

2020 and BWMC - Regulations, Issues and Solutions.

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Regulations

Ballast Water Management	Global Sulphur Cap
<u>Obligations</u>	<u>Obligations</u>
International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) entered into force 8 September 2017	MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships entering into force on 1 January 2020.
All ships (unless exempted) are required to manage their ballast water to avoid introduction of alien species into coastal areas.	Under the revised MARPOL Annex VI, the global sulphur limit will be reduced from current 3.50% to 0.50%.
D1 and D2 Standards <ul style="list-style-type: none"> • D1 – Open sea, 200 nautical miles away from land, 200 meters deep and in accordance with plan. • D2 – Within maximum amount of viable organisms discharged. 	Limits applicable in Emission Control Areas for SO _x and particulate matter have already been reduced to 0.10% since 1 January 2015.

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Regulations

Ballast Water Management

- Use of special equipment, Ballast Water Management Systems

Global Sulphur Cap

- Use of Scrubbers (Open, Closed, Hybrid)
- Use of low sulphur fuel
- Use of alternate fuels (LNG)

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Enforcement & Penalties

Ballast Water Management	Global Sulphur Cap
<u>Penalties</u>	<u>Penalties</u>
Section 10A of the Prevention of Pollution of the Sea Act	Section 9 of the Prevention Of Pollution Of The Sea (Air) Regulations 2005
If any discharge of ballast water or sediments occurs from any ship into Singapore waters, or from a Singapore ship into any part of the sea, the master, the owner and the agent of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 6 months or to both.	If any ship fails to comply with any requirement of these Regulations, the owner and the master of the ship shall each be guilty of an offence and shall each be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

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Enforcement & Penalties

Ballast Water Management	Global Sulphur Cap
<u>Penalties</u>	<u>Penalties</u>
Regulation 15 of the Prevention of Pollution of the Sea (Ballast Water Management) Regulations 2017	Section 23 of the Prevention Of Pollution Of The Sea (Air) Regulations 2005
<p>A ship is liable <u>to be detained</u>... if an inspector has, following an inspection, determined —</p> <p>(a) ...that the ship's IBWM Certificate is invalid;</p> <p>(b) ...that the written evidence of the ship's compliance with the requirements of regulation... is inadequate; or</p> <p>(c) the ship has contravened any of the requirements of these Regulations.</p>	<p>(1) Where the Director or Port Master has reasonable cause to believe that a ship... does not comply with the requirements... he <u>may deny the entry of such ship to the port.</u></p> <p>(2) Where the Director or Port Master has reasonable cause to believe that a ship... (b) has contravened any of the requirements of... and, in the opinion of the Director or Port Master, the ship presents an unreasonable threat of harm to the marine environment... the Director or Port Master <u>may detain that ship.</u></p>

A Grey Area

- Regulatory
- Contract

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Regulatory

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Regulatory Uncertainty

“3.2 Guiding Principles

1. the need to be cognizant of the principles enshrined in instruments already developed, such as:
 1. the **principle of non-discrimination and the principle of no more favourable treatment**, enshrined in MARPOL and other IMO conventions; and
 2. the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances, enshrined in the UNFCCC, its Kyoto Protocol and the Paris Agreement;
2. the **requirement for all ships to give full and complete effect, regardless of flag**, to implementing mandatory measures to ensure the effective implementation of this strategy”

RESOLUTION MEPC.304(72)

INITIAL IMO STRATEGY ON REDUCTION OF GHG EMISSIONS FROM SHIPS

Adopted on 13 April 2018

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Regulatory Uncertainty

- The regulations appear to have no grace period.

Ballast Water Management	Global Sulphur Cap
If any discharge of ballast water or sediments occurs from any ship into Singapore waters, or from a Singapore ship into any part of the sea, ... shall each be guilty of an offence....	If any ship fails to comply with any requirement of these Regulations, ...shall each be guilty of an offence...

- Ostensibly, the moment there is any discharge of ballast water or sediments, or emissions exceed the standards, the owner or master is liable for breach.

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Grey Area – Ballast Water Management System

“... it is a defence for the person charged to prove, on a balance of probabilities, that –

... ..

(b) the discharge of ballast water or sediments —

(i) was accidental; and

(ii) resulted from damage to the ship or its equipment, other than damage that was caused by the person wilfully or recklessly, and all reasonable precautions were taken *before and after* the occurrence of the damage, or the discovery of the occurrence of the damage or discharge, for the purpose of preventing or minimising the discharge;

... ..”

