



Welcome to the June 2015 edition of our Cruise Bulletin.

In this issue we begin with an update on sanctions. We discuss recent developments with respect to Russia and Cuba and their potential impact on cruise lines.

The shipping industry is a global one, for which there should be global regulation. However, caught between differing national legislation, cruise ships may in some circumstances find themselves compliant with one regime but in breach of others. We discuss the effectiveness of the International Maritime Organization (IMO) and in particular the differing national rules on ballast water management and enforcement of marine fuel sulphur content.

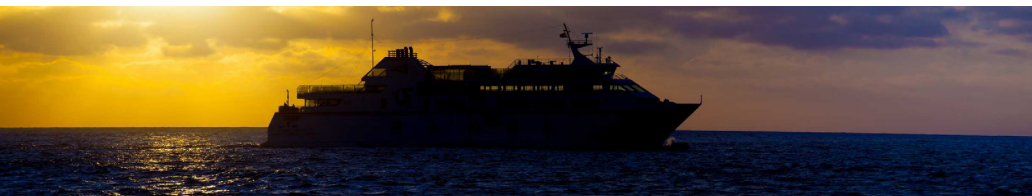
It is now apparent that compliance with the new sulphur regime is not only costly, but can also bring additional risk of fire and mechanical failure. We discuss the risks associated with changeover from residual marine fuel to low sulphur fuel.

Finally, we summarise the proposed changes to the 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims 1976. An automatic increase of the limits as of 8 June 2015 may affect cruise ships particularly in situations where fuel is spilled or passengers are injured.

Should you require any further information or assistance with any of the issues dealt with here, please contact any of the contributors to this Bulletin, or any of the HFW contacts listed at the back.

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hfw The impact of a changing sanctions landscape

The period from 2010 to 2014 saw major changes in the sanctions landscape which had a significant impact on many shipping businesses worldwide. These changes tended not to affect cruise lines because the majority of the developments related to countries such as Iran, Ivory Coast, Libya and Syria, which were of limited relevance to the industry.

However, recent developments with respect to Russia and Cuba will potentially have a major impact on the industry. This article looks at those developments, and their potential impact on cruise lines, against a background of uncertainty in respect of future changes to the US sanctions against Cuba, and the EU and US sanctions against Russia.

US sanctions against Cuba

At the end of 2014, President Obama announced the partial relaxation of US sanctions against Cuba as part of a package of diplomatic and economic measures designed to “normalize relations” between the US and Cuba.

The US embargo against Cuba is set out in a host of different legislative measures, some of which can be amended pursuant to the authority of the President, but many of which need Congressional approval. As a result, so far we have merely seen a partial lifting of US restrictions.

The recent changes do not currently directly affect cruise lines (for the reasons set out below), but they do indicate the lines along which there may be further relaxations. Cruise lines are therefore keeping a close eye on developments in this area.



...cruise lines may be interested in the partial relaxation of the so-called “180 day rule”, which previously prohibited any vessel (whether or not US-flagged) which had called at a port in Cuba from calling at a US port for the next 180 days.

DANIEL MARTIN, PARTNER

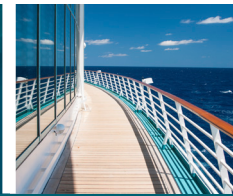
One change of particular interest to cruise lines is that US persons are now permitted to travel to Cuba without a licence (provided that the purpose of the travel falls within one of 12 categories). While US Government guidance makes explicit that this does not extend to travel to Cuba for normal tourist activities (because that is not one of the 12 permitted categories), this may change in the future and any complete lifting of the US travel embargo could result in significant business opportunities.

Likewise, cruise lines may be interested in the partial relaxation of the so-called “180 day rule”, which previously prohibited any vessel (whether or not US-flagged) which had called at a port in Cuba from calling at a US port for the next 180 days. The effect is that vessels which have engaged in certain trade with Cuba (including agricultural commodities and other authorised cargoes) will no longer need to wait 180 days before calling at a US port (although direct voyages from the US to Cuba still require an export licence).

While this relaxation does not currently extend to cruise ships, this could change in the future, and could also result in significant business opportunities. In a sign of potential future developments, press reports indicate that in early May 2015, the US authorities issued a licence to Baja Ferries (a Mexican operator) which would allow it to operate the first passenger ferry service between the US and Cuba (subject to appropriate consents from the Cuban authorities) for more than 50 years.

