

Soundings

Sulphur Series: Countdown to 2020

Are you ready for the switchover?

In this edition of our “Sulphur Series”, we look in more detail at the practical steps that will need to be taken in order to prepare ships without scrubbers for the switchover to low sulphur fuel on 1st January, 2020. We also consider how the allocation of responsibilities and costs related to such steps might be dealt with contractually.

As most owners will be aware, switching to compliant fuel requires careful and detailed planning in terms of tank cleaning, fuel segregation, storage and compatibility. A lead-up period will be necessary in many cases and this is something for which many operators have already started to plan ahead. Together with the necessary practical preparations and planning, relevant contractual arrangements

should also be reviewed to avoid, or at least minimise, potential disputes during the period of transition into 2020.

Planning ahead: the practicalities

It will be essential that tanks are cleaned to a high standard prior to bunkering using 0.5% sulphur fuel. If compliant fuel is loaded onto unpumpable high sulphur fuel oil remaining

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in the tanks, there is a risk that the new fuel may be rendered unstable, resulting in excessive sludge formation at filters and purifiers, leading to fuel combustion problems.

There are no regulatory guidelines as to cleaning methods and different operators will adopt different methods depending on policy, practice and experience. Broadly speaking, the main options available are manual cleaning, flushing the fuel system through with marine gas oil, low sulphur fuel or cleaning additives, or a combination of the above. Manual cleaning often has to be carried out at a lay-by berth so this method can involve additional costs and delays, particularly if there is a high demand for cleaning and sludge disposal facilities. Flushing the system through with additives or low sulphur fuel may avoid ships being placed out of service, but will require careful planning and implementation of a bunker rotation plan over a period of months to ensure staggered availability of each fuel tank for inspection in the lead up to 2020.

In addition to tank preparation, owners will also need to consider and address any new operational combustion and engine lubrication requirements for burning 0.5% sulphur fuel in ships' engines and boilers. Key modifications and changes in operational settings may be necessary for some ships and crew will need to be trained accordingly.

For more information, Members are referred to the IMO guidance for a shipboard implementation plan, which can be found at <http://www.imo.org/en/OurWork/>

[Environment/PollutionPrevention/Documents/MEPC.1-Circ.878.pdf](#).

Planning ahead: contractual provisions

This all raises questions as to who will be contractually responsible for tank cleaning time and associated costs. For new charters that are being negotiated now, and that will continue into 2020, parties are strongly advised to include a contractual regime to govern the transitional period. For existing charterparties where there are no express provisions, where possible, parties would do well to agree the allocation of responsibilities and costs in advance.

BIMCO and INTERTANKO clauses

With this in mind, both BIMCO and INTERTANKO have produced clauses for inclusion in time charters. INTERTANKO were represented on the BIMCO drafting team, but took the view that a specific INTERTANKO clause would better reflect the particular needs of their members.

BIMCO have published a stand-alone clause dealing with the transitional issues, to complement a separate compliance clause. INTERTANKO, on the other hand, have issued one clause which takes a "comprehensive approach to MARPOL Annex VI and other regulatory requirements as well as quality issues and industry best practice".

The INTERTANKO clause is somewhat more detailed than the BIMCO clause and expressly sets out a number of steps that must be taken by reference to any ship



implementation plan, including default provisions which apply where charterers fail, for example, to engage in discussions regarding the procedures for preparing the tanks.

Both clauses provide a useful starting point, but may well require amendment or elaboration to reflect particular circumstances, as illustrated below. It will also be important to ensure that any contractual terms are consistent with the timing and detailed plans set out in the applicable ship implementation plan.

Timing

Both the BIMCO and INTERTANKO clauses envisage charterers supplying the ship with sufficient compliant bunkers, prior to 1st January, 2020, to reach a bunkering port where compliant bunkers are available. Thereafter, all high sulphur fuel must be removed from the tanks before the carriage ban date of 1st March, 2020.

