



# Standard Bulletin

7 July 2008



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## Club accounts for the year ended 20 February 2008 The Club goes from strength to strength

The Club has maintained its strong financial position with reserves and tonnage at record levels in what was a difficult and demanding year.

The Club's accounts were approved by the Board in May and will be sent to members in the next couple of weeks. In his statement, the Club's chairman, Ricardo Menendez, said: "The free reserves provide the stability and resilience that the Club needs to weather adverse underwriting conditions, and it is pleasing to note that they have increased again, to \$226m, at a time of both continued heavy claims and investment market uncertainty."

Against a background of continuing high claims and troubled investment markets, the positive results we have achieved serve to demonstrate the Club's long-term stability even in adverse market conditions. The increase in free reserves reflects a surplus of income over expenditure of \$9 million. This was made possible partly through improved underwriting results, and partly through another good investment performance. Although our investment return was

lower this year than last, it was still very satisfactory in difficult conditions at 8.5% in the 12 months to the end of February 2008, enabling premium income to be subsidised without compromising our financial strength.

The Club's tonnage stands at a record high level of 73m gt, with growth in the Club's membership both at the last renewal and continuing during the current policy year.

Looking ahead, it would be wise to assume that market conditions will remain challenging for the foreseeable future. Whilst of course loss prevention and risk reduction remain top priorities, we have to work on the basis that the cost of claims will stay at a high level. Nonetheless, the Club has demonstrated a sustained ability to provide excellent security and service even when times are difficult. We shall continue to do so.

The financial highlights, taken from the annual report, are set out below.

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The Standard Steamship Owners' Protection & Indemnity Association (Bermuda) Limited

The Standard Steamship Owners' Protection & Indemnity Association (Europe) Limited

The Standard Steamship Owners' Protection & Indemnity Association (Asia) Limited

Standard Bulletin is published by the Managers' London Agents:

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## Financial Highlights 2008

### Results for the financial year ended 20 February 2008

	2008	2007
	US\$m	US\$m
Calls and premiums net of reinsurance	132	120
Total claims net of reinsurance and operating expenses	(152)	(161)
<i>Balance of technical account for general business</i>	<b>(20)</b>	(41)
Net investment income	29	66
<i>Excess of income over expenditure for the year</i>	<b>9</b>	25
<b>Outstanding claims liabilities</b>		
Estimated known outstanding claims net of all recoveries	284	312
Incurred but not reported claims (IBNR)	118	114
<i>Total estimated claims liabilities</i>	<b>402</b>	426
<b>Funds available for claims</b>		
Open policy years	189	202
Closed policy years	213	224
Free reserves	226	217
<i>Total balance sheet funds</i>	<b>628</b>	643



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## Indemnities

### What is an indemnity?

Members often ask for guidance on what indemnities they may agree to without prejudicing their cover. This is often in the context of charterparty or other contractual negotiations.

An indemnity is essentially a contract whereby one party agrees with another party to accept risk that it would not otherwise have.

### Why should indemnities be avoided?

Indemnities are in principle generally to be avoided because they entail assuming a liability to pay for something that would not otherwise have to be paid for. In principle, a shipowner should only be liable for those acts or duties for which he is responsible at law, either by the operation of normal legal principles – e.g. because he has been at fault, sometimes referred to as negligence – or because he is liable by statute or other written regulation. A shipowner should not normally be liable to pay for things that have not been caused by his fault or where he is not required by law to pay.

### Extra risk and cost

Indemnities may have the effect of making an owner pay where he is otherwise not at fault or liable, and so increase the potential financial burden on a shipowner. This may result in claims or extra costs, and even if they are insured, they may affect future insurance premium costs.

Some indemnities can be covered without extra insurance, but some can't. We expand on this further below. But there is another reason why agreeing to indemnities is not a good idea.

### Protecting shipowners' interests

If one shipowner agrees to an indemnity, then it makes it much harder for other shipowners subsequently to resist demands for indemnities in similar circumstances. The Club, along with others in the International Group, puts a lot of effort into ensuring that shipowners' liabilities are not constantly increased. There is a constant tendency among legislators, regulators and commercial partners to attempt to increase shipowners' liabilities and decrease their defences and limitations of liability. The Club plays an active role in resisting this tendency beyond what might be considered fair and reasonable. It is obviously more difficult to do this if shipowners themselves accept increased liabilities.

### Acceptability of indemnities – mutuality and fairness

What governs whether an indemnity is acceptable? This is influenced by the need for mutuality and fairness between members, and by extension, between the clubs participating in the Group's Pool and common reinsurance programme.

It would clearly be wrong for one shipowner to agree to an onerous indemnity, in order to obtain a commercial advantage, and then expect any claims arising to be contributed to by other shipowners who have not agreed such an indemnity, possibly to their commercial disadvantage. It would also be wrong for one club to agree to cover indemnities for its

members and expect other clubs and their members to contribute to claims arising that those other clubs have declined to cover.

