

# Amendments to Rules 2023

**Member Circular No. 15/2022**

**January 2023**

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 2023.

As a result of changes to the terms of the applicable reinsurances inter alia due to amendments of the war programme as a consequence of the ongoing war between Russia and Ukraine, there will be additional changes to both the Rules for Ships and the Rules for MOUs. These additional changes will be communicated as soon as all reinsurance terms have been agreed and the subsequent changes to the Rules for Ships and Rules for MOUs have been endorsed by the Boards of the Associations.

## **RULES FOR SHIPS – P&I ENTRIES**

### **Sanctions clauses**

The challenging sanctions landscape that has emerged after Russia’s invasion of Ukraine and the fact that the sanctions regimes of the EU, UK and the US are not entirely aligned, have resulted in the need to amend the sanctions clauses in the Rules for Ships.

The first change is to remove Russia (and China and France) as countries whose sanctions would trigger the clause. The change is done to mitigate potential issues with EU, US and UK sanctions on the one side and potential Russian counter-sanctions on the other. The change is in line with the amendment of the Cefor Sanction Limitation and Exclusion Addendum released on 28 February 2022.

The second change is to further clarify that the Associations and their agents (Gard AS and its subsidiaries) are not to be exposed to a risk of being or becoming subject to sanctions. Whilst the trigger under the sanctions clauses as per today is whether the Association is exposed to a risk of being or becoming subject to sanctions, the sanctions clauses have now been amended so that the trigger is whether the Association or its agents are exposed to a risk of being or becoming subject to sanctions. A definition of the agent in Rule 1 has also been included.

The following changes have been made to the sanctions clauses of the Rules for Ships (amendments reflected by strike-through/underlining):

## Gard P&I Member Circular No. 15/2023, January 2023

### Rule 1 – Interpretation

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

...

#### Agent

*for entries with Assuranceforeningen Gard – gjensidig – or Gard P. & I. (Bermuda) Ltd., the ‘Agent’ means Gard AS and its subsidiaries.”*

### Rule 24.3 – Termination by the Association

*“Notwithstanding and without prejudice to Rules 24.1 and 24.2 and Rule 25.4, the Association may, on such notice in writing as the Association may decide, terminate the entry in respect of any and all Ship(s) in circumstances where the Member has exposed or may, in the opinion of the Association, expose the Member or the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by the State of the Ship(s) flag, by any State where the Association and/or its Agent has its registered office or permanent place of business ~~or by any State being a Major Power~~ or by the United Nations, ~~or the European Union, the United Kingdom or the United States of America.~~ For the purpose of this Rule 24.3 “Major Power” means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People’s Republic of China.”*

### Rule 25.4 – Cesser

*“Notwithstanding and without prejudice to Rules 25.1, 25.2 and 25.3, a Member shall forthwith cease to be insured by the Association in respect of any and all Ship(s) entered by him if any Ship is employed by the Member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Association and/or its Agent has its registered office or permanent place of business ~~or by any State being a Major Power~~ or by the United Nations, ~~or the European Union, the United Kingdom or the United States of America.~~ For the purpose of this Rule 25.4 “Major Power” means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People’s Republic of China.”*

### Rule 77.2 - Administrative costs, insolvency and sanctions etc

*“The Association shall not indemnify a Member against any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs or expenses may expose the Association and/or its Agent to any sanction, prohibition, restriction or adverse action by any competent authority or government.”*

### Other clauses

#### Rule 32 – Stowaways, refugees or persons saved at sea

There is currently a difference in wording between Rule 32 and Appendix V 2 vii. The Appendix currently refers to “rescuing or attempts to rescue migrants, refugees or other people at sea”. Claims experience in recent years relating to persons saved at sea, shows that investigations are not made by Members into whether a person is a refugee or a migrant. However, even if the persons were not refugees, but migrants, they would still fall within the catch-all “persons saved at sea”. As this wording would also include “refugees”, there is no longer a need to differentiate between “refugees” and “persons saved at sea”. To reflect this, Rule 32 has been amended to read as follows (amendments reflected by strike-through/underlining):

