Standard Bulletin

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The Standard
for service and security

The Standard

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In this edition

Bermuda board meeting

The club board, and the boards of its principal subsidiaries, met in Bermuda on 15 October 2014. The club's AGM was held on the same day. On the previous day, meetings of the board's three committees – Strategy, Nomination and Governance, and Audit and Risk – took place. We report on these and other topics below.

Retirement of Sir John Swan, board director 1977-2014

Sir John Swan retired from the board of The Standard Club Ltd at the end of the board meeting. Sir John joined the board in 1977 as an independent director and has served on the board continuously since then – including during his premiership of Bermuda from 1982-1995. He has provided wise guidance to the board throughout this 37-year period, and I would like to express the immense gratitude of the club board, members and managers to Sir John for his contribution to the club.

The club board held a dinner in Sir John's honour on 14 October. In his speech, Sir John looked back over the many changes of the club's board and managers during his time as a director, and thanked board members past and present for their support.

An interview with Sir John follows this article.

Other changes to board directors

We are pleased to report that Alberto Chiarini of Saipem SpA was appointed to the board of The Standard Club Ltd with immediate effect.

Yoshihiko Nakagami of Iino Kaiun resigned as a director of The Standard Club Ltd with effect from 28 May 2014.

The club's strategy

The board reviewed the market outlook, and the club's competitive position and strategic direction. It confirmed the club's focus on providing broad, good-value, sustainable P&I and related covers, with excellent financial security and market-leading service.

A series of current and future initiatives were discussed and agreed. These aim to support stable underwriting performance through reduced claims and operating costs, and therefore to minimise the rate rises required from members. They reflect a continued focus on underwriting members and vessels with high-quality operations, supported by the continuous improvement of the club's risk assessment, risk selection and loss prevention tools and processes. The initiatives also focus on reducing internal costs and third-party costs, particularly relating to claims.

In addition, there are initiatives aimed at driving sustainable growth for the club, across both P&I and non-P&I covers. These include the club's important project to establish the Standard Syndicate at Lloyd's.

The Standard Syndicate at Lloyd's (Syndicate 1884)

The club is committed to offering a wide range of attractive, customised covers to meet its members' needs. As part of this strategy, the board decided earlier this year to establish a new marine and energy syndicate at Lloyd's. The club wrote to members on 21 October with a detailed update on this.

At the Bermuda board meeting, the board reviewed the progress of this project. The Lloyd's Franchise Board gave approval in principle for this project, subject to regulatory permissions, in late September. The focus is now on engaging with the regulators and on putting the infrastructure, processes and team in place, with a target 'go live' date of 1 April 2015.

Discretionary claims

A flexible approach to paying claims is an important element of the club's proposition to its members. In support of this, the board considers claims that fall outside the core cover provided by the club, which can be covered if the board exercises its discretion to reimburse the member. Each claim is reviewed in detail to understand the specific circumstances, and to assess whether the costs should be within the scope of the club's cover. At the October board meeting, the board decided to support two of the claims in full and to support a proportion of another claim.

Financial performance

The board reviewed the current financial position, the 2014/15 financial year performance and the financial plan for future years. The club's finances are strong and the current forecast is for the reserves at year end to be similar to their current level. A small underwriting deficit is expected to be balanced by the modest investment returns forecast for the year.

Conditions for investments remain challenging, with low returns across many asset classes and a lack of market confidence in the macro-economic outlook. As a result, the club's portfolio is positioned defensively. Despite this, the club outperformed the benchmark in the period from 20 February to 20 September, and its investment track record over the medium term remains in the top quartile of the IG clubs.

Renewal

The board considered the club's approach to the forthcoming renewal. The club's finances are strong; the club has a high-quality membership and the majority of members pay premiums that are commensurate with the level of claims and the risk that they bring to the club. However, the club estimates that there is annual inflation in the region of 6% for claims within the club's retention.