EU and US sanctions against Russia

The current EU sanctions (which were imposed in July 2014 and then extended) prohibit the provision of “services directly related to tourism activities in Crimea or Sevastopol” and, in particular, provide that “it shall be prohibited for any ship providing cruise services, to enter into or call at” any of the following seven ports situated in the Crimean Peninsula: (1) Sevastopol (2) Kerch (3) Yalta (4) Theodosia (5) Evpatoria (6) Chernomorsk (7) Kamysh-Burun.



The EU has recently indicated that the current sanctions will be renewed and tied to the complete fulfilment of the Minsk Agreement between the EU and Russia. This requires, amongst other things, Russia to secure its border with Ukraine and hand over control of that border to Ukraine. It is therefore likely that the current restrictions will be extended for at least six months (to 31 December 2015). The position after that date will of course depend on whether Russia fulfils the terms of the Minsk Agreement and/or if there are any other developments (either positive or negative) on the ground.

This prohibition applies to vessels flying the flag of a Member State or any vessel owned or operated by an EU company. There is an express derogation for vessels entering or calling at one of those ports for reasons of maritime safety in cases of emergency.

In addition, the EU maintains a broad asset freeze, affecting 168 individuals and 37 entities, including Kerch Commercial Sea Port, Kerch Ferry, Russian National Commercial Bank and Sevastopol Seaport.

In order to ensure compliance with the EU sanctions, cruise lines should have in place procedures to ensure that they do not enter into or call at any of the seven listed ports, and that they do not have any dealings with any individual or entity which is included on a sanctions list.

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hfw One regime for global shipping?

The International Maritime Organization (IMO) was established to be the international body which creates a level playing field for shipping, from safety to environmental standards, by introducing a global regulatory framework. The idea of an international shipping body is a good one, but whether the current system actually works in the intended manner is another matter.

IMO Member States must ratify individual IMO Conventions in order for those conventions to apply to them. Not all IMO Conventions are implemented by all IMO Member States. Once a contracting State ratifies a Convention, and it enters into force, then it should introduce corresponding national legislation to implement it. The IMO has no power to enforce its own conventions. Territories which have not joined the IMO, or

which have chosen not to ratify certain Conventions, cannot be obliged to enforce those Conventions.

Local rules can often be stricter or impose additional obligations to the IMO standard. The IMO's Member State Audit Scheme, which will be mandatory from 1 January 2016, assesses how effectively Member States implement and enforce relevant IMO Convention standards. However, where Member States' performance is inadequate the IMO cannot force Member States to improve their performance.

The situation as it stands means that one vessel, which has fulfilled its IMO flag State requirements, may be in breach of legal requirements when it calls in the territorial waters of another IMO Member State. This creates confusion, uncertainty, and disproportionate compliance costs.

Ballast Water

It is universally accepted that ballast water can destroy sensitive ecosystems when released untreated into coastal waters. The IMO and the US, in particular, have drafted rules to solve the problem.



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ANTHONY WOOLICH, PARTNER



The IMO's Ballast Water Management Convention¹ (BWM Convention) is expected to come into force soon². The BWM Convention requires all vessels to implement a Ballast Water Management Plan, to carry a Ballast Water Record Book and to carry out ballast water management procedures to certain standards. Ballast water management systems must be a type approved by the IMO. If, or when, the BWM Convention does enter into force, vessel owners will have five years to install compliant ballast water management systems. There are currently over 50 such systems which have received IMO approval.

In the meantime, the US has implemented its own ballast water management rules. All ballast water treatment systems used by vessels in US waters must be type-approved by the US Coast Guard.

The US has not signed up to the BWM Convention and the industry does not expect it to do so³. The US considers that the IMO's "G8" treatment technology type approval guidelines are inadequate⁴. However, the US regime does not yet specify which equipment will be adequate. Transitional arrangements are in place and manufacturers must apply for US approval.

Worldwide, it is estimated that approximately 62,000 vessels of 400 gross tons or more will need to install treatment technology under the BWM Convention⁵. Once the BWM Convention enters into force there will be little time for owners to install the equipment, especially if a vessel has a busy agenda of cruises booked. As well as the risk of lost earnings



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FELICITY BURLING, ASSOCIATE

in the event that a vessel has to be withdrawn during a season to have the work done, the World Shipping Council (WSC) estimates that installation of the equipment is likely to cost US\$1 million to US\$2 million per vessel⁶.

If the BWM Convention enters into force before US-approved technology is commercially available then vessel owners may be forced to install expensive IMO-compliant equipment which the US Coast Guard might later decide is non-compliant. The WSC and the International Chamber of Shipping have called for the IMO to revise the G8 guidelines, with grandfather provisions to avoid punishing vessel owners who have already installed G8 compliant systems.

