

Amendments to the Rules for 2013

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 2013.

1. Rules for Ships – P&I

1.1. Rules 27, 87 and Appendix IV — Liability under the Maritime Labour Convention 2006

The Maritime Labour Convention 2006 (“MLC”) is an International Labour Organization Convention established in 2006 in consultation with the International Maritime Organization as the *Fourth pillar* of international maritime law. The MLC will take effect on 20 August 2013.

The MLC sets out seafarer’s rights to decent conditions of work on a wide range of subjects. The member States shall among other things ensure that seafarers on vessels flying their flag are entitled to; (i) repatriation, including repatriation in cases of a shipowner’s insolvency (effectively abandonment); (ii) unemployment compensation resulting from a ship’s loss or foundering, limited to two months wages, for each day the seafarer remains unemployed; and (iii) compensation in the event of death or long term disability due to an occupational injury, illness or hazard as set out in national law, the seafarer’s employment agreement or collective agreement.

As to Club cover there has been a need to change the standard terms to include item (i) above, compensation for cost of repatriation in the case of the insolvency of the owner. Otherwise the liabilities and losses as described above falls within standard Club cover as of today.

Against this background Rule 27 and Rule 87 has been amended as set out below. In Rule 27 a new sub-paragraph 3 has been added while claims falling within the scope of Rule 27.3 are exempted from the from the “pay to be paid” principle in Rule 87.

The new Rule 27.3 shall read as follows (amendments underlined):

“Rule 27 Liabilities in respect of Crew

1. [...]
2. [...]
3. The Association shall cover liability to repatriate a member of the Crew pursuant to any statutory enactment giving effect to the Maritime Labour Convention 2006 or any materially similar enactment, provided always that

there shall be no recovery in respect of liabilities arising out of the termination of any agreement, or the sale of the Ship, or any other act of the Member in respect of the Ship, save and to the extent permitted by this Rule 27.3 in respect of the Member's liability for such expense under the Maritime Labour Convention 2006.

The new Rule 87.3 shall read as follows (amendments underlined):

“Rule 87 Payment first by member

1. [...]
2. [...]
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, or in respect of repatriation under any statutory enactment giving effect to the Maritime Labour Convention 2006 or any materially similar enactment, 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, and*
 - c) *with regard to liability, costs and expenses falling within Rule 27.3 above any payment made by the Association shall be made as agent only of the Member, and the Member shall be liable to reimburse the Association for the full amount of such payment.*

The cover offered in respect of repatriation under the new Rule 27.3 shall be limited to the governing Club retention under the International Group's Pooling Agreement in the relevant year.

The new sub-paragraph 3 to Appendix IV to the Rules for Ships shall read as follows (amendments underlined):

“Appendix IV Passengers and seamen

1. [...]
2. [...]
3. *The Association's liability in respect of repatriation pursuant to Rule 27.3 shall be limited to an amount, per Ship per event, equal to the Club retention* under the Pooling Agreement in the Policy Year the event giving rise to the claim(s) occurred.*

**In the 2013 Policy Year the Club retention will amount to USD 9 million.*

1.2. Rule 28 - Liabilities in respect of passengers

The International Group of P&I Clubs have decided to issue the so-called non-war blue cards being in reality an undertaking by the Club in favour of the third party claimant that the liability of the carrier in respect of the passenger under the Athens Convention/ EU Passenger Liability Regulation (“PLR”) will be met by the insurer. Since the P&I cover for passenger claims is limited to USD 2 billion per event, the theoretical possibility of the P&I cover being exhausted in respect of passenger claims exists in a major passenger ship casualty.

Certified liabilities, i.e. claims falling within the scope of the non-war blue card, shall have priority. In order to achieve this, Rule 28 has been amended and the Association has been given a right, in its absolute discretion, to defer payment of passenger claims falling outside the scope of the non-war blue card until the certified liabilities have been discharged.

Further, to the extent certified liabilities discharged by the Association exceed the governing passenger claim limit under the contract of insurance, any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association in respect of such payment.

The existing Rule 28 has become the new Rule 28.1 and a new Rule 28.2 has been added.