A circular outlining the approach to renewal has recently been sent to all members. This announced a general increase of 5% – which is below the level of expected claims inflation, as it takes into account the club's financial strength and the level of expected investment income. In the interest of fairness between members, the board has asked the managers to engage with the minority of members whose claims and exposure are out of line with their premiums, to discuss the terms of their renewal. These members should expect to incur more significant premium increases; the club, however, is open to members bearing a greater share of the risk by way of increases in deductibles to mitigate the necessary premium increases.

Maritime Labour Convention 2006

The board reviewed the amendments to the Maritime Labour Convention 2006 (MLC) adopted by the International Labour Organization (ILO), with a focus on the new financial security requirements of MLC which are likely to enter into force in early 2017. The board considered this carefully and supported the proposition that clubs should provide financial guarantees. It also supported making amendments to the IG pooling agreement to enable this to be achieved, should there be sufficient support for this approved within the IG.

AGM

All of the proposed resolutions were passed, including the acceptance of the accounts for the year ended 20 February 2014, the reappointment of PwC as the club's auditors and the re-election of those board members retiring in accordance with the Articles.

The Hon. Sir John Swan, K.B.E., J.P. reflects on 37 years of service to The Standard Club

Sir John Swan

Sir John Swan, Bermudian politician, entrepreneur and philanthropist, retired from The Standard Club board in October 2014, ending a remarkable 37 years of service to the club.

Prior to and during his tenure on the board, Sir John had a celebrated life. He served Bermuda as Premier (Prime Minister) from 1982 to 1995. As such he was the longest serving Premier of Bermuda and led Bermuda to the world stage as an international financial centre. Sir John built one of Bermuda's most successful property development and savings and loans businesses. These ventures empowered Bermuda's black majority to acquire their own homes, participate in business and save money for their children's education.

So, having had such a glittering career, does he view his membership on the board as a valuable experience? "Absolutely," he says, "I would not have spent that many years on the board unless I always felt it was worthwhile. In fact, being on the board and engaging in discussions and receiving the informative and professional participation of Charles Taylor, who managed the business of The Standard Club, assisted me enormously in my role of evolving Bermuda as a leading international financial centre."

Sir John's path was clear from early on. His parents were entrepreneurs and very people oriented. They saw these same attributes in their son and encouraged him to pursue a career that would bring out these talents. Sir John attended West Virginia Wesleyan College. Presciently, in 1957 on Foreign Student Recognition Day, the President of the college gave his opinion as to the career path he saw for each of the foreign students and eerily prognosticated that: "John Swan from Bermuda upon completion of his education would return home and go into the real estate business and one day become leader of his country."

With these two similar messages from his parents and college president, upon returning home, Sir John set out to secure a job at a real estate firm. Success came after five weeks and the job lasted for two years. With his savings of $830 he opened a small office and launched John W. Swan Agency in 1962.

He was told by a number of people that he would fail, something he never understood. He says: "I did recognise that I had to overcome covert and overt prejudice and ignorance, but I felt my success would be finally determined by my attitude. If I embraced prejudice and ignorance, it would embrace me and could shackle me both physically and mentally." Sir John said he used prejudice and ignorance to his advantage by convincing people through his commitment, and actions, and embracing them even when they wanted to diminish his efforts. He says he was shocked as to how much he was

able to accomplish and reflects: "If you allow prejudice and ignorance to stop you moving forward, all you do is place your opportunities in the hands of someone who wishes to deprive you of your potential, be they black or white."

Long hours and hard work made the John W. Swan Agency a huge success. It focused on building houses for people who otherwise could not afford them. "We would buy land mostly from the white community, split it into lots, construct houses and empower people to buy their first homes by making affordable loans available. Enabling people to buy a home gave them a financial stake in their future and financial security for the first time," he says. It was not long before the success of the John W. Swan Agency led to it building 40% of Bermuda's residential property from 1965 to 1975. During this time, Sir John's firm employed more than 20 young Bermudian contractors and trained many young black Bermudians in business administration. Many would later become successful business people in their own right.

