



The ASA *Newsletter*

4th Edition, 2018

The ASA is represented by the following member associations:



News Alert

| <i>Date</i> | <i>Name of Event</i> | <i>Organiser & Location</i> |
|--------------------|---|--|
| 2-5 October | Singapore International Bunkering Conference (SIBCON) | MPA, Singapore |
| 15-18 October | 24 th Interim Meeting of The Seafarers Committee | ASA SC, Xiamen |
| 18 October | 35 th Interim Meeting of The Safe Navigation & Environment Committee | ASA SNEC, Singapore |
| 22-25 October | 12 th ASEF Meeting & A-3 Experts Meeting | ASEF, Dalian |
| 31 October | Gas Asia Summit 2018 | GAS Singapore, Singapore |
| 6-7 November | 26 th ACS Executive Committee Meeting & A-3 Executive Meeting | ACS, Beijing |
| 7 November | 24 th ASA Chairmen Council's Meeting | ASA, Bangkok |
| 19 November | Post - MEPC 73 Industry Debriefing | MPA, Singapore |
| 20 November | Pre - MSC 100 Industry Briefing | MPA, Singapore |
| 29 November | Safety4Sea Singapore Conference | Safety4Sea, Singapore |
| 30 November | Singapore Registry of Ships (SRS) Forum | MPA, Singapore |
| 18 December | Partners in Seafarers' Welfare | MPA, Singapore |

Singapore Announced Ban on Open-Loop Scrubber Discharge

The Maritime and Port Authority of Singapore (MPA) announced that it will not allow ships with open-loop scrubbers to discharge scrubber wash water in port after 1st January 2020. This is to remain in compliance with the IMO 2020 fuel sulphur limits and to protect the marine environment by ensuring that the port waters are clean. These vessels will have to burn more costly 0.5 percent sulphur fuel when calling Singapore, just like ships that are not equipped with scrubbers. The discharge ban will have a lesser effect on ships fitted with hybrid scrubber systems, which can switch from open-loop to closed-loop mode and retain their wash residues on board. Singapore, as a party to MARPOL Annex VI, will offer a full range of services for shore reception of closed-loop scrubber residues.

Singapore's ban occurs within the context of a broader conversation about the potential effects of scrubber washwater on the marine environment. Wet scrubbers allow vessels to continue to burn low cost, high-sulphur fuels, even where otherwise prohibited, by removing sulphur oxides from the exhaust stream. Open-loop scrubbers use seawater as the washing agent, then discharge it again after use, along with some of the substances that would ordinarily exit the vessel's stack as air pollutants.



Port of Singapore

Taiwanese Ports affected by early Sulphur Cap Implementation

Taiwanese Ministry of Transportation and Communications (MOTC) issued a guidance, which advises that from 1st January 2019 vessels entering international commercial port areas in Taiwan, should use fuel oil with a sulphur content of 0.5% or less. Ships may also use equivalent ways of emission reduction, in accordance with the MARPOL Convention.

Vessels can comply with the sulphur cap by directly using 0.5% sulphur fuel or using scrubbers, as well as other methods such as complaint blending of marine fuel or the use of LNG. Further to this publication, any alternative means of compliance with the regulations must be approved by the vessel's flag administration. The latest guidance clarifies exactly the ports that will enforce earlier the sulphur cap regulation which are:

- Keelung;
- Taichung;
- Kaohsiung;

- Hualien;
- Taipei;
- Suao;
- Anping.

24th Interim Meeting of the Seafarers Committee, ASA

The ASA Seafarers Committee held its 24th Interim Meeting in Xiamen on the 15th to 18th October 2018, hosted by China Shipowners' Association (CSA) and sponsored by China COSCO Shipping Corporation Limited (COSCO Shipping) and chaired by Mr Fu Xiangyang, Chairman of ASA SC.

The committee recognizes that the development of seafarers is facing severe challenges amongst countries and regions of member associations. Some Asian countries are seafarer-supplying whereas some countries are in high demand to employ seafarers. To address the unbalanced situation, a possible sharing system of the Asian seafarers is desirable. In this regard, the Project on Establishment of the Seafarer Excellence Network of the Asia-Pacific sets a good example. For more details about the Project, members can visit the link :

<https://aimp2.apec.org/sites/PDB/Lists/Proposals/DispForm.aspx?ID+2231>



35th Interim Meeting of the Safe Navigation & Environment Committee, ASA

The ASA Safe Navigation & Environment Committee held its 35th Interim Meeting in Singapore on the 18th October 2018. The Committee updated several issues concerning 2020 Global Sulphur Cap, Ballast Water Management Convention in regards to the creation of Same Risks Area within selected areas of ASEAN waters. This will exempt vessels engaged solely in intra-ASEAN trades from the International Convention for the Control and Management of Ships' Ballast Water & Sediments since these ASEAN waters are likely

to share similar or identical ecosystems. Piracy & Armed Robbery Against Ships and Cybersecurity were also discussed during the meeting.

