

- “1 When the Member has a right of recourse against a third party for any liability, loss, cost or expense covered by the Association, the Association shall be subrogated to the Member's right of recourse upon payment by the Association to or on behalf of the Member in respect of the liability, loss, cost or expense.*
- 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 the case to which that liability, loss, cost or expense relates 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 where because of a deductible in his terms of entry the Member has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made; and*
  - b the Association shall retain the whole amount of any award of costs in respect of its own handling of any case; and*
  - c In respect of a Defence Entry, any recovery whatsoever from any 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 a fair recovery (in the Association's discretion) of legal and other costs and expenses corresponding to the sum of legal and other costs and expenses paid or agreed to be 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 or on behalf of 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.**
- 3 Subject to Rule 84.2, all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member.*
- 4 Where a Member settles or compromises a claim within its Defence cover for a lump sum ~~which includes costs or without making provision as to costs~~, the Association shall determine what part of*

that lump sum shall be deemed attributable to legal and other costs and expenses irrespective of the provisions of the settlement or compromise and, where relevant, the lump sum shall be treated as a Recovery pursuant to Rule 84.2 c). ”

## **Rule 88 – Payments and undertakings to third parties**

Rule 88 has been amended to allow for a discretionary mechanism for the Association to prioritize claims that the Association is obliged to pay directly to third parties under blue cards or LOUs, over claims the same are obliged to indemnify to Members under the Rules and terms of entry.

This could be relevant in situations where insurance funds are limited, e.g., the USD 1 billion limit for pollution claims and fines. Accordingly, a new section to Rule 88 (Rule 88.4) has been added whereby the Association is given the right, but not the obligation, to prioritize claims. The Association has the discretion to withhold settlement of non-certified claims, depending on the circumstances of the individual case. The discretionary authority of whether to make use of the Rule will rest with the Board of Directors of the Association.

The new Rule 88.4 shall read as follows:

“4 a Where the Association has issued any guarantee, undertaking or certificate as referred to in Rule 58.2 or Rule 73.2 or other bail or security by which it undertakes to directly meet or guarantee any relevant liabilities (together the “Direct Liabilities”) and claims in respect of Direct Liabilities alone or in combination with other claims may in the sole opinion of the Association exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Entry, the Association may in its absolute discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Association may in its absolute discretion decide, have been discharged.

b To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s) any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable, all the rights of the Member under any other insurance and against any third party.”

## **Rule 91 - Arbitration**

The use of “Oslo City Court” in the current Rule 91 is not accurate and therefore the wording has been updated to reflect the current official name of the Court.

Rule 91 shall read as follows (amendments reflected by strike-through/underlining):

“1 Unless otherwise agreed, disputes between the Association and a Member or a former Member or any other person arising out of the contract of insurance or these Rules shall be resolved by arbitration. Each party shall nominate one arbitrator and those so nominated shall appoint an Umpire. If the arbitrators cannot agree on an Umpire or a party fails to nominate his arbitrator, the nomination shall be made by the Chief Justice of the Oslo City District Court. Reasons shall be given for the award. Arbitration proceedings shall take place in Oslo.”

## RULES FOR MOUS – P&I ENTRIES

### MOU Rule 1 - Interpretation

Reference is made to the change in Rule 1 in the Rules for Ships regarding gender equality. Similar changes have been made in the Rules for MOUs.

A new Rule 1.7 shall read as follows (amendments reflected by strike-through/underlining):

“ ...

7 Any words importing gender in these Rules shall import all genders.”

### MOU Rule 27 – Liability for obstruction and wreck removal

Reference is made to the changes in Rule 40 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 27 shall read as follows (amendments reflected by strike-through/underlining):

“The Association shall cover:

**a** costs and expenses incurred, relating to the raising, removal, destruction, lighting and marking of the Vessel or of the wreck of the Vessel or parts thereof or of its equipment lost, as a result of a casualty, when such raising, removal, destruction, lighting and marking is compulsory by law or the costs or expenses thereof are legally recoverable from the Member, under contract or otherwise;

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

provided that

*i* for the purpose of this rule, ‘casualty’ means collision, stranding, explosion, fire or similar fortuitous event;

*ii* recovery from the Association under this Rule shall be conditional upon the Member not having transferred his interest in the wreck otherwise than by abandonment; and

*iii* the realised value of the wreck and other property saved shall be credited to the Association.