Over the years, he has helped modernise the city of Hamilton through a number of commercial building projects. Sir John also developed the first condominium apartment complex in the city of Hamilton. His most recent project is Bermuda's first 10-storey office development, which is a remarkable example of a state-of-the-art environmentally friendly and energy efficient building. He has also been one of the strongest visionaries and proponents for the development of the Hamilton Waterfront.

Sir John's move into politics was triggered by the country's then Premier, who encouraged him to stand for election to parliament

in 1972. After being elected to Parliament he served as Chairman of the Bermuda Hospitals Board where he successfully restructured the organisation, improving health care services and enabling the island's hospitals to become internationally accredited for the first time.

In 1975, Sir John was appointed Minister of Marine and Air Services where his skills as a negotiator on the international stage were honed. "We had a problem with pollution in Bermuda, due to ships dumping their bilges near the island or running aground on the island's reefs, which were poorly marked on ocean charts. This resulted in oil pollution on our beaches and damage to the sensitive marine environment", he explains. After a period of persistent negotiation with international maritime organisations which led to a 100 mile 'no go' area for ships around Bermuda, Sir John says with satisfaction: "We have had no problems with oil pollution since."

He was appointed Minister of Immigration and Labour in 1976, initiating numerous policies and practices that enhanced Bermuda's economic and social development. "When I took office, immigration was viewed as a haphazard process. I felt that this meant that we had little control over whether people coming to Bermuda would contribute to the island's economy. I reorganised the structure so that immigration became a legal, policy process with proper procedures and systems of work permits in place."

Sir John became Premier in 1982. Under his stewardship, the Government completed in excess of 20 major projects. However, the most significant legacy of his political career was instigated in 1982 when he led the negotiations and the completion of a Tax Treaty with the United States. This agreement resulted in the development of the insurance and reinsurance industries in Bermuda and established the island as a major offshore financial centre. "At that time, the economy of Bermuda was largely based on a declining tourism industry. Barbados had recently signed a tax treaty with the United States and was starting to grow. It was clear that if we did not step up, Bermuda would miss out badly," he says. International negotiations lasted six years, beginning with a meeting in the Oval Office between Sir John and Ronald Reagan, the President of the United States, and subsequent meetings with President George H. Bush, who became a personal friend and a great supporter of Sir John and Bermuda. President Reagan said this could not start until Bermuda received the consent of the British to negotiate.

"I got straight on a plane to London after my meeting in the Oval Office and went to 10 Downing Street. The British Prime Minister, Margaret Thatcher, recognised the importance of what we were doing and immediately gave me a letter of agreement for President Reagan. I was back on a plane across the Atlantic as quickly as possible to return the letter to the President in person," he recalls. Sir John regards the tax treaty as the beginning of 'New Bermuda' by establishing the foundations for the island's economic progress and success.

Throughout the time that Sir John was building his real estate business and leading the Bermudian government, he was a member of The Standard Club board. He was elected as a director on 3 May 1977 and attended his first board meeting in Genoa under the chairmanship of D F Martin-Jenkins. He has since served on the board under the chairmanship of R B Adams, J Butterwick, John Keville, Graeme Dunlop, Ricardo Menendez and Rod Jones. "I went from being the youngest director in the room to the oldest," he smiles.

Sir John credits The Standard Club with helping his business and political career. "The Standard is a very international club, with representation of shipowners from around the world on the board. It deals with major legal, fiduciary and environmental issues and has to consider issues of great importance to the global economy, including international trade, geopolitical tensions and sanctions. I was part of all these discussions and gained a great deal of knowledge and understanding about insurance and financial services that I was able to put back into my work in establishing Bermuda on the international stage," says Sir John.

Sir John was appointed a Knight Commander of the Order of the British Empire (KBE) in 1990 by Her Majesty the Queen. Among numerous international honours, in 1985, Sir John was admitted to the Freedom of the City of London and, in 1986, he was awarded the Medal of Distinction in recognition of his humanitarian endeavours from the International Association of Lions Clubs. In 2010, Sir John was inducted into the Bermuda Business Hall of Fame where he was one of the first four recipients of this new award.

