

## P&amp;I and Law

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# Legal perspective on environmental regulations

*Ganado Advocates of Malta give a glimpse into the 2020 Sulphur Regulations and the Ship Recycling EU Regulation*

## The 2020 Global Sulphur Limit

Pursuant to the amendments made to MARPOL Annex 6, the International Maritime Organization (IMO) has, by virtue of the 2020 Global Sulphur Limit, resolved to limit sulphur content of bunker fuel from a maximum of 3.5% to a maximum of 0.5%. This move complements the strict sulphur content limit in bunker fuel for ships trading in specific emission control areas (ECAs) which in January 2015 was lowered from 1% to 0.1%. It is worth mentioning that even though the new global sulphur limit will come into force in 2020, the ship building industry has been taking into account these new limits for new builds currently being commissioned. For example the NEWBUILDCON standard ship building contract provides that a new vessel shall be constructed and delivered in compliance with:

i) the applicable laws, rules and regulations which are in force at the date of the contract and ii) those which (even though not in force at the time of the contract) are adopted on or before the date of the contract and which will be compulsory for the vessel on or before delivery.

Considering that heavy fuel oil, being the main fuel source to power ships, is high in sulphur content and the majority of ship engines are designed to run on HFO, such a paradigm shift shall undoubtedly impose costly burdens on various stake holders such as ship owners, charterers, bunker suppliers and oil refiners. In this regard, one should also keep in mind the consumers who are heavily dependent on maritime trade and may face higher cost for goods being transported by sea.

Given this shift, the IMO Marine Environmental Protection Committee held its 74th meeting between 13th and 17th May 2019 during which it adopted, inter alia, a set of guidelines to support the implementation of the new sulphur limit. The guidelines deal with various matters including the impact of new fuel types on ships machinery and verification issues and

control mechanisms to be implemented by Flag State and Port State administrations. Port States may also take a sample and test the fuel oils being furnished by bunker barges or shore bunker terminals. In case of non-compliance, the Port State is authorised to take appropriate measures against the non-compliant supplier and notify the IMO accordingly. Furthermore regulation 18.2.1 of MARPOL Annex VI provides that in the event that a ship cannot obtain fuel oil which is compliant with the 0.50% limit, the Port State or Flag State (as the case may be) can request the ship's Master to give a summary of the effort made to obtain compliant fuel, including local alternative resources. The ship is then required to inform the Flag State and the Port State of its inability to procure compliant fuel. This is referred to as the fuel oil non-availability report, a template of which is attached to the guidelines. Moreover, the guidelines also provide that where a ship is found to be in breach of the limit, the Port State is to report such non-compliance to the MARPOL VI GISIS module. The importance of reporting any form of non-compliance with the new limit has been highlighted as an effective enforcement strategy to bring ship owners and bunker suppliers in line.

New charters entered into prior to 1st January 2020 but which will extend beyond that date will need to contain specific terms to deal with this new limit. However, ship owners should also review the terms of existing charterparties which extend beyond

1st January 2020. If ambiguity exists, then it is advisable to make certain arrangements with charterers so as to avoid any potential litigious claims which may arise due to a breach of the new sulphur limit.

There are three main options which the shipping industry may turn to in order to be compliant with this new limit: the use of low sulphur fuel oil; the use of alternative fuels such as LNG; or the installation of abatement technology on ships such as scrubbers.

The IMO envisages this new sulphur limit will prevent around 570,000 premature deaths between 2020 and 2025 and will also decrease the negative effect of shipping on human health by 68%.

## The EU Regulation on Ship Recycling

The ever-growing environmental movement has influenced legislators to implement stringent rules in connection to Ship Recycling on a European level. A substantial amount of ship owners are European. Most of these ships are being dismantled in South Asia, whereby the environment is being severely harmed and workers are forced to operate under inhumane conditions. The EU Ship Recycling Regulation, which came into force on 31st December 2018, seeks to terminate such practices. The principle scope of the regulation requires all vessels bearing an EU Member State flag to be recycled in yards under safe conditions. It is essential that this is done without causing further detriment to the environment and without compromising the operational efficiency of ships.

The purpose of the aforementioned regulation is to circumvent or reduce any injuries, accidents or other negative effects to the environment and on human health. Ship recycling is attributed with an unambiguous definition in the regulation, as follows: "the activity of complete or partial dismantling of a ship at a ship recycling facility in order to recover components and materials for reprocessing, for preparation for re-use or for re-use, whilst ensuring the management of hazardous and other materials, and includes associated operations such as storage and treatment of components and materials on site, but not their further processing or disposal in separate facilities"

It is the obligation of the owners to ensure that the ship recycling facility, whether a yard or a facility, is situated in a Member State or in a third country, provided

that the said facility is deemed to be an EU-listed yard. For a ship recycling facility to be included in the European list, it must satisfy an exhaustive list of requirements drawn up by the Commission, such that it is authorised to conduct ship recycling operations and that it is evidently operated in a safe and environmentally sound manner.

The EU Ship Recycling Regulation extends to ship builders who are obligated to take into account the vessel's ultimate disposal from inception. When designing and constructing the vessel, the builders are to utilise materials that may be recycled safely and in an environmentally sound manner and are to ensure that the use of potentially hazardous materials to an individual's health and to our ecosystem are substantially minimised.

As the sole and most prominent international legal framework dedicated to ship recycling, the regulation seeks to facilitate the ratification of the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 which has not entered into force as of yet. In order to do so, the Convention must be ratified by at least 15 major flag and recycling countries.

The Ship Recycling Regulation explicitly provides that surveys of ships must be carried out by officers of the administrations or by recognised organisations who are vested with the authority to carry out same. A renewal survey must be conducted in order to verify that the inventory of hazardous materials complies with the requirements laid out in the regulations. For existing Malta flagged ships, the owners are required to conduct an initial survey on the ship by 31st December 2020. In the interim, proof that such services have been conducted would not be required.

Owners or representatives are vested with the responsibility to ensure that the vessel will keep an inventory certificate onboard, which is a "ship-specific certificate" and is issued to ships bearing the Maltese flag or any other flag of a Member State. This obligation is incumbent on the ship owners and is a requirement of the Maltese Flag Administration upon registration or renewal of vessel certificates.

## Malta's Position

The Maltese legislator has sought to enforce the provisions of the EU Ship Recycling Regulation by means of Legal Notice 84 of 2019 which came into force on 31st December 2018. This Legal Notice establishes a system of penalties for failure to comply with the EU Ship Recycling Regulation.

A person committing or attempting to commit an offence against the EU Ship Recycling Regulation will be liable of a fine (multa). The amount of the fine will be determined on a case by case basis but will range from €10,000 but not exceeding €100,000. ●