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

### MOU Rule 33A - Disinfection and quarantine expenses

Reference is made to the changes in Rule 48 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 33A shall read as follows (amendments reflected by strike-through/underlining):

“The Association shall cover extraordinary costs and expenses (in respect of quarantine, disinfection, fuel, insurance, stores, provisions and port charges), ~~other than the Vessel's running costs and expenses, necessarily incurred by the Member in connection with as a direct consequence of a quarantine orders regarding the Vessel or Crew or disinfection of the Vessel or Crew on account of an infectious diseases on board, provided always that there shall be no recovery except~~

- a *where the Vessel has been ordered to a port where the Member knew or ought to have known ~~should have anticipated~~ that she would be quarantined and/or would require disinfection (unless and to the extent that the Association shall in its absolute discretion determine otherwise), and*
- b *in respect of expenses for loss of time, loss of market, delay or similar.”*

#### **MOU Rule 40 – Other excluded losses**

In order to be back-to-back with market reinsurance terms for the 2022 policy year, the following changes have been made to MOU Rule 40.3:

“...

*3 The cover shall be subject to the Marine Cyber Endorsement (LMA 5403) and the Communicable Disease Exclusion Clause (JL2021-014) Coronavirus Exclusion (LMA 5395) as specified in Appendix III. These clauses shall be paramount and shall override anything contained in this insurance inconsistent therewith.”*

#### **MOU Rule 54 - War risks**

Reference is made to the changes in Rule 58 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 54 shall read as follows (amendments reflected by strike-through/underlining):

*“The Association shall not cover liabilities, losses, costs or expenses (irrespective of whether a contributory cause of the same being incurred was any neglect on the part of the Member or his servants or agents) when the loss or damage, injury, illness or death or other accident in respect of which such liabilities arise or such losses, costs or expenses are incurred was caused by:*

- a *war, civil war, revolution, rebellion, insurrection or civil strife arising therefrom, or any hostile act by or against a belligerent power, or any act of terrorism (provided that, in the event of any dispute as to whether or not, for the purpose of this paragraph (a), an act constitutes an act of terrorism, the Association shall in its absolute discretion determine that dispute and the Association's decision shall be final);*
- b *capture, seizure, arrest, restraint or detainment, (barratry and piracy excepted, provided always that ransom shall not be recoverable unless and to the extent the Association shall in its absolute discretion determine otherwise), and the consequences thereof or any attempt thereat;*
- c *mines, torpedoes, bombs, rockets, shells, explosives, or other similar weapons of war, provided always that this exclusion shall not apply to the use of such weapons, whether as a result of government order or with the agreement of the Association, where the reason for such use is the mitigation of liability, cost or expenses which would otherwise fall within the cover given by the Association.*

*Note: Additional cover in respect of war risks is available pursuant to Rule 2.1(b) - see Appendix II.”*

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

Reference is made to the changes in Rule 79 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 60 shall read as follows (amendments reflected by strike-through/underlining):

*“1 Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 58.3) insured on any one entry shall be jointly and severally liable for all sums due to the Association in respect of such entry. Members, Joint Members and Co-assureds (other than a Co-assured expressly given cover by the Association in accordance with Rule 58.3) insured on any entry in respect of one or more Vessel(s) forming part of a Fleet*

*Entry shall be jointly and severally liable in respect of all sums due to the Association in respect of any or all Vessels forming part of the Fleet Entry. For the purpose of this section a Fleet Entry shall mean the entry of more than one Vessel by one or more Members on the basis that those Vessels shall be treated together as a fleet.*

2..."

### **MOU Rule 64 - Recoveries from third parties**

Reference is made to the changes in Rule 84 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 64 shall read as follows (amendments reflected by strike-through/underlining):

- "1 When the Member has a right of recourse against a third party for any liability, loss, cost or expense covered by the Association, the Association shall be subrogated to the Member's right of recourse upon payment by the Association to or on behalf of the Member in respect of the liability, loss, cost or expense.*
- 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 the case to which that liability, loss, cost or expense relates 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 where because of a deductible in his terms of entry the Member has contributed towards a liability, loss, cost or expense any such interest element shall be apportioned between the Member and the Association taking into account the payments made by each and the dates on which those payments were made; and*
- b the Association shall retain the whole amount of any award of costs in respect of its own handling of any case; and*
- c in respect of a Defence Entry, any recovery whatsoever from any 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 a fair recovery (in the Association's discretion) of legal and other costs and expenses corresponding to the sum of legal and other costs or expenses paid or agreed to be paid by the Association, in excess of the Member's 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 or on behalf of 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 Member's minimum deductible.*
- 3 Subject to Rule 64.2, all monies recovered for a Member with Defence cover shall be paid over to the Member, except that the Association may deduct from such monies and retain any amount due to the Association from the Member.*
- 4 Where a Member settles or compromises a claim within its Defence cover for a lump sum ~~which includes costs or without making provision as to costs~~, the Association shall determine what part of that lump sum shall be deemed attributable to legal and other costs and expenses irrespective of the provisions of the settlement or compromise and, where relevant, the lump sum shall be treated as a Recovery pursuant to Rule 64.2 c)."*