The Standard Club would like to express its gratitude to Sir John Swan for his long and distinguished service. Jeremy Grose, Chief Executive says, "We have been privileged to have Sir John's input into our deliberations over the years and will miss his deep insight and thoughtful advice. Besides being a charismatic statesman, politician and businessman, he is also a remarkably down to earth and approachable person. We all wish him well for the future and hope to continue to see him at club events in Bermuda."


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OW Bunker bankruptcy

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This article intends to provide only general guidance on the above issues, arising as a matter of English law. It is not intended to provide legal advice in relation to any specific query. Instead, its aim is to assist the club's members in identifying the issues requiring consideration and in deciding on what further enquiries and advice should be sought from its club or preferred lawyers before acting.

Although the OW Bunker group (OWB) only had a reported 7% share in the marine fuel supply market, OWB's filing for bankruptcy on 7 November 2014, followed a week later by three US subsidiaries, is having an unforeseen and very immediate impact on the wider shipowning community. Indeed, we have received a high number of queries from our members as a result of this recent financial collapse.

Different types of cases are emerging from OWB's difficulties, including claims where OWB is the cargo owner and/or charterer. However, the most common cases we are seeing, and which are focused on in this brief article, stem from circumstances where a vessel owner/operator (or time charterer) has contracted with OWB but the physical supply of bunkers is handled by a third-party.

The risk to members particularly arises where the physical supplier remains unpaid under its supply contract with OWB or one of its bankrupt subsidiaries. In such circumstances, physical suppliers are looking to the owner of the supplied vessel for payment irrespective of the contractual position.

Owners and time charterers ordering bunkers from OWB may correctly point out that their primary payment obligations are owed to OWB or a bankrupt subsidiary under the supply contract (or perhaps ING Bank following its recent intervention). However, in certain jurisdictions, such as the USA, Holland and Belgium, a bunker supplier may have a lien against a vessel (and hence the right to arrest) even if it has no direct contract with the owner. Even if, for example, OWB's supply contract was with the time charterer, the bunkers may be deemed supplied 'on the credit of the vessel'.

Whilst the supply of bunkers can give rise to a direct claim against the vessel in certain jurisdictions, a supplier will not always be able to arrest for non-payment. For example, most common law jurisdictions, such as England, South Africa and Singapore (and those jurisdictions which interpret the 1952 Arrest Convention in a similar way) will not assist third-party bunker suppliers. A vessel cannot generally be arrested where there is no direct contractual link between the vessel's owner and third-party supplier.

If a member is confronted by the threat of arrest, or even a claim in contract from OWB, it faces a difficult choice, namely whether to:

(i) pay OWB or the physical supplier, but risk double payment and/or arrest; or
(ii) withhold payment and risk arrest.

The concern arising from (i) is that payments made under a supply contract to OWB are unlikely to result in the physical supplier being reimbursed at the same time or at all. That, in turn, potentially gives the latter a direct claim against the vessel (perhaps by virtue of a lien). On the other hand, payment to the physical supplier may well leave an owner exposed to contractual claims from OWB's liquidator, whose lawyers are reported to have confirmed that the liquidators will take legal action to

enforce payment pursuant to invoices. The position is further complicated by ING Bank's reported demand that owners and time charterers pay sums due to OWB direct to the bank.

The alternative course of withholding payment as per option (ii) above will, however, also expose an owner to risk of arrest, unless carefully managed.

In addition to arrest, a further remedy that a supplier may seek is a court order for delivery up of bunkers. In short, a supplier may rely on a retention of title clause in its supply contract to argue that it owns the bunkers on board a vessel and is entitled to take back possession. If the bunkers have already been burnt, then the supplier may have a claim in 'conversion'. Further discussion of these claims is beyond the scope of this article, and in any event, such claims often require detailed factual and legal investigation.