The Committee noted that, based on ReCAAP statistics, for January to September 2018:

- There were 64 incidents (50 actual & 14 attempted) in Asia.
- There was a decrease of incidents in the port/anchorages in Philippines.
- There is a slight increase of incidents in the Singapore Straits and ports and anchorages at Vietnam
- There is decrease in abduction of crew for ransom
- No successful hijacking of ships for theft of oil cargo

For more details about the Piracy & Armed Robbery Against Ships in Asia, members can visit the link :

[http://www.recaap.org/resources/ck/files/reports/quarterly/Single-sheet%20Summary%20for%20ReCAAP%20ISC%203rd%20Quarter%202018%20Report\(1\).pdf](http://www.recaap.org/resources/ck/files/reports/quarterly/Single-sheet%20Summary%20for%20ReCAAP%20ISC%203rd%20Quarter%202018%20Report(1).pdf)



35th Interim Meeting of ASA SNEC

26th ACS Executive Committee Meeting & A-3 (ASA ACS ASEF) Executive Meeting

The Association of Asian Classification Societies (ACS) held its 26th Annual Executive Committee meeting (EC26) in Beijing, China, on 6th and 7th November 2018. The objective of the meeting was to strengthen interactions and cooperation with Asian shipping and shipbuilding industry as well as administrations in Asia to promote regional maritime safety and environmental protection.

ACS continues to work towards developing the framework to enhance the Asian voice in cooperation with the organizations in Asian region (ASA and ASEF). ACS also participates and monitors the discussions at IMO on matters of concern for Asian shipping industry so that they will be able to provide better technical support to Asian flag states and governmental bodies with a view to promoting ship safety, marine environment friendliness and sustainability.

ASA and ASEF representatives were invited as honoured guests and speakers. ACS will hold its International Technical Seminar in Ha Long City, Vietnam on 27th August 2019.



Agreement on Minimum Wage for Seafarers Announced

At the recently concluded Joint Maritime Commission (JMC) Subcommittee on Wages of Seafarers, it was reported that the JMC was able to agree on an ILO Minimum Wage for an Able Seafarer (AB) after 2 days of intensive negotiations (please see attached ITF/ICS Joint Press Release in the link provided below). This decision will have a significant impact on seafarers and their employment as provide for in Code B of the MLC, 2006 (as amended).

<http://www.ics-shipping.org/news/press-releases/view-article/2018/11/21/agreement-on-minimum-wage-for-seafarers-announced>

Update of Contact Details for Cases of Abduction of Crew from Ships

The ReCAAP ISC is deeply concerned with the situation of abduction of crew from ships in the Sulu-Celebes Seas and waters off Eastern Sabah. To ensure timely responses to the reports of incidents by ships transiting the Sulu-Celebes Seas, the Philippine Coast Guard has included an additional contact of the Philippine Coast Guard Station, Bongao in Tawi-tawi; and updated the contact numbers and email

addresses of the Philippine Coast Guard District Southwestern Mindanao (CGDSW), and the Philippine Navy – Littoral Monitoring Station (LMS) Bongao in Tawi-Tawi.

The updated contact details of the Operation Centres of Philippines and ESSCOM of Malaysia are in the attached Advisory, which can also be found in the link below.

[ReCAAP ISC website](#)

Shipping Industry Urges European Commission to Extend the Consortia Block Exemption Regulation

Four trade associations representing the international liner shipping industry today submitted comments to the European Commission supporting extension of the EU consortia block exemption regulation (“BER”) for an additional five years beyond its current 2020 expiration date.

The papers were submitted in public consultation held by the Commission’s Directorate General for Competition (DG COMP) by the World Shipping Council (WSC), the European Community Shipowners’ Associations (ECSA), the International Chamber of Shipping (ICS), and the Asian Shipowners’ Association (ASA). The industry comments address a wide range of legal and economic issues, but emphasize several key points:

1. Vessel sharing arrangements are a fundamental part of the structure of the global liner shipping transportation network.
2. The consortia BER has since 1995 provided transparent and practical legal guidance to vessel sharing arrangements for international liner shipping services operating from and to EU ports.
3. Despite recent mergers in the liner industry, the industry remains unconcentrated and highly competitive, with freight rates at half of their levels twenty years ago.
4. In addition to supporting operational efficiency and broader service offerings, the BER helps carriers reduce air emissions and greenhouse gases through higher utilization of vessel space.

The full text of the industry comments, including the supporting economic analysis completed by RBB Economics is available at:

http://www.worldshipping.org/public-statements/regulatorycomments/WSC-ECSA-ICS-ASA_Submission_on_Consortia_BER_-20_Dec_2018- FINAL.pdf

Revision of the High Risk Area in the Western Indian Ocean

The security experts of the Round Table Organisations and Oil Companies International Marine Forum (OCIMF) have met to consider the revision of the Indian Ocean High Risk Area in response to calls for its amendment by a number of littoral States. After taking consideration of incident data and information provided by the military including IRTAs and IRTBs, the experts are considering redrawing the Eastern boundary of the HRA to a line 500NM from the Somali coastline as proposed in the “Draft Indian Ocean High Risk Area (HRA)” as per attached below.