Low sulphur requirements

Similar inconsistencies apply in the low sulphur regime, and specifically on trials of technology designed to achieve compliance. Marpol Annex VI provides for an exemption from low sulphur requirements during the period of 18 months when technology, for example scrubbers, are trialled. The US follows this practice. However, the EU Sulphur Directive does not provide for an exemption during the trial period. Recent draft guidance issued by the European Commission would require the specified low sulphur threshold to be observed "on average" during that period. Thus, scrubbers approved for use in the US and fitted by cruise operators may not be compliant with the EU regime as it is currently proposed.

Conclusion

The international regulatory system as it stands is unsatisfactory. The aim should be to have the same rules in each territory. Until the IMO has more power, vessel owners are stuck between a rock and a hard place. Compliance with one regime may mean twice the expenditure if another regime puts its own, different, rules in place.

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1 The International Convention for the Control and Management of Ships' Ballast Water and Sediments

2 See current status of the BWM Convention here: <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>

3 <http://www.lloydslist.com/ll/incoming/article444268.ece>

4 http://www.worldshipping.org/public-statements/Remarks_of_Christopher_Koch_at_2nd_Ballast_Water_Management_Summit_Long_Beach_CA_February_4_2015_-2-.pdf

5 http://www.worldshipping.org/public-statements/Remarks_of_Christopher_Koch_at_2nd_Ballast_Water_Management_Summit_Long_Beach_CA_February_4_2015_-2-.pdf

6 http://www.worldshipping.org/public-statements/Remarks_of_Christopher_Koch_at_2nd_Ballast_Water_Management_Summit_Long_Beach_CA_February_4_2015_-2-.pdf



hfw Low sulphur, potentially high risk

The (nearly) new regime

From 1 January 2015, regulations reduced the maximum permissible content of Sulphur Oxide (SOx) and particulate matter (PM), to 0.10% within the Emission Control Areas of the Baltic Sea, North Sea, United States and Caribbean (as defined).

Five months into the tightened regulatory regime, it is apparent that the changeover from residual (heavy) to distillate (low-sulphur) fuel brings with it significant practical issues and safety concerns.

Cruise ships in particular should take extra precautions for the reasons discussed below.

The distillation process

The concentration of sulphur in marine fuel arises from a combination of the naturally occurring sulphur content of the crude oil and the blending that has been undertaken to prepare the fuel.

Distillate fuel is composed of petroleum fractions of crude oil separated at the refinery during the distillation (i.e. boil off) process. The fractions which do not boil, and are therefore left behind, are referred to as residual fuel, with a higher sulphur content.

Going with the flow

Unsurprisingly, the different chemical composition of each fuel type affects how it behaves in an engine, which is where problems can creep in.

The 'leaner' or less dense distillate fuels do not always serve the engine as well as their heavier, more lubricious counterparts. The latter, as well as providing a fuel source, protect some



The viscosity of a fuel source must be within the limits prescribed by the engine manufacturer to obtain an optimal spray pattern and avoid fuel leakage (a potential fire risk), safeguarding against poor combustion, deposit formation and energy loss.

CLAIRE WOMERSLEY, ASSOCIATE

moving parts of fuel pumps and injectors from wear and tear.

This issue goes hand in hand with viscosity where, again, the leaner, less viscous fuels do not perform as well. When the viscosity in the fuel pump is too low, hydrodynamic lubrication of the pump can be inadequate, causing wear and scuffing. The viscosity of a fuel source must be within the limits prescribed by the engine manufacturer to obtain an optimal spray pattern and avoid fuel leakage (a potential fire risk), safeguarding against poor combustion, deposit formation and energy loss.

Quality standards and safeguards

Although most marine medium and slow speed engines are designed for residual fuel operation, they are also capable of operation on distillate diesel fuel, provided that the following specifics are considered:

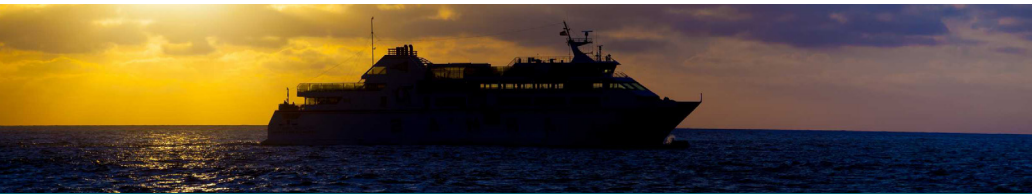
1. Viscosity of fuel – at engine inlet.
2. Lubricating oil choice.
3. Lubricity of the fuel.
4. Changeover procedures to and from the residual fuel¹.

