

Soundings

New BIMCO IMO 2020 clauses published

BIMCO has this week published two new clauses designed to address the forthcoming low sulphur content regime which will come into force on 1st January, 2020.

In [June 2018](#), we discussed some of the potential issues faced by Members in advance of the new MARPOL low sulphur requirements, which have come to be conveniently termed as “IMO 2020”. Over the past few months, interest in this topic has escalated significantly. Questions arising from the various implications of IMO 2020, ranging from practical requirements to drafting considerations, are regularly occupying the minds of owners and charterers alike.

Commentary

In response to market demand and in consultation with

industry representatives, BIMCO have published two clauses which tackle some of the main issues posed by IMO 2020.

Compliance Clause

The first clause, the BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties, deals with the parties' respective obligations in relation to compliance with the low sulphur requirements after 1st January, 2020. The clause reflects commonly used bunker quality and liability provisions already found in time charterparties and sets out balanced obligations for both charterers and owners. Parties

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Transitional clause

The second clause, the 2020 Fuel Transition Clause for Time Charter Parties, deals with issues that are anticipated to arise during the “transitional period”, covering the move from high sulphur to low sulphur fuel. The clause recognises the interim period between the effective date of 1st January, 2020, when ships will be required to start burning only low sulphur fuel, and 1st March, 2020, when a complete carriage ban will come into force. Owners and charterers will need to co-operate to ensure that the ship has as small a quantity as possible of non-compliant fuel on board prior to the carriage ban coming into force. For ships delivering immediately before 1st January, 2020, arrangements for supplying enough low sulphur fuel will need to be made. Costs and responsibility will have to be allocated for tank cleaning and disposal of any residual non-compliant fuel. Bunker tank spaces will also have to be managed for segregation purposes. The clause seeks to address all of these matters. This clause obviously deals with a one-off event so will only be necessary for charterparties entered into prior to 1st January, 2020, unlike the compliance clause.

Other drafting considerations

It is understood that BIMCO also has a “scrubber” clause in the pipeline, dealing with the installation, financing and use of scrubbers. However, due to recent controversy and uncertainty in the market regarding the use of scrubbers, this has been put on hold and it is currently uncertain when, or if, it will be published. However, the Association has

drafted various clauses for its Members relating to the use of scrubbers on a case-by-case basis and Members are invited to contact their usual case handler should assistance be required in this respect.

The compliance clause does not refer to “quality” and “grades” of bunkers as it is focussed specifically on sulphur content requirements. Quality and grades of fuels will need to be dealt with by other provisions within charterparties. Reference to the latest ISO standard is recommended, since ISO are updating their specifications to reflect specific requirements for low sulphur fuel.

The transitional clause does not deal with the fact that there will be different quantities of high sulphur fuel on-board at delivery and re-delivery. It is common for parties to agree for the same quantities to be on-board at delivery and re-delivery, but this will not be appropriate for charterparties that extend beyond 1st January, 2020. Therefore, parties will need to ensure that delivery/re-delivery quantity clauses are drafted appropriately. Price fluctuations should also be taken into account when drafting such clauses.

Parties are also advised to incorporate clauses dealing with fuel quality. It is generally anticipated that the increased use of low sulphur fuel after 1st January, 2020 will bring with it an increase in bunker quality and contamination claims as producers experiment with new non-standardised blends in order to meet the anticipated high demand for low sulphur fuel. BIMCO has a selection of clauses dealing with bunker quality, which can be used before and after 1st January, 2020 and Members are advised to adopt these, or similar, as standard.

The above commentary focuses largely on time charters, but voyage charters may also be affected in terms of



bunker pricing. As low sulphur fuel costs are currently unknown but likely to rise, owners, who typically provide bunker fuel under the terms of such charterparties, may face additional exposure from price fluctuations.

Owners may wish to hedge against bunker price volatility by, for example, including Bunker Adjustment Factor clauses.

The BIMCO clauses

2020 Marine Fuel Sulphur Content Clause for Time Charter Parties

- (a) For the purpose of this Clause, "Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.
- (b) The Charterers shall supply fuels to permit the Vessel, at all times, to comply with any applicable Sulphur Content Requirements. All such fuels shall meet the specifications and grades set out in this Charter Party.

The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers shall comply with the Sulphur Content Requirements.

The Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Charterers' failure to comply with this subclause (b), and the Vessel shall remain on hire throughout.

- (c) The Owners warrant that the Vessel shall comply with the Sulphur Content Requirements.

Subject to the Charterers having supplied the Vessel with fuels in accordance with subclause (b), the Charterers shall not otherwise be liable for any losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Owners' failure to comply with this subclause (c).

2020 Fuel Transition Clause for Time Charter Parties

(a) Definitions

For the purpose of this Clause:

"Carriage Ban Date" means 1 March 2020.

"Carriage Ban" means the prohibition of the carriage for use of Non-Compliant Fuel as of the Carriage Ban Date.

"Compliant Fuel" means any fuel that meets the Sulphur Content Requirements with effect from the Effective Date.

"Effective Date" means 1 January 2020.

"Non-Compliant Fuel" means any fuel with a sulphur content of more than 0.50%.

"Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.

Owners and charterers will need to co-operate to ensure that the ship has as small a quantity as possible of non-compliant fuel on board prior to the carriage ban coming into force.

(b) Requirements

(i) Before the Effective Date, the Charterers shall have supplied the Vessel with fuel so that on the Effective Date the Vessel shall have sufficient Compliant Fuel to reach the nearest bunkering port where Compliant Fuel is available.

(ii) No later than the Carriage Ban Date there shall be no Non-Compliant Fuel carried for use by the Vessel.

Together subclauses (b)(i) and (ii) are the "Requirements".

Notwithstanding the Carriage Ban, Owners and Charterers shall cooperate and use reasonable endeavours so that no later than the Effective Date there shall be no Non-Compliant Fuel carried for use by the Vessel.

(c) (i) In order to meet the Requirements, the Charterers shall at their risk, time and cost ensure that any Non-Compliant Fuel remaining on board after the Effective Date shall be discharged from the Vessel's bunker tanks until such tanks are free of liquid and pumpable fuel latest by the Carriage Ban Date or the redelivery date of the Vessel, whichever occurs first; and

(ii) in respect of the bunker tanks that are free of liquid and pumpable fuels, Owners shall at their risk, time and cost ensure that such tanks are fit to receive Compliant Fuel, taking into account the type of Compliant Fuel that will be loaded into such bunker tanks.

Compliant Fuel shall not be loaded into a Vessel's bunker tanks until the steps described above in subclauses (c)(i) and (c)(ii) have been carried out in respect of such bunker tanks.

Once bunker tanks are fit in accordance with subclause (c)(ii), no Non-Compliant Fuel shall be loaded into such bunker tanks.

(d) Disposal of Non-Compliant Fuel - In respect of Non-Compliant Fuel, if any, which needs to be discharged from the Vessel in accordance with subclause (c)(i), Charterers shall dispose of such fuel in accordance with any applicable local regulations at Charterers' risk, time and cost.

(e) Segregation - Unless otherwise agreed between Owners and Charterers, each supply of Compliant Fuel shall be bunkered into empty tanks within the Vessel's natural segregation.

The Managers will be happy to assist with any queries arising out of the above.

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