Draft Indian Ocean High Risk Area (HRA)

The HRA is a defined area within the Red Sea, the Arabian Sea and the Indian Ocean bounded by:

In the Red Sea:

Northern limit: Latitude 15° North (*could be 16°N to move close to the Yemen/Saudi border*).

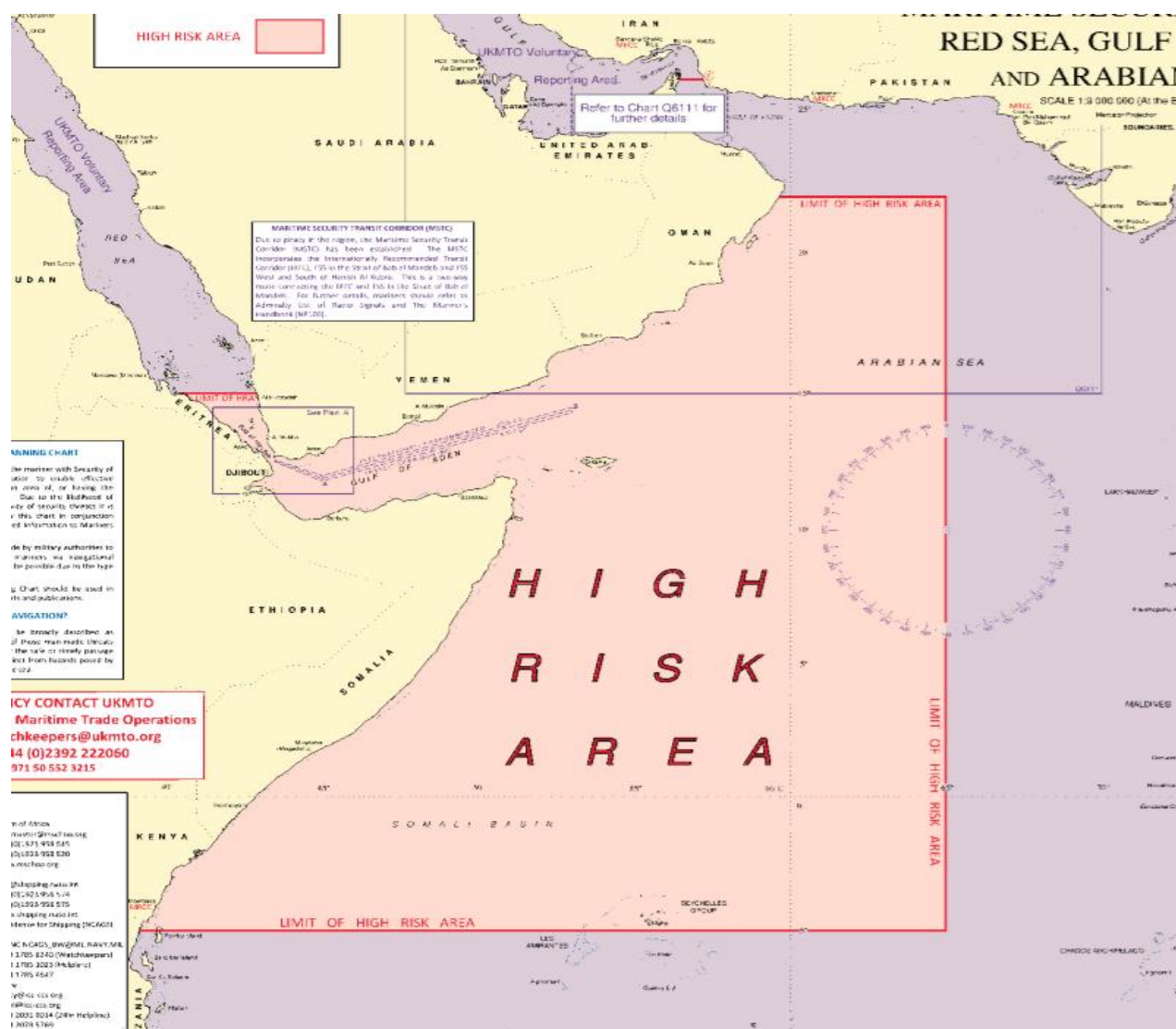
From the African coast:

East along Latitude 05° South to Longitude 53°East then;

030°(T) to Latitude 08°45' North, 60°East then;

000°(T) to Latitude 14° 10'N then;

320°(T) to Oman TTW.



The new boundary would remove the waters of the Seychelles and those of Oman where no attacks have occurred over the previous five years but, significantly, would still include a portion of the “fan” at the eastern end of the Internationally Recognised Transit Corridor (IRTC) in which pirates were active at the peak of the crisis. Revision of the area will demonstrate that industry is proactive in assessing threat and responding to changing circumstances whilst prioritising the safety and security of ships in areas where a threat exists.