With this in mind the current ISO 8217 quality standards, which define the requirement for petroleum fuels for use in marine diesel engines and boilers, include minimum viscosity limits and lubricity and oxidation stability requirements for all distillate grades. These standards are to guide manufacturers and users alike.

Changing times

For all vessels transiting through Emission Control Areas, aside from the practical benefits arising from the properties of residual fuel, there is an obvious business need for frequent changeover between the less expensive and more easily sourced residual fuels and their low-sulphur

1 http://www.cimac.com/cms/upload/workinggroups/WG7/CIMAC_SG1_Guideline_Low_Sulphur_Diesel.pdf



and regulation compliant counterparts. Each changeover presents a risk of fire and even partial or total propulsion failure and/or power interruptions. Since Emission Control Areas tend to contain attractive ports for cruise ship passengers, and cruise ships often transit these areas at high speed (in comparison with many, although not all, other merchant vessels), cruise ships in particular are regularly exposed to these risks.

Prevention is better than cure

There is currently no indication of any requirement for legislative changes in relation to the sophisticated fire detection and power monitoring systems already in use onboard cruise ships. However, extra vigilance is obviously required at all stages from the initial purchase of low-sulphur fuel to changeover times and their aftermath, to ensure that the identified risks do not translate into an incident. Distillate fuels should be sourced with sufficient viscosity to achieve the equipment manufacturers' minimum requirements. Fuel coolers or chillers can be used if necessary to help prevent the viscosity of the fuel from becoming too low. Additionally, fuel temperature can be reduced during a changeover by switching off the pipe work steam and trace heating systems early.

Conversely, when changing back to residual fuel from distillate, operators must take care to ensure that the temperature of the residual fuel is high enough to achieve the required viscosity at the fuel pump inlet, although heating of the distillate fuel is to be avoided.

Distillate fuels should be sourced with sufficient viscosity to achieve the equipment manufacturers' minimum requirements. Fuel coolers or chillers can be used if necessary to help prevent the viscosity of the fuel from becoming too low.

A period of review

In addition to the more obvious issues of expense and sourcing appropriate fuel, this changeover process represents a further sulphur-related burden for cruise operators. At HFW, we already have experience of casualties involving main engine failure and the use of low sulphur fuel. As the frequency of changeover related issues are monitored and recorded, time will tell whether such changeovers could become causative in a greater number of significant casualties.

For more information, please contact [Claire Womersley](mailto:claire.womersley@hfw.com), Associate, on +44 (0)20 7264 8023, or claire.womersley@hfw.com, or your usual contact at HFW.

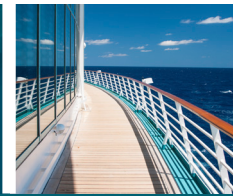
hfw Liability limits to increase by 51%

On 8 June 2015, the limits of an owners' liability for a maritime incident under the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 will rise by 51%¹ under the "tacit acceptance" procedure pursuant to Articles 8.7 and 8.8 of the 1996 Protocol to the LLMC.

Member States voted to increase the limits at the 99th session of the IMO (16-20 April 2012), driven partly by the view that the existing limits are insufficient to cover likely claims, in particular the consequences of a bunker spill. The *PACIFIC ADVENTURER* spill in Queensland in 2009 was specifically cited as justification for the rise. The rise was further deemed necessary to "keep pace with the real costs of compensating victims" and for "limits to be sufficient to meet demands". Calls for a higher increase were rejected on the grounds any increase had to be reasonable to ensure affordable insurance was available. Further the concept of limitation requires some claims to exceed the limit to avoid the LLMC being rendered redundant.

No enabling domestic legislation is required to bring in the Amended 1996 Protocol limits and for incidents after 8 June 2015, the higher limits shall automatically apply in any contracting State. The limits cannot however be reviewed again until 2020, meaning there should be no further increase until 2023.

¹ [http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-\(LLMC\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/Convention-on-Limitation-of-Liability-for-Maritime-Claims-(LLMC).aspx)



No enabling domestic legislation is required to bring the Amended 1996 Protocol limits and for incidents after 8 June 2015, the higher limits shall automatically apply in any contracting State.