## Gard P&I Member Circular No. 15/2023, January 2023

### **“Stowaways, ~~refugees~~ or persons saved at sea**

*The Association shall cover costs and expenses directly and reasonably incurred in consequence of the Ship having stowaways, ~~refugees~~ or persons saved at sea on board, but only to the extent that the Member is legally liable for the costs and expenses or they are incurred with the approval of the Association. The cover does not include consequential loss of profit or depreciation.”*

### **Rule 43.3 – Towage**

To align the wording of Rule 43 with the amendment to Appendix V, paragraph 16 of the Pooling Agreement in respect of those contracts under which towage takes place that will be poolable, Rule 43.3 has been amended to read as follows (amendments reflected by strike-through/underlining):

*“The Association shall not cover liability for loss of or damage to or wreck removal of a vessel or other floating structure towed by the Ship or the cargo or other property on such tow (together with costs and expenses associated therewith), save insofar as:*

*a. the towage or attempt thereat is made for the purpose of saving or attempting to save life or property at sea; or*

*b. the Ship is entered as a tug or otherwise on the basis that it will engage in towing in the ordinary course of business, and the tow is undertaken on contractual terms approved by the Association (whether or not the Member is a party to the contract); or*

*Notes: 1 The following standard terms of contracts are approved by the Association, provided they are not materially amended:*

*(a) UK, Netherlands or Scandinavian standard towage conditions;*

*(b) “Towcon” or “Towhire”;*

*(c) Lloyd’s Standard form of Salvage Agreements;*

*(d) Supplytime.*

*2 The Association will otherwise expect contracts incorporating terms as between the Member on the one part, and the owner of the tow and the owners of any cargo or other property on board the tow on the other part, that each shall be responsible for any loss or damage to his own ship, cargo or property ~~and for loss of life or personal injury to his own personnel~~, without any recourse against the other.*

*c. cover has been agreed with the Association prior to the commencement of the towage.”*

### **Rule 49 – Confiscation of the Ship**

To align the wording of Rule 49 with the amendment to Appendix V, paragraph 1 of the Pooling Agreement, it has been amended to read as follows (amendments reflected by strike-through/underlining):

*“The Association may, in its discretion, authorise payment, in whole or in part, of a Member’s claim for loss of the Ship following confiscation of the Ship by any legally empowered court, tribunal or authority by reason of the infringement of any customs law or customs regulations, or any fines involving such confiscation, provided that:*

*a. the amount recoverable from the Association shall under no circumstances exceed the market value of the Ship without commitment at the date of the confiscation;*

*b. the Member shall have satisfied the Association that he took all such steps as appear to the Association to be reasonable to prevent the infringement of the customs law or regulation giving rise to the confiscation;*

*c. no such claim shall be considered by the Association until such time as the Member has been irrevocably deprived of his interest in the Ship;*

*d. the Association shall be under no obligation to give reasons for its decision.”*

## Gard P&I Member Circular No. 15/2023, January 2023

### Rule 59 – Specialist Operations

To align the wording of Rule 59 with the amendment to Appendix V, paragraph 18 of the Pooling Agreement, it has been amended to read as follows (amendments reflected by underlining):

#### “Specialist operations

*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, mining, depositing of spoil, power generation and decommissioning to the extent that such liabilities, losses, costs and expenses arise as a consequence of:*

...”