MSC 100 approves framework for regulatory scoping exercise on autonomous ships

The 100th session of IMO's Maritime Safety Committee (MSC 100) concluded on 7 December 2018, approving the framework and methodology for the regulatory scoping exercise on Maritime Autonomous Surface Ships (MASS), following testing of the methodology by a correspondence group. For each instrument related to maritime safety and security, and for each degree of autonomy, provisions will be identified which:

- apply to MASS and prevent MASS operations; or
- apply to MASS and do not prevent MASS operations and require no actions; or
- apply to MASS and do not prevent MASS operations but may need to be amended or clarified, and/or may contain gaps; or have no application to MASS operations.

The degrees of autonomy identified for the purpose of the scoping exercise are:

1. **Degree one:** Ship with automated processes and decision support: Seafarers are on board to operate and control shipboard systems and functions. Some operations may be automated and at times be unsupervised but with seafarers on board ready to take control.
2. **Degree two:** Remotely controlled ship with seafarers on board: The ship is controlled and operated from another location. Seafarers are available on board to take control and to operate the shipboard systems and functions.
3. **Degree three:** Remotely controlled ship without seafarers on board: The ship is controlled and operated from another location. There are no seafarers on board.
4. **Degree four:** Fully autonomous ship: The operating system of the ship is able to make decisions and determine actions by itself.

Once the first step is completed, a second step will be conducted to analyse and determine the most appropriate way of addressing MASS operations, taking into account, inter alia, human element, technology and operational factors. The analysis will identify the need for:

- Equivalences as provided for by the instruments or developing interpretations; and/or
- Amending existing instruments; and/or
- Developing new instruments; or
- None of the above as a result of the analysis.

The initial review of instruments under the purview of the MSC will be conducted during the first half of 2019 by a number of volunteering Member States, with the support of interested international organizations. An intersessional MSC working group is also expected to meet in September 2019 to move forward with the process with the aim of completing the regulatory scoping exercise in 2020.

The list of instruments to be covered in the MSC's scoping exercise for MASS includes those covering:

- safety (SOLAS);
- collision regulations (COLREG);
- loading and stability (Load Lines);
- training of seafarers and fishers (STCW, STCW-F);
- search and rescue (SAR);

- tonnage measurement (Tonnage Convention);
- Safe Containers (CSC); and
- special trade passenger ship instruments (SPACE STP, STP).

In addition, the MSC noted provisional *principles for the development of guidelines on MASS trials*, discussed by a working group. The principles include ensuring that such guidelines should be generic and goal-based, and taking a precautionary approach to ensuring the safe, secure and environmentally sound operation of MASS. Interested parties were invited to submit proposals to the next session of the Committee, taking into account these principles.

ASA Announcements

ASA 5 Standing Committee Change of Chairmanship

During the 24th ASA Chairmen's Council Meeting held in Bangkok on 7th November 2018, the Council approved the change of Chairmanship for ASA Seafarers Committee (SC), Ship Insurance and Liability Committee (SILC) and Ship Recycling Committee (SRC).

For ASA SC, Mr Fu Xiangyang will step down as Chairman and his successor is Mr Han Chao. ASA would like to thank Mr Fu Xiangyang for his contribution welcome Mr Han Chao aboard as the new SC Chairman.

For ASA SILC, Mr Robert Alexander Ho will step down as Chairman and his successor is Mr William Peng. ASA would like to thank Mr Robert Alexander Ho for his contribution welcome Mr William Peng aboard as the new SILC Chairman.

For ASA SRC, Dr C.H. Yeh will step down as Chairman and his successor is Mr Ron T.Y. Huang. ASA would like to thank Dr C.H. Yeh for his contribution welcome Mr Ron T.Y. Huang aboard as the new SRC Chairman.

New Chairman for MIAL

Maritime Industry Australia Limited (MIAL) held the AGM on 15th October 2018 and announced that Mr David Parmeter was elected to be the Chairman of MIAL Board. Mr John Lines would step down as MIAL Chairman at ASA and Mr David Parmeter would take over the role of MIAL Chairman at ASA. ASA would like to thank Mr John Lines for his contribution welcome Mr David Parmeter aboard as the new MIAL Chairman.

New Chairman for NACS

National Association of Chinese Shipowners (NACS) held the Board of Director Meeting on 11th October 2018 and announced that Mr Anchor Chang was elected to be the Chairman of NACS Board. Mr Vincent Lin would step down as NACS Chairman at ASA and Mr Anchor Chang would take over the role of NACS Chairman at ASA. ASA would like to thank Mr Vincent Lin for his contribution welcome Mr Anchor Chang aboard as the new NACS Chairman.

Feature Article

2020 Vision: Time for a Close Look at Charter Party Clauses

As the IMO 2020 deadline pertaining to the new MARPOL Annex VI limits on sulphur content in bunker fuels closes in, the necessity of looking closely at the charter party clauses is gaining momentum. Recently, two new time charter clauses by BIMCO has turned the focus on the question of how the new obligations are to be made to fit into charter party terms.