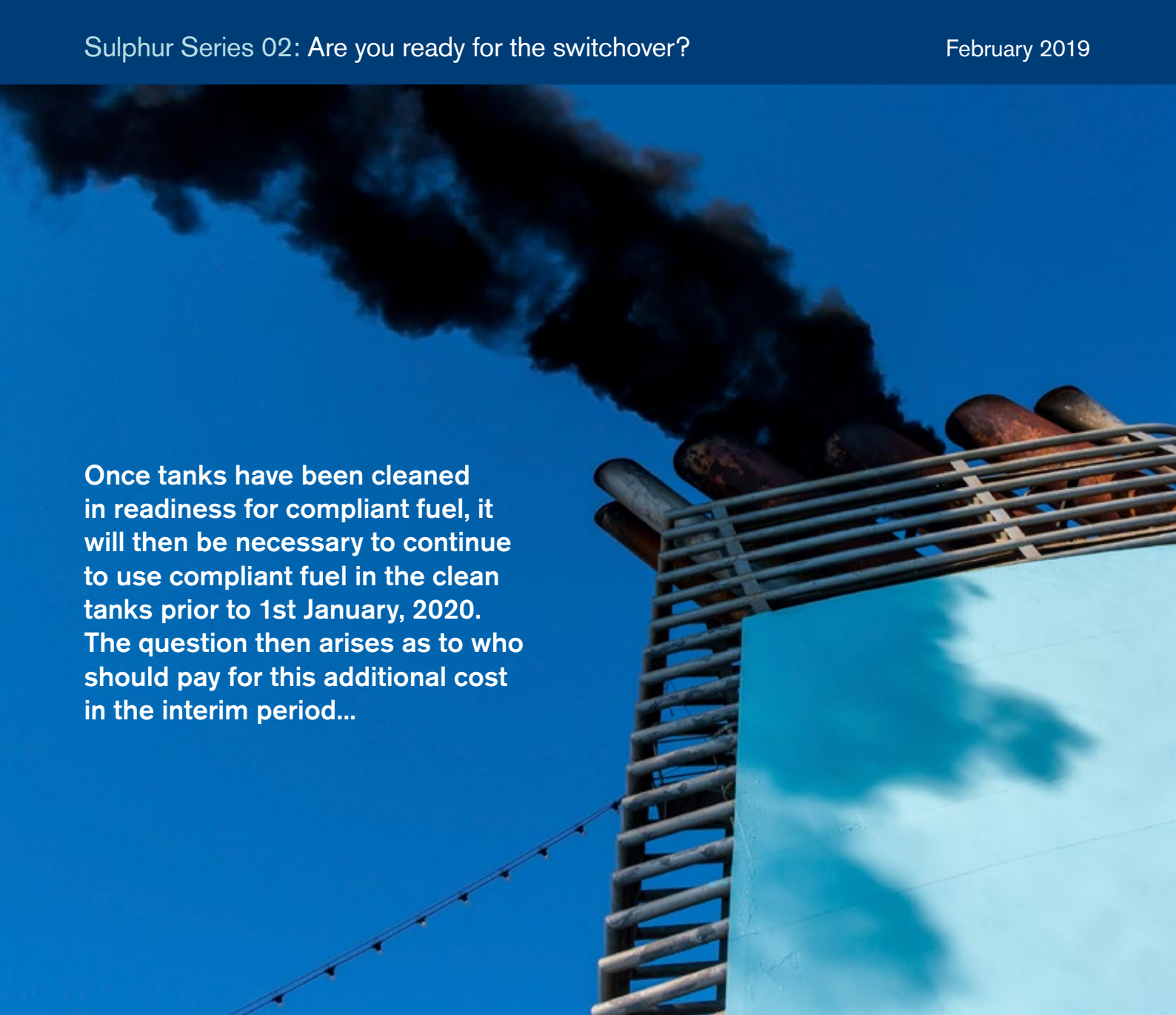
There appears to be a slight wrinkle in the drafting of the BIMCO clause. Sub-clause (c) provides that compliant fuel “shall not” be loaded into bunker tanks until the steps described in sub-clauses (c)(i) and (ii), i.e. discharging non-compliant fuel and preparing the tanks to receive compliant fuel, have been performed. However, sub-clause (c)(i) (discharge of non-compliant fuel) is not required to be done until 1st March, 2020, whereas it will of course be necessary to have the tanks ready to receive compliant fuel by 1st January, 2020. Parties may wish to amend the clause to clarify this.

Parties should also bear in mind that in some jurisdictions, the burning of compliant fuel is already required prior to the implementation date, such as existing Emission Control Areas (ECAs) and countries such as China, which have implemented the new MARPOL requirements early. If parties are regularly trading to such jurisdictions, they might consider amending the standard clauses to bring the tank cleaning requirements forward.

Responsibility for tank cleaning and preparation

Both clauses broadly reflect the traditional division of responsibility, with charterers responsible for the supply and removal of fuel and owners responsible for cleaning and preparing tanks. For example, clause 9 of the INTERTANKO provision requires charterers to pay for “cleaning or flushing with gasoil”, whereas owners are to pay for “tank cleaning”. The BIMCO clause requires charterers to ensure tanks are free of “liquid and pumpable fuel”, with owners thereafter to ensure tanks are “fit” to receive compliant fuel.

However, the line between the two spheres of responsibility may not be easy to define. For example, if owners require the supply of compliant fuel in order to wash the tanks, there may be a question as to who should have to pay the additional cost of compliant fuel for this purpose. Under the BIMCO clause, this would probably fall within owners’ sphere of responsibility. The position may be more finely balanced under the INTERTANKO clause, which provides for the cost of “flushing with gasoil” to be paid by charterers (though it is perhaps notable that this does not



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refer to flushing with “compliant fuel”). It would be worth considering spelling out expressly the particular costs to be assumed by each party.

Once tanks have been cleaned in readiness for compliant fuel, it will then be necessary to continue to use compliant fuel in the clean tanks prior to 1st January, 2020. The question then arises as to who should pay for this additional cost in the interim period, given that charterers' obligation to supply low sulphur fuel generally does not arise until 1st January 2020. Parties may wish to address this issue when drafting new charterparties.

The above examples illustrate the complexity, both in practical and legal terms, of the switch to low sulphur fuel. Although the BIMCO and INTERTANKO clauses are a good

starting point, they do not provide an off-the-shelf solution for every charterparty and careful thought must be given to ensuring that the terms of any charter are practically achievable and reflect the ship implementation plan.

Conclusion

It is highly advisable that preparation for compliance is not left to the last minute. In most cases practical steps will need to be taken well in advance, in consultation with charterers where appropriate, to ensure practical readiness in time for the 2020. Parties should also keep these issues in mind when drafting any new charterparties that are likely to continue into 2020.

Members are invited to contact the Managers with any specific queries relating to these issues.

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