### **MOU Rule 68 – Payments and undertakings to third parties**

Reference is made to the changes in Rule 88 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

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The new MOU Rule 68.5 shall read as follows (amendments reflected by strike-through/underlining):

**4 a** Where the Association has issued any guarantee, undertaking or certificate as referred to in Rule 55.2 or other bail or security by which it undertakes to directly meet or guarantee any relevant liabilities (together the "Direct Liabilities") and claims in respect of Direct Liabilities alone or in combination with other claims may in the sole opinion of the Association exceed any limit(s) on the cover provided by the Association as set out in the Rules or in the Certificate of Entry, the Association may in its absolute discretion defer payment of any such other claims or any part thereof until the Direct Liabilities, or such parts of the Direct Liabilities as the Association may in its absolute discretion decide, have been discharged.

**b** To the extent that any claims or liabilities (including any Direct Liabilities) discharged by the Association exceed the said limit(s) any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association promptly upon demand in respect of such payment and shall assign to the Association to the extent and on the terms that the Association determines in its discretion to be practicable, all the rights of the Member under any other insurance and against any third party."

#### **MOU Rule 71 – Arbitration**

Reference is made to the changes in Rule 91 in the Rules for Ships as set out above. Similar changes have been made in the Rules for MOUs.

MOU Rule 71 shall read as follows (amendments reflected by strike-through/underlining):

"Unless otherwise agreed, disputes between the Association and a Member or a former Member or any other person arising out of the contract of insurance or these Rules shall be resolved by arbitration. Each party shall nominate one arbitrator and those so nominated shall appoint an Umpire. If the arbitrators cannot agree on an Umpire or a party fails to nominate his arbitrator, the nomination shall be made by the Chief Justice of the Oslo City District Court. Reasons shall be given for the award. Arbitration proceedings shall take place in Oslo."

#### **Appendix III - Marine Cyber Endorsement and Coronavirus Exclusion (Rule 40.3)**

In order to be back-to-back with market reinsurance terms for the 2022 policy year, the following changes have been made to Appendix III - Marine Cyber Endorsement and Coronavirus Exclusion (Rule 40.3) (amendments reflected by strike-through/underlining):

#### **"3 Marine Cyber Endorsement and Communicable Disease Exclusion ~~Coronavirus Exclusion~~ (Rule 40.3)**

...

#### **Communicable Disease Exclusion**

1. In the event that the World Health Organization ('WHO') has determined an outbreak of a Communicable Disease to be a Public Health Emergency of International Concern (a 'Declared Communicable Disease'), no coverage will be provided under this (re)insurance for any loss, damage, liability, cost or expense directly arising from any transmission or alleged transmission of the Declared Communicable Disease.
2. The exclusion in paragraph 1 of this endorsement will not apply to any liability of the (re)insured otherwise covered by this (re)insurance where the liability directly arises from an identified instance of a transmission of a Declared Communicable Disease and where the (re)insured

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proves that identified instance of a transmission took place before the date of determination by the WHO of the Declared Communicable Disease.

3. However even if the requirements of paragraph 2 of this endorsement are met, no coverage will be provided under this (re)insurance for any:

A. liability, cost or expense to identify, clean up, detoxify, remove, monitor, or test for the Declared Communicable Disease whether the measures are preventative or remedial;

B. 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 the Declared Communicable Disease;

C. loss, damage, liability, cost or expense caused by or arising out of fear of or the threat of the Declared Communicable Disease.

4. As used in this endorsement, Communicable Disease means any disease, known or unknown, which can be transmitted by means of any substance or agent from any organism to another organism where:

A. the substance or agent includes but is not limited to a virus, bacterium, parasite or other organism or any variation or mutation of any of the foregoing, whether deemed living or not, and

B. the method of transmission, whether direct or indirect, includes but is not limited to human touch or contact, airborne transmission, bodily fluid transmission, transmission to or from or via any solid object or surface or liquid or gas, and

C. the disease, substance or agent may, acting alone or in conjunction with other co-morbidities, conditions, genetic susceptibilities, or with the human immune system, cause death, illness or bodily harm or temporarily or permanently impair human physical or mental health or adversely affect the value of or safe use of property of any kind.

5. This endorsement shall not extend this (re)insurance to cover any liability which would not have been covered under this (re)insurance had this endorsement not been attached.

All other terms, conditions and limitations of this (re)insurance remain the same.

**JL2021-014**

**8th March 2021**

#### **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; or~~

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~~from 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"

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Updated Rules for Ships and Rules for MOUs will be published on [www.gard.no](http://www.gard.no) prior to the renewal date 20 February 2022.

If you have any questions, please contact [Tore Svinøy](#) or [Ingvild Høgenes Nilsen](#), Gard, Arendal.

Yours faithfully,

**GARD AS**



Rolf Thore Roppestad  
Chief Executive Officer