It is important to note that each case will turn on its own facts, not least because OWB contracted on different terms, which variously included English or Danish law clauses. In addition, different jurisdictions have diverse approaches to claims regarding non-payment of bunkers, the right of arrest and other remedies.

Practical steps

If bunkers have already been supplied, the broad message is for owners and time charterers to think very carefully before making any payments in relation to OWB bunkers, and certainly not before consulting with the club or lawyers. Payments to OWB are likely to be retained by the duly appointed liquidators rather than passed on to the physical supplier (hence the vessel may still be vulnerable to arrest), while payment to the physical supplier or, say, ING Bank rather than OWB is likely to expose an owner or time charterer to contractual claims for non-payment.

Documents to be gathered include:

(i) details of the bunker operations, including the date and place of delivery, name of the supplying company (and chain of suppliers if relevant) and delivery vehicle (barge, truck, pipe);
(ii) copies of all documents received and given by the vessel before, at and after the bunker operation, including the bunker delivery note;
(iii) copies of relevant vessel log entries;
(iv) correspondence with OWB and/or the physical supplier on actual delivery; and
(v) bunker contracts – with OWB and, if possible, supply contract(s) between OWB and the physical supplier – plus invoices.

The prudent course is to contact the club before any payments are made. Further, information should be obtained to enable an assessment of the available options and applicable jurisdictions. Examples of the types of documents to be gathered can be seen in the box opposite.

In some cases, a solution may be found by writing to OWB/the liquidators and the physical bunker supplier, plus any other known claimant(s) such as ING Bank, seeking written confirmation of payment instructions and/or proof of payment to the supplier. If payment is due imminently, the owner/time charterer may add that payment to OWB will be postponed until the agreed payment instructions are received, while at the same time making it clear that the owner or time charterer is willing and able to pay. At the very least, meaningful without prejudice discussions may then start, which could avert an immediate threat of arrest and may lead to settlement.

However, if there is no agreement between OWB and the physical supplier or other claimant(s) regarding payment or one or all remain silent, then the owner may be able to pay the money into escrow pending resolution of the dispute between OWB, the physical supplier and other claimant(s). Alternatively, the owner may pay the monies into court and 'interplead'. The latter is a procedure in England and Wales where a claimant starts proceedings to compel competing parties to litigate a common dispute. Similar procedures are found in other jurisdictions including, we believe, in the USA and South Africa. Again, the club strongly advises members to seek advice before attempting to make payments into escrow or court.

Subject to local advice, there may be other court procedures that can assist to head off an immediate threat of arrest, for example, filing a caveat against arrest, though this typically requires security to be put up quickly. If an owner knows that its vessel is at risk of arrest but does not know where, then to minimise the risk of detention and subsequent delays, it may wish to take pre-emptive steps to have adequate security ready at short notice.

Other options may, of course, arise on a case-by-case basis such as payment to the physical supplier in return for an express indemnity to defend and hold the owner harmless from any attempt by OWB or other interested party to seek payment. Of course, any such arrangement is only as good as the terms on which it is written and also depends on the financial standing of the physical supplier. Bear in mind also the jurisdiction where the supplier is located in case subsequent enforcement is required.

Furthermore, an owner may have an indemnity claim against its time charterer in the event of a claim emerging for non-payment (see, for example, clause 18 of the NYPE form).

Members should be aware that likely arrest jurisdictions include not only the country where the bunkers were supplied but also the USA, Holland, Belgium, Panama, Nigeria, Chile, Venezuela, Argentina and possibly certain parts of India. China is also possible, if the supplier is a national company, and we are aware of attempted arrests relating to OWB claims in Singapore and South Africa.