Accordingly, the Pooling Agreement between the clubs in the International Group sets out rules and guidelines for those indemnities that are acceptable to be covered and those that are not.

### Services provided to ships

The clubs draw a distinction between indemnities given in relation to services provided by a ship – typically in charterparties – and those in relation to services provided to a ship. Typically, we are able to agree to cover a wider range of indemnities in relation to services provided to a ship, because we recognise that it is much more difficult for owners to control the contractual terms for such services. Such services would include dock and berth contracts, towage contracts, pilotage, etc. For such contracts, we require an owner to have used his best endeavours to avoid being liable where the indemnitee has been solely negligent and to maintain his right to limit liability. However, we accept that even best endeavours will not always be successful, especially where contracts have been in use for some time and are well established for the services being procured. In those circumstances, we will continue to cover a member in accordance with normal cover conditions.

### Contracts for services provided by the ship

For services to be provided by a ship, typically for the carriage of cargo, we require owners to be more careful about what they agree to. We do not generally provide full cover to members where they have accepted greater liability than they would otherwise have but for an indemnity, although there are some exceptions to this.

### Knock-for-knock indemnities

The principal exception is that we are able to cover members' liabilities under knock-for-knock contracts – and indeed, in many circumstances we encourage their use. We have discussed these on many occasions in relation to the offshore energy business, where they are common and can be very effective. Essentially, a knock-for-knock contract is one where each party agrees to bear its own losses, whether they are for their own property damage or for personal injury to their own staff, and will not make claims against the other party, even if the other party has been at fault, and will indemnify each other in respect of their own losses. Such contracts can be effective at ensuring certainty of liability and, by reason of their simplicity, in reducing insurance costs. However, it is important that such contracts or indemnities are properly drafted and are not undermined by other contractual provisions, for example, insurance clauses. We refer members to a number of previous articles on this subject – the most recent being 'International Recognition of Knock-for-Knock Contracts' by Sharmini Murugason in the Offshore edition of the Standard Bulletin dated October 2007.

### Particular operations

There are certain specific areas of operation where specific guidelines operate in relation to indemnities. These include helicopter operations, Panama Canal transits, ships' doctors and LNG terminals. We can provide further information to members on these areas.

*Continued on next page*



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## Bunkers Convention

### Certification requirements and issuance of Blue Cards and State certificates

As advised in the Club's circular dated 25 April 2008, the International Convention on Civil Liability for Bunker Oil Pollution 2001 (the "Bunkers Convention") has now been ratified by the required number of States, with the requisite combined gross tonnage, and will enter into force in the States that are party to the Convention (State Parties) on 21 November 2008. The Convention provides a liability and insurance system very similar to that which applies to oil tankers under the Civil Liability Convention (CLC). Registered owners of any seagoing vessel and seaborne craft over 1,000 gross tons, of any type whatsoever, and registered in a State Party or entering or leaving a port in the territory of a State Party, will be required to maintain insurance that meets the requirements of the Convention and to obtain a certificate issued by a State Party attesting that such insurance is in force.

The Convention includes a list of particulars that must be set out in the certificate of insurance, which include the name of the ship, distinctive numbers or letters and port of registry, the name and principal place of business of the registered owner, and the IMO ship identification number. The Club will issue Blue Cards under the Bunkers Convention to enable signatory States to issue certificates. Members who require a Bunker Blue Card will need to provide the Club with this information if we do not already have it, and we will shortly be contacting members for any information necessary to complete our records. The Blue Card must include the name and full address of the principal place of business of the registered owner, and we will assume that this is the name and address of the registered owner unless members advise us otherwise.

Ships registered in a State that has ratified the Convention need only obtain a State-issued certificate from that State. This will be treated as evidence of insurance when calling at any port or terminal in a State Party to the Convention. Ships registered in States that are not parties to the Convention should obtain a certificate from another State Party to the Convention. Ideally, if calling at a port or terminal in a State Party, this should be obtained from the issuing authority of that particular State.

Alternatively, in the event that this is not possible, a certificate may be obtained from the issuing authority of another State Party. The secretariat of the International Group is in discussions with the administrations in State Parties to identify those willing to issue certificates for vessels that do not fly their flag, and we will provide further information shortly.

States that are party to the Convention are:

Bahamas, Bulgaria, Croatia, Cyprus, Estonia, Germany, Greece, Hungary, Jamaica, Latvia, Lithuania, Luxembourg, Norway, Poland, Samoa, Sierra Leone, Singapore, Slovenia, Spain, Tonga and the United Kingdom. The Convention has now been ratified by the Marshall Islands, where it will also enter into force on 21 November 2008.