Section 10B Prevention of Pollution of the Sea Act

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Grey Area – Sulphur Limits

“Regulations of this Annex shall not apply to:

2. Any emission resulting from damage to a ship or its equipment:

2.1 provided that all reasonable precautions have been taken *after* the occurrence of the damage or discovery of the emission for the purpose of preventing or minimizing the emission; and

2.2 except if the owner or the master acted either with intent to cause damage, or recklessly and with knowledge that damage would probably result.”

Regulation 3 of MARPOL VI

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Grey Area – Sulphur Limits

“Ships should have contingency measures in place to continue operation in case of scrubber failure and one possible option to consider is to have a designated fuel oil tank with IMO 2020 compliant fuel with the appropriate change over procedures.

“However, if there is insufficient or no compliant fuel on board, the ship should be allowed to complete the current leg of its voyage without deviation and then carry out repair works or bunker compliant fuel at the next port of call.”

Similarly, should the scrubber’s emissions monitoring system (CEMS) malfunction, the ship should not be considered as being in immediate breach of regulations.”

- Marine And Port Authority Singapore, IMO 2020 Sulphur Limit, A Guide For Singapore-Registered Ships

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Grey Area – Sulphur Limits

“However, if there is insufficient or no compliant fuel on board, the ship should be allowed to complete the current leg of its voyage without deviation and then carry out repair works or bunker compliant fuel at the next port of call.

...

Similarly,... the ship should not be considered as being in immediate breach of regulations.”

...

The intent of FONAR *[fuel oil non-availability report form] is to report non-availability of compliant fuel in the last port of call. It should not be misconstrued as an exemption from compliance with the sulphur limit.”

- Marine And Port Authority Singapore, IMO 2020 Sulphur Limit, A Guide For Singapore-Registered Ships

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Contractual

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Contractual Issues

1. Costs of Scrubbers

- Who should bear the cost?
- What potential costs are involved?

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Contractual Issues

2. Seaworthiness

- Owners must maintain the vessel's class and ensure that she complies with international and national maritime rules and regulations, i.e. is “legally fit” for the chartered service.

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Contractual Issues

3. Re-Delivery

- In relation to delivery and redelivery quantities, bunkers have only been defined as “high sulphur fuel” and “low sulphur fuel”, in line with the two categories of bunkers available today.

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Contractual Issues

4. Warranties

- Charterparties usually contain performance warranties giving specific speed and consumption allowances for different fuels

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Practical Steps

1. Review and Renegotiate
2. Due Diligence
3. “The Proper Chain”

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QUESTIONS ?

THANK YOU

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Joseph Tan Jude Benny LLP (JTJB)

- * Founded in 1988
- * Full service Singapore law firm
- * Specialist practice in maritime and shipping - one of the most experienced shipping practices in Asia. Handles both wet and dry shipping work, litigation and arbitration
- * Practice Groups helmed by proven and experienced Partners
- * Own network of international law offices
- * The only Singapore member of the ADVOC group - access to a network of 92 international law offices spanning 69 countries.
- * International clientele and reputation

Recognition and Awards

2019 Asia Pacific Legal 500

- * Singapore -> **Shipping – Tier 2**
- * Singapore -> **International Arbitration – Tier 4**

2019 Chambers & Partners, Asia Pacific

- * Singapore > Shipping: Domestic – (Band 3)

Areas of Practice

- Shipping & Admiralty
- Commercial Dispute Resolution
- Conveyancing & Real Estate
- Corporate & Corporate Secretarial
- Corporate Compliance & Data Protection
- Matrimonial & Family Law
- Probate & Administration
- Insurance & Personal Injury
- Patents & Trademarks
- Energy, Resources & Infrastructures

Joseph Tan Jude Benny LLP – Tried, Tested and Trusted for over 30 years.

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Murali is an Advocate and Solicitor of the Supreme Court of Singapore. He read law at the University of Warwick and was called to the Bar of England and Wales in 1995. He was called to the Singapore Bar in 1997 and became the Managing Partner of JTJB LLP in July 2013.

Murali's practice focuses on commercial and shipping cases. He has advised and acted as counsel in a wide range of maritime cases including advisory work and disputes involving charterparties, cargo loss/damage, marine insurance, casualty and collisions.

He has appeared before the Singapore High Court and Court of Appeal and a number of his cases are reported. Murali regularly speaks at conferences on shipping and commercial topics.

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