What are the new clauses for?

The new BIMCO clauses are intended for charters of vessels which are not fitted with a scrubber and which therefore have to burn compliant fuel from 1 January 2020. After 1 March 2020, such vessels will also be banned from having non-compliant fuel on board other than as cargo. Over half of the world fleet is expected to be in this category at the deadline: the worldwide shortage of scrubbing equipment and the dry-dock space needed to install it has been widely discussed in the industry media. For the unwary, the new regime creates a perfect environment for disputes.

The new clauses are designed to address the fundamental problem that while shipowners are responsible for ensuring compliance with the sulphur cap regulations, time charterers are responsible for supplying the fuel. The two clauses aim to deal both with the difficulties involved in the changeover period and with the parties' ongoing obligations once the new regulations come into force.

What do the clauses say?

BIMCO have drafted the clauses to be admirably concise and clear, but as with any standard terms, they need to be considered in the context of the charterparty as a whole. If disputes are to be avoided, it will not simply be a case of incorporating the new BIMCO clauses into time charter terms.

In particular, owners and charterers should consider in addition to the following points.

- a) The scope of the indemnity given to owners if charterers supply non-compliant fuel
- b) Have the owners' potential liabilities all been taken into account, for example under the new MARPOL Regulation 18?
- c) What will happen if owners need to rely on the Regulation 18.2 exception to the carriage ban after the vessel has been redelivered?
- d) At what point does the charterers' obligation to remove non-compliant fuel become the owners' obligation to clean the tanks?
- e) Are further details needed in the description clause and/or the bunker quality clause?
- f) What might be the impact on the performance warranties?
- g) Should the vessel's trading limits be reconsidered?

How will it affect shipping?

BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties is intended to replace the Fuel Sulphur Content Clause 2005. The differences between the two are not limited to the new sulphur cap. The drafting committee has taken the opportunity to review the scope of application, the wording of the indemnity given by charterers and the extent of the warranty given by owners.

Part (a) of the new clause defines “Sulphur Content Requirements” not only in terms of MARPOL Annex VI and the requirements of the IMO, but adds “and/or any other applicable lawful authority”. The accompanying notes say that this refers to “any additional regulation that may be applied by authorities as a supplement to MARPOL Annex VI”, in other words, only requirements which are based on and supplemental to the IMO regulations.

However, the clause does not spell this out. The reference to “and/or” potentially extends the provision to any regulatory limit on sulphur emissions. In circumstances where a particular authority decides to impose more stringent requirements than those set out in MARPOL Annex VI, the new clause will require both parties to comply with these requirements. While charterers have a choice about where the vessel trades, owners might want to consider carefully the charterparty trading limits provisions if such regulations become a trend in certain parts of the world.

The Charterer’s Obligations

Part (b) of the new clause sets out charterers’ obligations. There are four of these.

1. The first is to “supply fuels to permit the Vessel, at all times, to comply with any applicable Sulphur Content Requirements” (as defined in part (a)). The onus is therefore on the charterers to ascertain which fuels are required to allow the vessel to comply with the requirements. As there will still be different requirements for Emission Control Areas (ECAs), the charterers are required to ensure that if the vessel is trading within ECAs, the correct fuel is supplied.
2. The second is that the fuels supplied must meet the specifications set out elsewhere in the charterparty. It is therefore important that these specifications are updated, where necessary, to ensure that they refer to fuels which comply with the new regulations. If they are not updated, the charterparty will contain conflicting clauses.
3. The third obligation is a warranty given by charterers that the “bunker suppliers, bunker craft operators and bunker surveyors used by the charterers shall comply with the Sulphur Content Requirements”. A very similar provision appeared in the 2005 version of the clause. BIMCO’s accompanying notes say that this warranty is intended to ensure that charterers exercise care in selecting bunker suppliers. However, it is difficult to envisage how a charterer can guarantee that a party he does not control will comply with anything. As such, it is not so much a warranty as an indemnity against any losses occasioned by the failure of a third party involved in bunkering operations to comply with the new regulations.
4. Finally, the charterers are obliged not only to indemnify, but also to “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” which might arise as a result of the charterers’ failure to comply “with this subclause (b)”. This appears to be a comprehensive indemnity. It adds several items (“damages”, “deviations”, “claims”, “actions”, “proceedings”, “suits” and “demands”) to the list set out in the 2005 clause. It is unclear why this was considered necessary, or what the difference is between some of the terms (“claims”, “actions”, “proceedings” and “suits” all seem to mean the legal process of some description).

However, while the list appears comprehensive, the extent of the indemnities given by charterers is not entirely clear. The last sentence of part (b) provides that should any of the listed misfortunes arise, “the

Vessel shall remain on hire throughout”. While this is intended to avoid charterers putting the vessel off hire if there is a delay relating to non-compliant fuel, it raises the question of whether the provision applies at all in circumstances where the vessel cannot be on hire; for example, if the delay has arisen following redelivery at the end of the charter period. Clearly, a vessel cannot “remain on hire” if it has already been redelivered.