The new Rule 28.2 shall read as follows (amendment underlined):

“Rule 28 Liabilities in respect of passengers

1. [...]
2. Where liabilities to passengers include liabilities arising under a non-war certificate issued by the Association in compliance with either:
 - a) Article 4bis of the Athens Convention relating to the Carriage of Passengers and their Luggage by sea, 1974 and the Protocol thereto of 2002, or
 - b) Regulation (EC) No.392/2009 of the European Parliament and of the Council of 23rd April 2009 on the liability of carriers of passengers by sea in the event of accidents,
and such liabilities (“Certified Liabilities”) exceed or may exceed in the aggregate the limit of cover specified in Appendix IV:
 - i. the Association may in its absolute discretion defer payment of a claim in respect of those liabilities or any part thereof until the Certified Liabilities, or such part of the Certified Liabilities as the Association may decide, have been discharged; and
 - ii. if and to the extent any Certified Liabilities discharged by the Association exceed the said limit any payment by the Association in respect thereof shall be by way of loan and the Member shall indemnify the Association in respect of such payment.”

1.3. Appendix II, section 2 – Combined overall limit for affiliated charterer co-assured on an Owner's entry

The wording of Appendix II, section 2, of the Rules for Ships has been harmonized with the corresponding provisions of the Pooling Agreement with regard to the combined single limit of USD 350 million for both pollution and non-pollution claims.

Appendix II, section 2, shall read as follows:

“2 . Charterers co-assured under an Owner's entry

Cover afforded in respect of charterers co-assured under an Owner's Entry as described in Rule 78.4 is limited each incident or occurrence each entry to whichever is the lesser of the Limitation Amount (if any) and USD 350 million. Any reference in this Appendix II, section 2, to the "Limitation Amount" means the amount to which the registered owner of the Ship could have limited its liability in the respect of the relevant matter had the registered owner of the Ship sought and not been denied the right to limit.”

2. Rules for MOUs - P&I

2.1. Rule 30 -Limitations etc. on cover – Fines

Pursuant to Rule 26 the Association shall cover fines imposed upon a Member by any court or competent authority for various categories of violations. The cover for fines in the Rules for MOUs mirrors to a large extent the cover for fines for ships as set out in the Rules for Ships.

A new sub-limit of USD 50 million has been introduced in respect of fines in the Rules for MOUs. The new sub-limit is included as a new section 3 in Rule 30 while the existing sub-paragraphs 3 and 4 are re-numbered to 4 and 5.

The new Rule 30. 3 shall read as follows (amendments underlined):

“Rule 30 Limitation of liability, sanctions and other restrictions in the right of recovery

1. [...]
2. [...]
3. Notwithstanding Rule 30.2 above, the liability of the Association for fines as described in Rule 26 shall be limited to USD 50 million per Vessel per event provided that if the total amount of all categories of liabilities, losses, costs and expenses falling within Rule 26 and any other Rules incurred by all Members, Co-assureds and Affiliates under any one entry and which arise out of any one event exceeds the sum insured in the terms of entry referred to

in Rule 30.2 above, the Association shall not be liable to make any payment in respect of the amount by which such claims exceed the sum insured in the terms of entry referred to in Rule 30.2 above.

4. [...]
5. [...]"

2.2. Rule 35 – Construction operations

Where the Vessel is engaged in construction operations there is a general understanding that the cover does not include liability in respect of pollution from such operations if the pollution is a result of loss or damage to the contract work. To clarify this an amendment has been made to Rule 35.

The amended Rule 35 shall read as follows (amendments underlined):

“Rule 35 Construction operations

Where the Vessel is engaged in construction operations, the Association shall not cover liability in respect of pollution from, loss of or damage to the contract works, or to the materials supplied or to be supplied for the contract works to the extent that the pollution, loss or damage arises either

- a) [...]
- b) [...]"

2.3. Rule 44 – Deductibles

The standard deductible in respect of liabilities, losses, costs and expenses arising under any one entry from any one event is set at USD 10,000, e.g. Rule 44 for MOUs.

The deductible for “*U.S. owned, operated or managed units*” is set at USD 250,000 to reflect the higher level of liabilities, losses, costs and expenses the Association can face in the U.S. The wording does not, however, include claims made, asserted or enforced in the U.S related to units which are not U.S. owned, operated or managed. The higher level of liabilities, losses, costs and expenses will apply also for these cases and has therefore been included as part of the higher deductible.

The amended Rule 44 shall read as follows (amendments underlined):

“Rule 44 Deductibles

1. *Save as set out in rule 44. 2 below, and unless otherwise agreed, the cover shall be subject to a deductible of USD 10,000 in respect of all liabilities, losses, costs and expenses arising under any one entry from any one event.*
2. To the extent the Vessel is:
 - i. US owned, operated or managed or

- ii. the liabilities, losses, costs and expenses are made, asserted or enforced in the U.S.,
the cover shall be subject to a deductible of USD 250,000, unless otherwise agreed with the Association.”

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

Yours faithfully,
GARD AS

A handwritten signature in blue ink, appearing to read 'Claes Isacson'.

Claes Isacson
Chief Executive Officer