Example of notice to suppliers confirming that the charterer does not have authority to pledge credit of the vessel

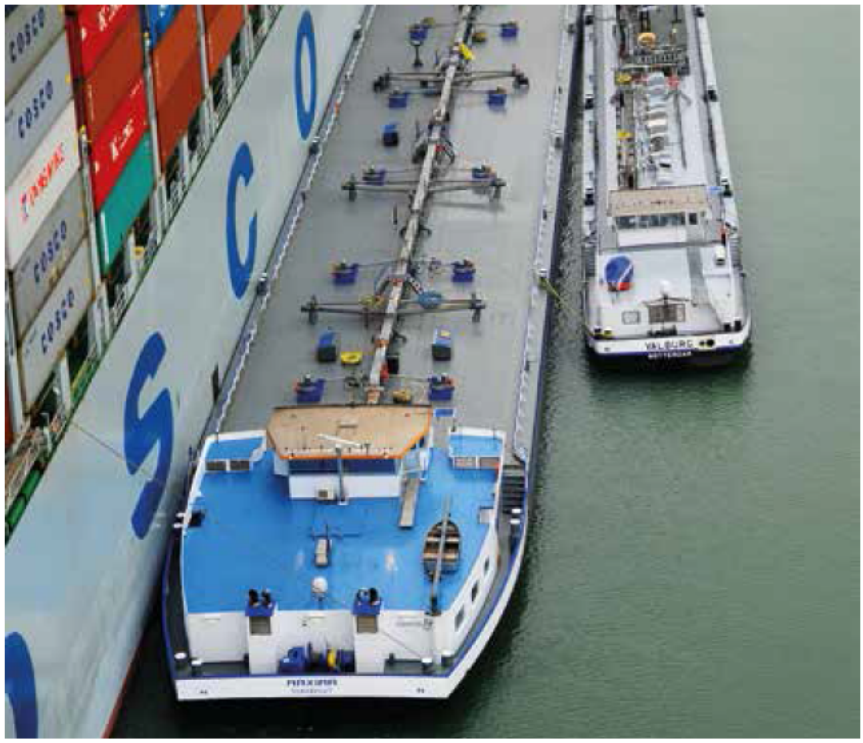
'We hereby put you on notice that the bunkers to be supplied to the vessel [•] at [•] are supplied under a contract between the vessel's time charterers [•] and [•], a contract to which the owners are not a party. These bunkers are not supplied on the faith and/or credit of the owners, their servants, managers, agents or subcontractors, or the vessel, none of whom will have any responsibility for payment for them. No lien or other encumbrance whatsoever will be created by the supply of bunkers to the vessel [•].'

While discussions above have concentrated on difficulties where bunkers have already been supplied, issues will undoubtedly also arise if bunkers have been ordered from OWB but have yet to be delivered. If so, then the first point to check is the status of the seller as not all OWB companies have filed for bankruptcy. Again, the imperative is to gather relevant contracts and information, and speak to the club before problems arise. If the supply does proceed and it has been ordered by the time charterer, then notice should be given to both OWB and the physical suppliers confirming that the charterer does not have authority to order bunkers for the credit of the vessel or the owner and that the bunkers are for the charterer's sole account.

The last point, and the collapse of OWB generally, serve as a timely reminder of the steps that an owner can take to minimise the risk of arrest in the event of a time charterer's non-payment of bunkers. Details of these steps are again beyond the scope of this article, but broadly include (i) a time charter provision expressly prohibiting the charterer from procuring supplies and services on the credit of the vessel and, as indicated above, (ii) giving notice to suppliers confirming that the charterer does not have authority to pledge the credit of the vessel or the owner. An example of such a notice is shown in the box on the left.

Whilst there is no guarantee such a notice will be effective to protect a vessel in all jurisdictions, it is certainly better than nothing when it comes to accepting future liftings.

In case of any doubt, the member should not hesitate to contact the authors or their usual club contact. The law is not static and we are always on hand to assist.



Chinese tax changes affecting the international shipping community

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Recent developments in the People's Republic of China (PRC) tax law in relation to International Transportation Business (ITB) have attracted increasing concern and attention from the international shipping community. This article offers a brief practical guide on the main aspects of the new regulations and the changes these bring about.

Why the new regulations?