How beneficial is it to the charterers?

In circumstances where a vessel is detained by an enforcing authority after redelivery due to non-compliant fuel being on board and, for example, misses a laycan for a follow-on fixture, owners will look to the previous charterers for compensation. They might be met with the response that the clause does not cover detention beyond the charter period. The position could remain unclear until there is some judicial authority on the construction of this provision. Owners might consider amending this part of the clause to avoid this argument arising at all.

Part (c) of the clause sets out a warranty by the owners that the vessel “shall comply” with the new regulations. This warranty is not said to be conditional on the charterers having supplied compliant fuel. However, the final part of the clause provides that “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...etc”.

The Charterers and Owners Liability

The intention seems to have been to ensure that charterers will not be liable for any failure on the part of owners to ensure compliance with the Regulations if the charterers have provided compliant fuel. However, the absolute nature of the warranty given by owners in (c) seems to mean that if owners have failed to ensure that the vessel complies with the sulphur content regulations for any reason at all, including for the reason that the vessel has no compliant fuel on board, they will be in breach of (c). The charterers will not be liable for the named consequences so long as they have complied with their obligations under (b) regarding the supply of the fuels. If they have not complied with (b), they will potentially be liable.

This is problematic because the clause, surprisingly, makes no reference to Regulation 18.2, which recognises that there will be bunkering ports where compliant fuel is not available. It provides that a vessel does not have to deviate in order to find compliant fuels, effectively allowing high sulphur fuels to continue to be carried and used beyond the deadline in limited circumstances.

The Charterers Compliance to Obligations

The BIMCO clause does not say whether the charterers are entitled to rely on the Regulation 18.2 exception in order to comply with their obligations under (b). As the clause stands, it appears that if no compliant fuel is available at a bunkering port, the charterers cannot fulfil their obligation under (b) and so potentially could be liable towards owners for any failure to comply with the regulations, even where the non-compliance is due to a failure by owners to comply with the warranty in (c).

This was probably not the intention of the provision, but to avoid disputes, the position could be clarified by adding an express provision that charterers will not fail to comply with their obligations under (b) in circumstances where the vessel is entitled to rely on Regulation 18.2.

Concerns regarding Regulation 18

The absence of any reference to Regulation 18 potentially raises another issue. In exchange for the exception allowing the use of high sulphur fuels, the regulation imposes on owners a binding duty to make “best efforts to obtain compliant fuel oil” and to retain full evidence of the steps which have been taken to “locate alternative sources for such fuel oil”. A formal report (Fuel Oil Non-Availability Report, FONAR) will have to be sent to the vessel’s flag state and the vessel’s port of destination as soon as the master becomes aware that the vessel will be unable to take on compliant fuel at the next bunkering port.

The FONAR is likely to be verified by Port State Control when the vessel arrives at the next port. Evidence of the efforts made to locate compliant fuel will have to be provided, including copies of communications with fuel suppliers. As the charterers are likely to be the party who are in control of supplying bunkers and in communication with the bunker suppliers, the evidence required for the FONAR will be in their control. Owners will be dependent on charterers to provide a full paper trail to show the efforts which have been made to find compliant fuel.

How will it be enforced?

As it is not yet known how the various authorities will enforce the regulations, it is unclear whether the requirement to use “best efforts” under Regulation 18 will be interpreted as a non-delegable obligation on the owners. It is possible that they may be required to make their own enquiries regarding the availability of compliant fuel at the intended bunkering port. It may not be enough, in some circumstances, for owners to show that the charterers attempted to locate compliant fuel but were unable to do so. At this stage, nobody can be sure.

Also, it is possible that charterers may take deliberate steps to avoid having to stem expensive compliant bunkers, for example by manipulating the vessel’s arrival time at a bunkering port to correspond with a shortage of compliant fuel. Owners might be obliged under the charterparty to follow such orders, but this may not be a defence in the event that action is taken by Port State Control at the next port of call.

An express provision seems to be required to oblige charterers to furnish owners with the necessary evidence to comply with the reporting requirements under Regulation 18.2 and an indemnity in the event that the enforcing authorities do not accept that “best efforts” were exercised and the vessel is detained or fined. As the vessel may have been redelivered by the time the owners are required to explain the circumstances in which non-compliant fuel came to be on board, the obligation may need to be worded so that it continues beyond redelivery.

The 2020 Fuel Transition Clause for Time Charterparties

Particular problems arise for fixtures which will come to an end between December 2019 and March 2020. The new BIMCO clause attempts to deal both with how to avoid vessels being left with unusable fuel on board on 1 January 2020 and who is to bear the time and costs of removing any remaining high sulphur fuel before 1 March 2020, when it will become unlawful for vessels which are not fitted with a scrubber even to have such fuel on board.