### Rule 82.1 - Obligations with respect to claims

To clarify that the Member is required to provide documents and information that are necessary for the Associations to calculate the loss and issue payment and to fulfil KYC obligations, Rule 82.1 has been amended to read as follows (amendments reflected by underlining):.1

“A Member shall:

- a) promptly notify the Association of any event which may give rise to a claim upon the Association, and of any formal enquiry into a loss or casualty involving the Ship;
- b) upon the occurrence of any event which may give rise to a claim upon the Association, take and continue to take all such steps as may be reasonable, including the preservation of any right of recourse against a third party, for the purpose of averting or minimising any liability, loss, cost or expense in respect whereof he may be insured by the Association;
- c) notify and, if possible, consult the Association prior to taking any action as described in Rule 82.1(b) above;
- d) promptly provide the Association with all documents and information which may be relevant to such event and which are required to enable the Association to determine whether the event is covered according to these Rules and to assess, determine and pay compensation due;
- e) allow the Association or its appointees to interview any person who in the opinion of the Association may have knowledge relevant to the event;
- f) not without the prior consent of the Association admit liability for or settle any claim for which he may be insured by the Association”

### Appendix V – Deductibles

An amendment has been made to Appendix V to remove the application of a double deductible in the circumstances such as where a Member diverts a ship for the purpose of securing treatment for an injured or sick person on board, or for the purpose of saving persons at sea. Specifically, the deductibles for claims arising under Rule 31 and for claims involving having persons saved at sea onboard under Rule 32 have been removed (although the deductible for costs related to having stowaways onboard remains). Appendix V has been amended to read as follows (amendments reflected by strike-through/underlining):

“2 P&I entries ...

a) *The standard deductibles for liabilities, losses, costs and expenses incurred by all the assured under any one P&I entry are as follows (subject to paragraphs 2(b) and (c) below):*

...

vii) Diversion

All liabilities, costs and expenses covered under Rule 31 and arising out of any one event: USD 0.

viii) Other P&I liabilities etc.

All liabilities, losses, costs and expenses covered under any Rule, other than Rules 27, 28, 29, ~~31~~, 34, 36.1.(a), 37 (a), 38 and 47 and arising out of any one event: USD 7,000, save that deductible(s) in relation to liabilities, losses, costs and expenses covered under Rule 32 shall not apply when the

## Gard P&I Member Circular No. 15/2023, January 2023

~~Member has incurred the relevant liabilities, losses, costs and expenses due to saving or attempts to save persons at sea, having persons saved at sea on board, under Rules 31 and 32 can be waived by the Association in its sole discretion on a case by case basis where the Member has incurred the relevant costs and expenses due to rescuing or attempts to rescue migrants, refugees or other people at sea.~~

## RULES FOR MOUS – P&I ENTRIES

### Sanctions clauses

Reference is made to the changes of the sanctions clauses in the Rules for Ships. Similar changes have been made in the Rules for MOUs as set out below (amendments reflected by strike-through/underlining):

### MOU Rule 1 – Interpretation

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

...

#### Agent

*for entries with Assuranceforeningen Gard – gjensidig – or Gard P.&I. (Bermuda) Ltd. the ‘Agent’ means Gard AS and its subsidiaries.”*

### MOU Rule 16.3 – Termination by the Association

*“Notwithstanding and without prejudice to Rules 16.1 and 16.2 and Rule 17.4, the Association may, on such notice in writing as the Association may decide, terminate the entry in respect of any and all Vessel(s) in circumstances where the Member has exposed or may, in the opinion of the Association, expose the Member or the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by the State of the Vessel(s) flag, by any State where the Association and/or its Agent has its registered office or permanent place of business ~~or by any State being a Major Power~~ or by the United Nations, ~~or the European Union, the United Kingdom or the United States of America.~~ For the purpose of this Rule 16.3 “Major Power” means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People’s Republic of China.”*

### MOU Rule 17.4 – Cesser

*“Notwithstanding and without prejudice to Rules 17.1, 17.2 and 17.3, a Member shall forthwith cease to be insured by the Association in respect of any and all Vessel(s) entered by him if any Vessel is employed by the Member in a carriage, trade or on a voyage which will thereby in any way howsoever expose the Association and/or its Agent to the risk of being or becoming subject to any sanction, prohibition or adverse action in any form whatsoever by any State where the Association and/or its Agent has its registered office or permanent place of business ~~or by any State being a Major Power~~ or by the United Nations, ~~or the European Union, the United Kingdom or the United States of America.~~ For the purpose of this Rule 17.4 “Major Power” means any of the following States: United Kingdom, United States of America, France, the Russian Federation and the People’s Republic of China.”*