On 30 June 2014, the China State Administration of Taxation (CSAT) issued the 'Notice on Provisional Measures on the Collection of Tax on Non-Resident Enterprises Engaged in International Transportation Business' (2014 No 37 Notice). This came into effect on 1 August 2014. The Notice seeks to tighten the tax regulations for 'non-resident taxpayers' who benefit from the 'international transportation business'. The tax treatment and administrative procedures in the Notice could therefore have a significant impact on members.

Scope of 'international transportation business'

Clause 2 of Notice no 37 clarifies that 'international transportation business' includes the transportation of passengers, cargo or post in and out of Chinese ports by non-resident companies through vessels, aircraft or space slots. The clause further clarifies that voyage chartering or time chartering, with the purpose of income generation, shall be classified as 'international transportation business'.

Advice

- Members should prudently examine the terms regarding tax payment obligations, when entering into transportation agreements, to seek best protection of their interests.
- Members should familiarise themselves with the new provisions and be ready to comply with them.
- Members will need to be aware of the possibility that their Chinese counterparty may act as a withholding agent to collect the due taxes.
- Members will need to check if their registered country has any tax treaty with China by which they can be protected from the new tax burdens.
- Alerts will be issued via our website and Twitter to communicate major updates.

Tax registration procedure

The Notice requires non-resident companies to register with the local tax authority within 30 days of concluding an agreement or obtaining operation qualification. Non-resident companies may complete tax registration either by themselves or through their appointed local agents. If a non-resident enterprise fails to register and pay tax, Chinese authorities can appoint the enterprise's Chinese counterparty as the withholding agent and require such agent to withhold the tax amount from its payment to the non-resident taxpayer and instead pay the same to the local tax authority. If the withholding agent fails to do so, the tax authorities should recover the tax amount from the non-resident tax payer and should impose a significant fine on the withholding agent.

Taxable income

Taxable income shall be calculated by deducting 'deductible expenses' from the actual income received from the provision of the transportation services. 'Deductible expenses' consist of the reasonable expenses incurred to earn the revenue received. To claim deductible expenses, supporting documentation must be submitted to the authorities.

Double Taxation Treaties

Non-resident enterprises may be able to benefit from reduced or waived enterprise income tax due to a double taxation treaty between their nation and China. To arrange this, the foreign enterprise should apply for an official confirmation of the applicability of that treaty from the relevant tax authority. Taxpayers, who have paid the tax but are actually entitled to tax treaty treatment, can apply for a refund of the overpaid tax within three years after payment.

Conclusion

Obviously, this regulation is intended to streamline and tighten the collection of tax on non-resident taxpayers engaged in international transportation business in China, they are expected to face a higher tax burden from the Chinese tax authorities unless protected by applicable tax treaties.

However, it is important to note that the new regulations are in their infancy. At this stage, there remain many uncertainties in the application of the Notice and quite a few issues need to be clarified. The new regulations are acknowledged as 'Interim Measures' and further clarification from the Chinese tax authorities is awaited.

The Standard Club will closely monitor this issue and keep members appraised of developments with further alerts where necessary.

This article is intended to provide only general guidance on the above issues. This should not be construed as specific legal advice in Chinese tax law. Instead the aim is to assist the club's members in identifying the issues requiring consideration and on deciding what further enquiries or advice should be sought either from the club or preferred lawyers.

The costs of US Security Guards – owners' negligence and charterers' liability

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In the current market, disputes over liability for disbursements can mean the difference between loss and profit.

Comment
- Careful attention should be paid to which clause is incorporated.
- Parties are free to amend standard clauses to clarify liability in specific circumstances and should consider doing so.
- The burden of bringing charterers within the exception wording rests firmly on charterers.
- A lack of US visas is unlikely to constitute owners' negligence or render the costs of security guards for their account.

Liability for the costs of mandatory security guards at US ports remains a common issue of dispute. The pro-forma clauses provide for the possibility of owners being liable in cases of, for example, owners' negligence. Owners may also be liable for the costs of compliance with the ship security plan. However, there has been minimal guidance on when such liabilities arise. The recent decision in London Arbitration 5/14 sheds some light on the issue, confirming that in the normal course of events, security guards are a charterers' liability.