1. Part (a) of the new clause defines the deadlines and the sulphur content requirements. As for the sulphur content clause, these are also said to include requirements of “any other applicable lawful authority”.

2. Part (b) (i) sets out the charterers' obligation to ensure that by 1 January 2020, they have supplied the vessel with enough compliant fuel, ie fuel with a sulphur content of no more than 0.5%, to reach the "nearest bunkering port where Compliant Fuel is available". This seems straightforward, but as it is still unclear how readily available any of the new low sulphur fuels will be, this provision may need careful planning nearer the time.

Ambiguities in the Provision

The provision does not say what is to happen if the vessel is unable to proceed straight to the nearest bunkering port (it does not actually require charterers to order this). Neither does it give any guidance about safety margins. If the charterers' only option is to supply expensive MDO for the voyage to the nearest port with cheaper compliant fuel, they may be reluctant to supply more than the absolute minimum. Disputes could arise about what is a sufficient safety margin, particularly as the changeover period will be in mid-winter for the northern hemisphere and many routes may be subject to bad weather and sea conditions.

Part (b) (ii) requires that by 1 March 2020, there is to be "no Non-Compliant Fuel carried for use by the Vessel". The intention is clearly to ensure that the vessel will not fall foul of the carriage ban which will come into force on 1 March 2020, but the provision does not say which party is ultimately responsible for ensuring this. If the vessel is left with unusable fuel on board on 1st March 2020, there will need to be a factual investigation into how it came to be on board and which party was responsible for it not having been burnt or removed before the deadline.

"Requirement" or "Statement of Intent"

To help with the changeover process, there is a provision that the parties are to "cooperate and use reasonable endeavours" to ensure that there is no non-compliant fuel on board by 1 January 2020. However, this provision is not defined as one of the "requirements" which the parties are to achieve. It is simply a statement of intent and does not appear to be designed to be contractually enforceable.

Loading and Unloading of Non-compliant Fuel

Part (c) sets out how the requirements are to be met. The charterers are to ensure that if any non-compliant fuel is left in the vessel's tanks by 1 January 2020, they are to discharge it "until such tanks are free of liquid and pumpable fuel" and are to do so by 1 March 2020, or redelivery of the vessel, whichever occurs first. Once the tanks are "free of liquid and pumpable fuel", the owners take over responsibility for ensuring that the tanks are suitable to receive compliant fuel. They need to "take into account the type of Compliant Fuel that will be loaded into such bunkering tanks". No compliant fuel is to be loaded until both the pumping stage and the cleaning stage have been completed.

The clause deliberately avoids spelling out the difference between the two stages. The notes point out that the requirements for each individual vessel (and possibly, each type of compliant fuel) differ so much that it is not possible to prescribe a "one size fits all" solution.

However, generic terms such as this always risk being a rich source of disputes. At what point does the charterers' obligation to discharge unused non-compliant fuel end and the owners' obligation to clean and prepare the tanks for the new fuel begin? Unless the parties have defined in the charter terms exactly

where the dividing line is to be between the two stages, disputes about what is “unpumpable” and who is responsible for any delay if the vessel is unable to take on compliant fuels are almost guaranteed.

Disposing Non-compliant Fuel

Part (d) of the clause then sets out that the charterers are to bear the risk, time and cost of disposing of any non-compliant fuel which needs to be discharged under part (c). This is to be done “in accordance with any applicable local regulations”. Surprisingly, there is no express indemnity given in the event that charterers fail to dispose of non-compliant fuel, for example, because there are no facilities at the port to do so. The owners are the party who will bear liability vis à vis local authorities if port regulations are breached. It seems sensible to set out clearly that charterers will be liable to indemnify owners in such circumstances. The final part, (e) provides that each supply of compliant fuel is to be “bunkered into empty tanks within the Vessel’s natural segregation”. However, this must be subject to sufficient empty tanks being available. Different types of compliant fuel are likely to be incompatible. If charterers want to stem different kinds of fuel, perhaps to take advantage of good prices, the vessel might not have enough tank space to receive them.

The clause does not say which party is to ensure that enough space is available. This leaves it open for disputes to arise about who is at fault: have owners failed to clean enough tanks; have charterers failed to take available space into account? While it is not possible to foresee all potential circumstances, a good start would be to ensure that the charterparty description clause sets out clearly how the bunker space is segregated and how many different kinds of fuel can be accommodated.

Beyond the BIMCO Clauses

The potential impact of incorporating the new BIMCO clauses and of the new regulations generally on the parties’ obligations under other charterparty terms will need to be given careful thought. A number of provisions may potentially need to be reviewed.

Charterers will be dependent on owners for an accurate description of the bunkers they are required to take on and pay for at the start of the charter period, particularly if they are to take delivery towards the end of 2019. They will need to know not only the quantities, but also the exact specifications of each type of fuel on board and their location on the vessel. Charterers will probably require owners to give a warranty in the BOD clause as to the quantities and specifications of the bunkers on delivery.