*Continued from page 2*

### Indemnities are not always called indemnities! – other contractually assumed risks

The Club does cover a wide range of contractual risks, for example, under acceptable crew contracts and normal bill of lading liabilities. But sometimes a contractual provision does not appear to be an indemnity, but in fact may amount to one. For example, an agreement with a charterer that the shipowner will be fully liable for any cargo damage goes further than his normal legal liability and amounts to an indemnity to the charterer in respect of cargo claims. An agreement that the ship will remain seaworthy throughout the voyage puts more liability onto the owner than he is liable for under the Hague-Visby Rules and similar legal regimes. Again, this might result in the shipowner effectively indemnifying the charterer against losses arising from unseaworthiness. A similar increase of liability might arise from an owner agreeing to be liable for amounts in excess of his normal limitation rights.

Such contracts increasing owners' liabilities may not be insured under the member's normal cover and members need to be aware of the requirements of club cover in relation to contractual risks, for example, the need to contract on Hague-Visby Rules terms.

### Help is at hand – additional coverage

However, we accept that members cannot always contract on favourable terms and may sometimes have, or wish, to accept greater liabilities. In the event that they do decide to do so, the Club has an extensive reinsurance programme, which allows us to provide members with additional cover to ensure that members are not uninsured. This cover is for those risks that are of a P&I nature but that fall outside what is covered as a matter of course. But it is important to let us know if additional liability has been accepted or is proposed to be accepted so that we can make the necessary cover arrangements.



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## The P&I and Defence Class Rules

As we explained in the March edition of *Standard Bulletin*, we are proposing a substantial revision of the Club's rules. At the meeting on 15 May, the Board agreed that the proposed new rules should be put to the membership for adoption at a Special General Meeting on 10 October 2008. If adopted, the rules will take effect from 20 February 2009.

The text of the new rules has been on the Club's website [www.standard-club.com](http://www.standard-club.com) since the end of March, and we have received a number of helpful and positive comments from members. We will be reviewing all of the comments we receive during July and will update the version of the rules on the Club's website in early August.

We would therefore encourage members to have a look at the proposed new rules and let us have any comments as soon as possible.

Please contact [john.white-thomson@ctcplc.com](mailto:john.white-thomson@ctcplc.com) +44 (0)20 7522 7479.

## Club News

### Change of address of the Club's registered office in Bermuda

The new address of the Club's headquarter's in Bermuda from 7 July 2008 will be:

The Standard Steamship Owners' Protection  
and Indemnity Association (Bermuda) Limited  
Burnaby Building  
16 Burnaby Street  
PO Box HM 1743  
Hamilton  
Bermuda HMGX

The telephone number remains unchanged (1) 441 292 7655.

### Australian P&I Correspondent

A new commercial correspondent has been appointed in Sydney, which will cover all of the major ports in Australia. Its details are:

Bayside Shipping Services Pty Ltd  
PO Box 692, Avalon, Sydney, NSW 2107  
Telephone +61(0) 2 9918 8306, Fax: 8324 6486  
Contact: Steve Robertson  
Mobile: +61(0) 420 982411  
e-mail: [steve@baysideshipping.com](mailto:steve@baysideshipping.com)

## Club News

### Staff News

#### Claims

**Iain Cassell** has been promoted to claims director of syndicate D.  
Tel: +44 (0)20 7680 5605  
Email: [Iain.Cassell@ctcplc.com](mailto:Iain.Cassell@ctcplc.com)

**Eddy Morland** has joined our New York office as a claims executive.  
Tel: +1 212 809 8085  
Email: [Eddy.Morland@ctcplc.com](mailto:Eddy.Morland@ctcplc.com)

**Jody Wood** has moved from syndicate B/C to Standard Asia in Singapore.  
Tel: +65 9722 0929  
Email: [Jody.Wood@ctcplc.com](mailto:Jody.Wood@ctcplc.com)

#### Risk Management & Loss Prevention

**Chris Spencer** has joined the Club as director of loss prevention.  
Tel: +44 (0)20 7522 5647  
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### Offshore Forum 2008 - London

The annual Offshore Forum, hosted by the Standard Club and Charles Taylor Consulting, offers a unique opportunity for shipowners involved in the offshore oil and gas industry to meet and discuss current industry issues with oil companies and contractors in an informal environment. The Forum is intended to stimulate informed debate amongst participants and is open to both members and non-members of the Standard Club and their marine contractor and oil company clients.

This year's Forum will take place in London on Wednesday 29 October. We are delighted to be in a new venue, the historic surroundings of Trinity House, headquarters of the Corporation of Trinity House, which is the General Lighthouse Authority for England, Wales, the Channel Islands and Gibraltar. The format of this year's forum has also changed from that of previous years. A short seminar will be held at 3pm, followed by drinks and dinner from 6.30pm. The main topics this year will be brief presentations by some of the participants on the one improvement they would make to the offshore industry.

Participants in previous Forums have found them both informative and enjoyable. If you are interested in attending the Offshore Forum, please contact Barbara Jennings on +44 (0)20 7522 7429, [barbara.jennings@ctcplc.com](mailto:barbara.jennings@ctcplc.com), or Suzie Mate on +44 (0)20 7522 7446, [suzie.mate@ctcplc.com](mailto:suzie.mate@ctcplc.com).