Case study

The case concerned a voyage chartered vessel with a non-US crew. The fixture provided:

'Bimco ism/isps clauses for voyage charters to apply...'

The first question was, which BIMCO clause was incorporated? The owners argued for the BIMCO ISPS clause, which provides that security guards are for the charterers' account "unless such costs or expenses result solely from the owners' negligence" and that "all measures required by the owners to comply with the ship security plan shall be for the owners' account".

The charterers argued for the later, more charterer-friendly BIMCO ISPS/MTSA clause, which provides that owners are liable if 'such costs or expenses result solely from the negligence of the owners, master or crew or the previous trading of the vessel, the nationality of the crew or the identity of the owners' managers'.

The tribunal held that the original BIMCO ISPS clause was incorporated as the parties were free to contract on such terms as they wished.

However, it was considered that the owners were not liable under either clause. The charterers argued that the owners had been notified that security guards may be required at US ports unless sufficient crew had visas and that the failure to ensure that sufficient crew had visas constituted negligence. They further argued that the requirement for guards was directly linked to the advance information provided by owners to the US authorities. However, the tribunal disagreed. It is not mandatory for crew to have US visas, the only requirement being that the crew remain on board. Thus it was not negligent for the vessel to arrive without a minimum number of crew visas. The tribunal further considered that there was no clear link between the advance crew information provided and the ordering of security guards. The charterers were therefore liable and would have been even applying BIMCO ISPS/MTSA.

Safe passage through the Bosphorus?

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There is a constant need to draw a balance between efficiency of passage and safety – safety of the surroundings and of the vessels themselves.

Each year, approximately 50,000 vessels pass through the Bosphorus Strait, around 20% of which are carrying dangerous cargoes. The surrounding city of Istanbul has a dense population of 14 million people, ferries cross between Asia and Europe constantly and, particularly to the north, fishermen are out in their small vessels. The strait is notoriously difficult to navigate and there is no obligation to have a pilot on board.

In the last 10 years, concern over the number of serious incidents occurring has led to a dramatic increase in security measures, for example:

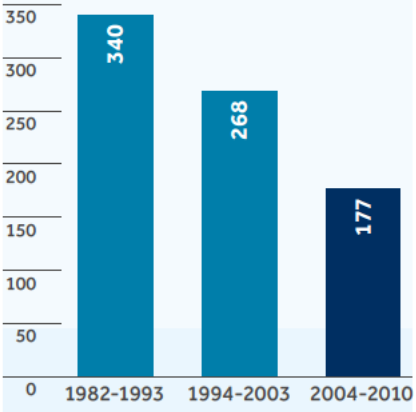
- the Turkish Strait's VTS, introduced in 2003, aimed specifically at increasing safety of navigation and organising the traffic in a more effective way;
- the AIS system introduced in 2007, which automatically tracks vessels travelling through the Black Sea, Aegean and West Mediterranean;
- the Long Range Identification and Tracking System (LRIT), whose operation is governed by SOLAS, was introduced in Turkey in 2009, allowing the tracking of ships by satellite;
- the National Emergency Intervention Centre was introduced, which exists specifically to intervene when incidents do occur.

More recently, a one-way system was implemented – 12 hours in one direction, 12 hours in the other. This was initially introduced to facilitate the construction of a rail tunnel under the Bosphorus, but has been kept in place following completion of the tunnel.

Within The Standard Club membership, there have been very few incidents relating to collisions or groundings since these measures, in particular the VTS system, were introduced.

Thanks to Omur Marine for providing source information for this article

Number of accidents



Source: September 9 University

The Bosphorus Strait experienced 785 ship accidents between 1982, when traffic density started to increase, and 2010. Following the implementation of the VTS in 2004, the number of accidents has noticeably reduced.

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Charles Taylor