



GARD AS

Circular No. 20/2010

January 2011

To the Members

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Dear Sirs,

Re: Amendments to the Rules for 2011

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 2011.

1. Rules for Ships – P&I

Rule 79 Joint Members, Co-assureds and Affiliates

Under the Rules each ship is entered pursuant to a separate contract of insurance between the Member and the Association. In order to enabling the Association to enforce a claim for outstanding premium and calls in relation to one ship against another ship forming part of the same fleet of entered ships a new “Fleet Entry” category has been introduced in the Rules. If it has been agreed between the relevant Member(s) and the Association that that the ships shall form part of a “Fleet Entry” as defined, an assured in respect of one ship forming part of the fleet will also be liable for premiums and calls in respect of other ships forming part of the same fleet of entered ships.

The amended Rule 79. 1 shall read as follows (amendments underlined):

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

- 1. Joint Members and Co-assureds 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 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.

Rule 87 Payment first by Member

Against the background of the International Group of P&I Clubs having agreed that the “*Payment first by Member*” principle (Rule 87) shall be waived in relation to Crew claims, a new section 3 has been added to Rule 87

The amended Rule 87 shall read as follows (amendments underlined):

Rule 87 Payment first by Member

1 Unless the Association shall in its absolute discretion otherwise determine, it is a condition precedent to a Member's right to recover from the Association in respect of any liability, loss, cost or expense that he shall first have discharged or paid the same.

2 The Association shall not be obliged to compensate a Member for a payment made to a third party unless the Member's liability to make that payment has been determined by:

- a) a final judgment or order of a competent court; or*
- b) a final arbitration award (if settlement of the dispute by arbitration was agreed upon before the dispute arose, or was, with the consent of the Association, agreed upon subsequently); or*
- c) a final settlement of the dispute approved by the Association.*

3 Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew, the Association shall discharge or pay such claim on the Member's behalf directly to such member of the Crew or dependent thereof, provided always that:

- a) the member of the Crew or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated; and*
- b) the amount payable by the Association shall under no circumstances exceed the amount which the Member would otherwise have been able to recover from the Association under the Rules and the Member's terms of entry.*

2. Rules for MOUs

Rule 48 Joint Members, Co-assureds and Affiliates

As described above in section 1 a “*Fleet Entry*” category has been introduced in the Rules providing that Members entered for one or more ships forming part of a fleet shall be jointly and severally liable in respect of all sums due to the Association for any or all ships in the same fleet.

The amended Rule 48. 1 shall read as follows (amendments underlined);

Rule 48 Joint Members, Co-assureds, Affiliates and Fleet Entries

1. Joint Members and Co-assureds 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 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.

Rule 55 Payment first by Member

As described in section 1 above the Clubs of the International Group of P&I Clubs have agreed that the “*Payment first by Member*” principle (Rule 55) shall be waived in relation to Crew claims.

The amended Rule 55 shall read as follows (amendments underlined):

Rule 55 Payment first by Member

1 Unless the Association shall in its absolute discretion otherwise determine, it is a condition precedent to a Member's right to recover from the Association in respect of any liability, loss, cost or expense that he shall first have discharged or paid the same.

2 The Association shall not be obliged to compensate a Member for a payment made to a third party unless the Member's liability to make that payment has been determined by:

- a) *a final judgment or order of a competent court; or*
- b) *a final arbitration award (if settlement of the dispute by arbitration was agreed upon before the dispute arose, or was, with the consent of the Association, agreed upon subsequently); or*
- c) *a final settlement of the dispute approved by the Association.*

3 Notwithstanding sections 1 and 2 above, where a Member has failed to discharge a legal liability to pay damages or compensation for personal injury, illness or death of a member of the Crew, the Association shall discharge or pay such claim on the Member's behalf directly to such member of the Crew or dependent thereof, provided always that;

- a) *the member of the Crew or dependent has no enforceable right of recovery against any other party and would otherwise be uncompensated; and*
- b) *the amount payable by the Association shall under no circumstances exceed the amount which the Member would otherwise have been able to recover from the Association under the Rules and the Member's terms of entry.*

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

Yours faithfully,

GARD AS



Claes Isacson
Chief Executive Officer