



JAPAN P&I NEWS

To the Members

THE 2020 GLOBAL SULPHUR CAP—Allocating Risk and Responsibility <Some Key Charterparty Issues>

Introduction

As Members are likely aware new IMO sulphur regulations will come into force on 1 January 2020. On that date the MARPOL permitted limit for sulphur content in ship's bunker fuel oil will be reduced from 3.5% m/m to 0.5% m/m. From 1 January 2020 vessels will only be permitted to burn fuel with a sulphur content below 0.5% m/m (hereinafter referred to as "Compliant fuel") and the burning of fuel with a higher sulphur content than that (hereinafter referred to as "Non-compliant fuel") will be prohibited. In addition, the IMO has also approved a prohibition on the carriage of Non-compliant fuel which will come into force on 1 March 2020.

Members, whether Charterers or Owners need to make sure they are ready for the introduction of the new regulations and that the risk and responsibility for complying with them is clearly allocated between the parties under their Charters. If there is no charterparty wording dealing with the issues raised by the new regulations, then the allocation of responsibility for compliance may be unclear. This means that disputes between the parties and potentially expensive legal proceedings are far more likely. This is of course highly undesirable for all parties involved.

In this article we will consider some of the issues that will arise under time charters as a result of the new regulations and how they might be addressed.

Some Key Charterparty Issues

As a starting point the charterparty should include clear wording which provides Owners are responsible for ensuring that the vessel is able to consume fuel that will comply with the sulphur content requirements of MARPOL Annex VI. To avoid any ambiguity, the charter should also include wording that provides fuel supplied to the vessel (usually the responsibility of Charterers) is compliant with the new regulations in terms of its sulphur content.

A key period in which there is potential for disputes arising between the parties is between 1 January 2020 when the burning of Non-compliant fuel becomes prohibited and the 1 March 2020 when the carriage of Non-compliant fuel also becomes prohibited.

It would be prudent for the Charter to include wording providing who will be responsible for ensuring that on 1 January the vessel has enough Compliant fuel to reach the nearest bunkering port where Compliant fuel is available. If this issue is overlooked then there is of course a risk that come 1 January 2020 the vessel could be stranded as she would not be able to burn Non-compliant fuel except in a very narrow range of circumstances.

Another issue that needs to be addressed is who should be responsible for the removal of any Non-compliant fuel from the vessel's bunker tanks after 1 January 2020. Once all liquid and pumpable Non-compliant fuel is removed

from the vessel there is the issue of fuel tank cleaning. Fuel tanks that have carried Non-compliant fuel will need to be cleaned so that they are ready to receive Compliant fuel without contaminating the new supply of Compliant fuel.

Under many standard charter forms the responsibility cleaning the vessels fuel tanks in preparation for carrying Compliant fuel will likely fall under Owner's maintenance obligations. However, there is certainly scope for disputes between the parties as to the extent of tank cleaning required and which party should be responsible for doing particular tasks. If the parties have already planned the process by which the tanks will be cleaned then it may be worth setting out the processes in the charter along with details of the party who will be responsible for the time and cost in each case.

The disposal of Non-compliant fuel remaining in the vessel's tanks after the 1 January is another issue that needs to be addressed. Obviously the best outcome would be for the parties to plan ahead effectively so that any Non-compliant fuel has been consumed come the 1 January. However, for various reasons it may not be possible to do so. This issue is important because after the introduction of the IMO 2020 regulations disposal of Non-compliant fuel may well be quite troublesome in certain ports around the world. Only specially fitted Vessels will be able to burn such fuel and in many ports it may be necessary to pay for a third party to dispose of it.

Another issue that the parties need to consider is that of the speed and consumption of the vessel when she is burning Compliant fuel. There are concerns that in certain cases the burning of Compliant fuel will cause vessels to underperform. In order to avoid speed and underperformance claims from Charterers, Owners may want to consider the inclusion of wording to provide protection in the event of underperformance that directly results from the burning of Compliant fuel.

Members will also need to consider the charterparty provisions dealing with bunkers upon delivery and redelivery in their Charters. Compliant fuel is likely to be significantly more expensive than Non-compliant fuel and members should be aware of this when agreeing provisions where bunkers are bought back by Owners for a particular price.

All of the issues above are likely to require negotiation with the allocation of risk and responsibility dependent on the parties' commercial bargaining position. Negotiating of bespoke clauses is likely to be time consuming and wording that hasn't been carefully considered may lead to uncertainty in terms of the allocation of risks and responsibilities between the parties. As such we would recommend that standard form clauses be used or at least form a starting point for discussions.

BIMCO have produced two clauses that deal with issues relating to the new regulations "The 2020 Fuel Transition Clause for Time Charter Parties" and "The 2020 BIMCO Marine Fuel Sulphur Content clause for Time Charter Parties". In the Club's view both clauses deal adequately with many of the issues raised by the introduction of the new regulations and represent a fair compromise between the interests of Owners and Charterers. The standard form clauses can of course be amended to reflect the particular requirements of the parties in each case.

The Club has significant experience advising on clauses dealing with the upcoming IMO Regulations and would be happy to assist Members with any specific questions that they have.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association