### MOU Rule 51.2 – Unlawful trade and sanctions

*“The Association shall not indemnify a Member against any liabilities, costs or expenses where the provision of cover, the payment of any claim or the provision of any benefit in respect of those liabilities, costs or expenses may expose the Association and/or its Agent to any sanction, prohibition, restriction or adverse action by any competent authority or government.”*



## Gard P&I Member Circular No. 15/2023, January 2023

### Other clauses

#### MOU Rule 2.3 – The cover

It is specified in the Rules for Ships that the insurance covers liabilities, losses, costs and expenses incurred in direct connection with the operation of or, in the case of Defence cover, acquisition or disposal of the Ship. However, in the Rules for MOUs it is not specified that Defence cover is provided in relation to acquisition or disposal of the Vessel. To alter this discrepancy MOU Rule 2.3 has now been amended to read as follows (amendments reflected by strike-through/underlining):

*“A Member is only covered in respect of liabilities, losses, costs and expenses incurred by him which arise*

- a) in direct connection with the operation (which in the case of Defence cover also shall include acquisition or disposal) of the Vessel, which will be deemed to include activity at one or more supply bases provided that such activity is in direct connection with the operation of the Vessel and transport between the Vessel and a supply base or a port or airport in the vicinity of the base;*
- b) in respect of the Member’s interest in the Vessel; and*
- c) out of events occurring during the period of entry of the Vessel in the Association.”*

#### MOU Rule 22 – Refugees or Persons saved at sea

Reference is made to the changes in Rule 32 of the Rules for Ships. Similar changes have been made in the Rules for MOUs as set out below (amendments reflected by strike-through/underlining):

##### **“~~Refugees or~~ Persons saved at sea”**

*The Association shall cover costs and expenses directly and reasonably incurred in consequence of the Vessel having ~~refugees or~~ persons saved at sea on board, but only to the extent that the Member*

*is legally liable for the costs and expenses or they are incurred with the approval of the Association. The cover does not include consequential loss of profit or depreciation.”*

#### MOU Rule 54 - War risks

It is specified in the Rules for Ships that the war risks exclusion only applies to P&I cover. This is not currently specified in the wording of MOU Rule 54. MOU Rule 54 has therefore been amended as follows (amendments reflected by strike-through/underlining):

*“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 ...”*

#### MOU Rule 62.1 – Obligations with respect to claims

Reference is made to the changes in Rule 82.1 of the Rules for Ships. Similar changes have been made in the Rules for MOUs as set out below (amendments reflected by strike-through/underlining):

*“1 A Member shall:*

- a) promptly notify the Association of any event which may give rise to a claim upon the Association, and of any formal enquiry into a loss or casualty involving the Vessel;*
- b) upon the occurrence of any event which may give rise to a claim upon the Association, take and continue to take all such steps as may be reasonable, including the preservation of any right of recourse against a third party, for the purpose of averting or minimising any liability, loss, cost or expense in respect whereof he may be insured by the Association;*
- c) notify and, if possible, consult the Association prior to taking any action as described in Rule 62.1(b) above;*

**Gard P&I Member Circular No. 15/2023, January 2023**

- d) *promptly provide the Association with all documents and information which may be relevant to such event and which are required to enable the Association to determine whether the event is covered according to these Rules and to assess, determine and pay compensation due;*
- e) *allow the Association or its appointees to interview any person who in the opinion of the Association may have knowledge relevant to the event;*
- f) *not without the prior consent of the Association admit liability for or settle any claim for which he may be insured by the Association.”*

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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 2023.

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

Yours faithfully,  
**GARD AS**



Rolf Thore Roppestad  
Chief Executive Officer