

Amendments to the Rules for 2012

Dear Sirs,

This circular outlines amendments to the Rules for Ships and the Rules for Mobile Offshore Units (MOUs) of both Assuranceforeningen Gard - gjensidig - and Gard P. & I. (Bermuda) Ltd, which will enter into force at noon GMT on 20 February 2012.

1. Rules for Ships – P&I

Rule 24 Termination by the Association and Rule 25 Cesser

In respect of the discussion regarding Iran sanctions in 2010 a new Rule 24.3 was introduced in 2010 giving the Association power to terminate an entry or entries if the relevant Ship(s) are involved in activities that may expose the Club or the Member to the risk of being or becoming the target or subject to Iran sanctions from the State of the Ship's flag, the State where the Club is domiciled or has a permanent place of business, a State being a permanent member of the UN Security Council or the United Nations or the EU.

A corresponding amendment was introduced in 2010 in Rule 25.4 regarding cesser. A Member shall cease to be covered in respect of Ship(s) employed by the Member in an activity which may expose the Club to the risk of being or becoming the target or subject to Iran sanctions from the same group of states and international organizations as set out in the new Rule 24.3. The Club shall not be deemed to provide insurance for a prohibited activity.

Rules 24.3 and 25.4 respond to sanctions against Iran only. However, new international sanctions regimes, such as the sanctions against Iran and Syria, illustrate how insurers can be exposed as a result of the activities of the assureds. Such exposure is beyond the control of the Association and the Association needs to have mechanisms in place to manage this exposure. Against this background and in order to protect the Membership as a whole, Rules 24.2 and 25.4 have been changed to respond to sanctions in general and not be restricted to the Iran sanctions only.

The Association has therefore deleted the reference to “*against Iran*” in Rules 24.3 and 25.4.

The amended Rules 24.3 and 25.4 shall therefore read as follows:

“Rule 24. 3

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 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 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. 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

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 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 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. 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 28 Liabilities in respect of passengers.

In order to harmonize the Rules with the 2011 version of the Pooling Agreement the scope of cover relating to payment of damages and compensation to passengers on board the Ship (see Rule 28 b) as result of a casualty shall be restricted to liabilities, losses, costs and expenses having arising out of incidents or conditions "on board" the entered Ship. A relevant casualty is, *inter alia*, a collision, stranding, explosion or fire and other incident representing a threat to the life, health or safety of the passengers.

The amended Rule 28 shall read as follows (amendments underlined):

"Rule 28 Liabilities in respect of passengers

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;*
- d** *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 (d) above shall be subject to the provisos to Rule 27.2;*
- 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 other cause rendering the Ship incapable of safe navigation to its intended destination or a threat to the life, health or safety of passengers."*

Rule 50 Damage to Member's own property

Rule 50 provides that, notwithstanding the terms of Rule 2.4 (b), if the Ship causes damage to property belonging to the Member, the Member shall be entitled to recover the losses based on a recognition of the fact that the Member may, in addition to being the owner, operator or charterer of the Ship, be the owner of cargo carried on board the Ship and/or other property affected by a casualty involving the Ship. Therefore cover is available in respect of loss or damage to property owned by the Member to the extent that the Member would have been covered by the Association in his capacity as owner, operator or charterer of the Ship had such loss or damage been caused to a third party.

Rule 50 does not refer expressly to losses incurred by the Member by reason of the Ship or the wreck of the Ship or parts thereof causing an obstruction to another ship owned or operated by the same Member. This category of loss should be recoverable under the current Rule 50, and therefore an express reference to Rule 40 (b) (Liability for obstruction and wreck removal) has been included in Rule 50 (a) to avoid any uncertainty.

The amended Rule 50 shall read as follows (amendments underlined):

"Rule 50 Damage to Member's own property

Notwithstanding the terms of Rule 2.4 (b):

- a if the Ship causes damage to property, other than cargo, belonging wholly or in part to the Member, the Member shall be entitled to recover from the Association under Rules 36 (collision with other ships), 37 (damage to fixed or floating object), 39 (loss of or damage to property) or 40 (b) (liabilities for obstruction) as if the property belonged to a third party; and*
- b in the event that any cargo lost or damaged on board the Ship shall be the property of the Member, the Member shall be entitled to recover from the Association under Rule 34 (cargo liability) the same amount as would have been recoverable from him if the cargo had belonged to a third party and that third party had concluded a contract of carriage with the Member on terms incorporating the Hague-Visby Rules."*

Rule 70 Limitation

Rule 70.1 provides that the general limit under the Defence cover is USD 10 million per event. Rule 70.2 provides that legal and other costs falling within the scope of Rule 66 shall be subject to a special limit of USD 1 million per event. Rule 66 applies for cases pertaining to acquisition or disposal of the Ship, including disputes arising out of purchase and sale of ships. It is thought however that disputes arising out of purchase and sale of ships should be subject to the general limit of cover as set out in Rule 70.1.

The amended Rule 70 shall read as follows (amendments underlined):

“Rule 70 Limitation

- 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 the Ship being purchased, falling within the scope of Rule 66 (a) and (b) in excess of USD 10 million per event.*
- 2** *The Association shall not be obliged to compensate under a Defence entry legal and other costs falling within the scope of Rule 66 (sale and purchase disputes exempted) in excess of USD 1 million per event.*
- 3** *The Association shall determine in its absolute discretion whether legal and other costs for the purpose of this Rule 70 shall be deemed to fall within the scope of Rule 65 or Rule 66 and whether the legal and other costs have arisen out of one or several events, irrespective of whether one or several Ships were involved.*
- 4** *The Association shall be under no obligation to give reasons for any of its decision under this Rule.”*

2. Rules for MOUs

Rule 15 Termination by the Association and Rule 16 Cesser

To harmonize the Rules for MOUs with the Rules for Ships the reference to “*against Iran*” has been deleted in Rules 15.3 and 16.4.

The amended Rules 15.3 and 16.4 shall read as follows:

“Rule 15.3

Notwithstanding and without prejudice to Rules 15.1 and 15.2 and Rule 16.4, 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 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 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. For the purpose of this Rule 15.3 "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 16.4

Notwithstanding and without prejudice to Rules 16.1, 16.2 and 16.3, 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 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 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. For the purpose of this Rule 16.4 "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 29 A Damage to Member's own property

To harmonize the Rules for MOUs with the Rules for Ships Rule 29 A has been amended.

The amended Rules 29 A shall read as follows (amendments underlined):

"Rule 29 A Damage to Member's own property

If and to the extent the Vessel causes damage to property, other than cargo, belonging wholly or in part to the Member, the Member shall be entitled to recover from the Association under Rule 20 (collision with vessels), Rule 21 (damage to fixed or floating objects), Rule 23 (loss of or damage to property) or Rule 24 (b) (liability for obstruction) as if the property belonged to a third party."

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

Yours faithfully,
GARD AS



Claes Isacson
Chief Executive Officer