Owners, on the other hand, will need to ensure that the former charterers provide this information and that it is accurate. The parties may also want to set out expressly how any misdescription is to be dealt with in circumstances where this has led to damage or delay. This may involve ongoing obligations for charterers after redelivery.

Bunker supplies during the charter period

Most time charters set out required specifications for fuel. Where they refer to ISO 8127, it should be borne in mind that this does not deal specifically with ultra-low sulphur fuel oil, so any such clause will need to be amended to include a specific limit on sulphur content. Where charterparties currently use vague expressions such as “high sulphur” and “low sulphur” fuel in the context of consumption in ECAs, this will also need to be amended.

Where a charterparty spans the transition period, the parties will also need to consider how bunker prices are to be dealt with in the charterparty.

Seaworthiness

A possible consequence of having to segregate fuels of different specifications could be that a vessel is limited in the quantity of fuel it can take on at the start of a voyage. Having sufficient bunkers on board at the commencement of the voyage is one aspect of its seaworthiness for the purposes of the Hague/Hague-Visby Rules. A vessel which leaves port without sufficient bunkers to complete its voyage is not seaworthy for the purposes of Article III (1) unless the voyage plan includes taking on further bunkers at a port which can be reached without risk of the vessel running dangerously low on fuel. This will take careful planning in circumstances where the nearest bunkering port may not have fuel available which is compatible with that already on board and the vessel may not have sufficient tank space to segregate it.

Additional calls at bunkering ports or more time spent cleaning tanks to receive different fuels will add time to the voyage. If the vessel is carrying delicate or time-sensitive cargo, this could lead to cargo damage. If this happens, cargo interests might raise the argument that the vessel was not cargoworthy at the beginning of the voyage under Article III (1) and owners could lose the right to rely on the Article IV (2) defences.

Similar arguments could arise in respect of any claim which the owners then brought against charterers under the ICA. Owners might want to consider including an express provision to deal with such circumstances.

Effect on performance

It is unclear whether the new fuels will have an impact on the performance of vessels. The warranty given by Owners under the new BIMCO sulphur content clause that the vessel will comply with the Regulations may be taken to encompass a warranty that the vessel will perform in accordance with its speed and consumption description throughout the charter period, even in circumstances where the performance warranty is not expressly ongoing. Owners will need to monitor closely the vessel's performance during the transition period and ensure that there is a provision for adjusting the performance warranties if necessary. Until the vessel's likely performance is known, owners might prefer to give an interim or "without guarantee" description, to be reviewed at the end of a specified period of burning the new fuels.

Inevitably, claims for bunker over-consumption will become higher as the cost of fuel increases and charterers will have even more incentive than they have now to scrutinise minutely the vessel's performance with a view to recouping some of the bunker costs from owners.

Conclusion

The new BIMCO clauses are a solid starting point, but owners and charterers need to bear in mind that they do not provide all the answers to the issues which might arise under the new regulatory regime. Now may be a good time for a detailed, in-depth look at chartering terms generally with a view to avoiding disputes. This could be an investment which saves significant time and costs in the long run.

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The Asian Shipowners' Forum (ASF) was founded in April 1992 when its first meeting was held at the Japan Shipping Club in Tokyo. One of the most important shipping organizations in the world, the ASF consists of eight members from the Shipowners' associations of Asia Pacific nations, i.e. Australia, China, Hong Kong, India, Japan, Korea, Chinese Taipei and Federation of ASEAN Shipowners' Associations (FASA), consisting of Indonesia, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Vietnam. Collectively, the ASF membership is estimated to control about 50% of the world merchant fleet.

Following the principle agreed at the first ASF meeting, the venues for the annual meetings of the ASF have been conducted on a rotational basis by the members from the North to South in geographical order.

Five Standing Committees are formed in the ASF and each is headed by a nominated chairman. They are the Seafarers Committee (SC), Shipping Economics Review Committee (SERC), Ship Insurance & Liability Committee (SILC), Safe Navigation & Environment Committee (SNEC) and Ship Recycling Committee (SRC). The work is basically done between the annual ASF meetings, with each committee being committed to convene at least one meeting a year.

The SERC was renamed Shipping Policy Committee (SPC) after the 22nd ASA Chairmen's meeting held in Hong Kong on 24th November 2017. This committee will continue to focus on Regulation, Taxation, Trade Policy, Customs, Canals, Infrastructure, the Macro Economy and Public Relations at the same time remain compliant with applicable legal requirements.

To better reflect the work and progress of its members and committees, it was proposed at the 18th ASF Chairmen's meeting held in Beijing, China, on 19th October 2015 to have its name changed to Asian Shipowners' Association (ASA). Subsequently at the 25th ASF AGM, it was officially declared the change of name from ASF to ASA. The name change does not alter the values and objectives that it delivers but will continue to further enhance the work done by the Association. The Association will continue to use the abbreviated name of "ASA".