TOBY STEPHENS, PARTNER

Illustrated Examples

| Physical Damage | | | |
|-----------------|------------------------------------|------------------------------------|---|
| Vessel Tonnage | 1976 LLMC Limit | 1996 Protocol Limit | June 2015 Protocol Limit (51% Increase) |
| GT: 2,000 | 417,500SDR US\$580,805.13 | 1,000,000SDR US\$1,391,150.00 | 1,510,000SDR US\$2,100,636.50 |
| GT: 30,000 | 5,093,500SDR US\$7,085,822.53 | 12,200,000SDR US\$16,972,030.00 | 18,422,000SDR US\$25,627,765.30 |
| GT: 100,000 | 12,583,500SDR US\$17,505,536.03 | 30,200,000SDR US\$42,012,730.00 | 45,602,000SDR US\$63,439,222.30 |

| Personal Injury | | | |
|-----------------|------------------------------------|------------------------------------|---|
| Vessel Tonnage | 1976 LLMC Limit | 1996 Protocol Limit | June 2015 Protocol Limit (51% Increase) |
| GT: 2,000 | 1,083,000SDR US\$1,506,615.45 | 2,000,000SDR US\$2,782,300.00 | 3,020,000SDR US\$4,201,273.00 |
| GT: 30,000 | 10,574,000SDR US\$14,710,020.10 | 24,400,000SDR US\$33,944,060.00 | 36,844,000SDR US\$51,255,530.60 |
| GT: 100,000 | 25,584,000SDR US\$35,591,181.60 | 60,400,000SDR US\$84,025,460.00 | 91,204,000SDR US\$126,878,444.60 |

US\$1.39115:1SDR (26 May 2015)

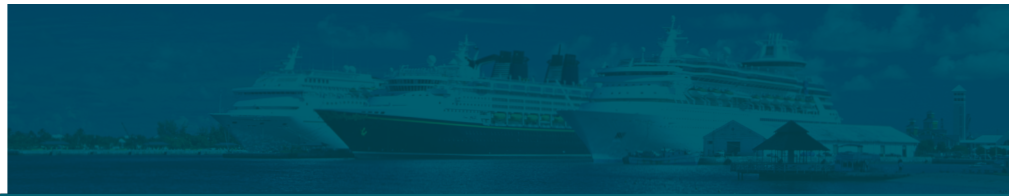
Comment

Cruise lines should keep the increased limits well in mind both when deciding on the law of the contract of carriage, in determining new routes and when managing a major maritime claim. It may also be that, when assessing potential jurisdictions for limiting one's liability, questions of what type of claims can be limited may become more important than simply to what level.

Finally, in the context of passenger claims, one should not forget the carrier's liability limit under the 2002 Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, in addition to the global tonnage limitation regime under the LLMC.

This will no doubt fuel the debate in some P&I Clubs and indeed within the International Group itself as to whether cruise ships should be allowed the benefit of mutual liability insurance.

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hfw Conferences and events

CLIA Technical and Regulatory Forum

HFW London
2 June 2015
Presenting: Stephanie Schweitzer, Elinor Dautlich, Claire Womersley
Attending: Marcus Bowman, Sue Barham, Anthony Woolich and William MacLachlan

Congressional Cruise Caucus

Washington DC, USA
9-11 June 2015
Attending: Anthony Woolich

Trade Sanctions Update Seminar

HFW Paris
11 June 2015
Presenting: Daniel Martin and Vincent Bénézech

Security in Complex Environments Group Conference

London
26 June 2015
Presenting: Richard Neylon
Attending: Elinor Dautlich and William MacLachlan

Trade Sanctions Update Seminar

HFW Piraeus
2 July 2015
Presenting: Daniel Martin and Anthony Woolich

Chamber of Shipping - Human Element and Accidents Conference

London
7 July 2015
Presenting: Toby Stephens and Kaare Langeland

Trade Sanctions Update Seminar

HFW London
8 July 2015
Presenting: Daniel Martin and Anthony Woolich

London International Shipping Week

London
7-11 September 2015
Attending: There will be a number of HFW Partners involved in events throughout the week.

HFW Sanctions Seminar (as part of London International Shipping Week)

HFW London
8 September 2015
Presenting: Daniel Martin and Anthony Woolich

CLIA European Ports and Destinations Summit and Cocktail Party

Hamburg, Germany
8 September 2015
Attending: Elinor Dautlich and William MacLachlan

Seatrade Europe Cruise & River Convention

Hamburg, Germany
9-11 September 2015
Attending: Elinor Dautlich and William MacLachlan

IUMI

Berlin, Germany
13-16 September 2015
Presenting: Paul Dean
Attending: Richard Neylon

MLAANZ 2015 Annual Conference

Perth
16-18 September 2015
Presenting: Hazel Brewer and Gavin Valley

Monaco Yacht Show

Port Hercules, Monaco
23-25 September 2015
Attending: Elinor Dautlich, Adam Shire, Jay Tooker, William MacLachlan and Alex Sayegh

Fort Lauderdale International Boat Show

Fort Lauderdale, USA
5-9 November 2015
Attending: Jay Tooker

Lawyers for international commerce

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