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# The 2020 Sulphur Cap

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CIRCULAR

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## Background

We refer Members to our previous publications on the 2008 amendments to Annex VI of the IMO's International Convention for the Prevention of Pollution from Ships 1973 (as modified by the Protocol of 1978) (MARPOL) and which will come into force on 1 January 2020. The amendments will ensure a significant reduction in the sulphur emissions from ships (the 2020 Global Sulphur Cap) and thereby demonstrate that the shipping industry is committed to meeting its environmental obligations.

## The 2020 Global Sulphur Cap

On and after 1 January 2020, the MARPOL permitted limit for sulphur content in ships' bunker fuel oil will be reduced from 3.50% mass by mass (m/m) to 0.50% m/m for ships operating outside designated emission control areas. The MARPOL Emission Control Area (ECA) limit of 0.10% will still apply, as will any applicable local regulations.

The IMO's Marine Environment Protection Committee (MEPC 73) has approved a prohibition on the carriage of non-compliant bunker fuel which will come into force on 1 March 2020 (Regulation 14 MARPOL Annex VI), with certain caveats. Ships fitted with exhaust gas cleaning systems (scrubbers), which are designed to remove sulphur oxides from the ship's engine and boiler exhaust gases in order to reduce sulphur emissions to a level not exceeding the required fuel oil sulphur limit, can continue to carry fuel with a sulphur content of more than 0.50%. Members should check before calling at a port if the port has any ban or additional requirements relating to the use of open loop scrubbers or for dealing with wash waters from scrubbers.

The IMO has developed further guidance, including a fuel oil non-availability report (FONAR), which is on the [IMO's website](#). Under Regulation 18 of MARPOL Annex VI, it will be possible to submit a FONAR to State parties recording the steps taken when a ship cannot acquire compliant fuel. It is important to note that a FONAR is not an exemption; it is one of a number of documents to be taken into account by State parties when considering enforcement action against a non-compliant ship and Port State Control (PSC) guidelines have also been published by the IMO to assist in this regard. When facing enforcement action, Members should be able to fully document the efforts which they have taken to comply.

A limited exception to the 2020 Global Sulphur Cap requirements is allowed for any emission necessary to secure the safety of the ship, saving life at sea or any emission resulting from accidental damage to a ship or its equipment (subject to certain conditions).

## P&I Club Cover

The International Group Clubs recognise that the 2020 Global Sulphur Cap presents important challenges to the shipping industry and are closely monitoring discussions at the IMO.

Penalties for non-compliance are likely to include fines, detentions and possibly, in extreme cases, PSC banning orders. The 2020 Global Sulphur Cap does not require any amendments to be made to existing Club Rules. As has always been the case, Clubs do not condone breaches of MARPOL. However, liabilities, including fines for purely accidental discharge of non-compliant emissions, are capable of P&I cover subject always to the Rules and any terms and conditions of cover. This would also include the obligation to reimburse liabilities for fines incurred by another party.

Cover in respect of other fines, for example, for breach of documentary or other MARPOL requirements, including inaccurate or inadequate record keeping or carriage or use of non-compliant bunker fuel, is only available at the discretion of a Club's Board of Directors at the conclusion of a case. Until a decision has been made by the Board on cover on such discretionary cases, Clubs may be unable to provide security and, even if they do, this will only be in exchange for acceptable counter-security, which would usually be

in the form of cash or a bank guarantee. The position in this respect is the same as set out in previous International Group circulars issued on the subject of MARPOL breaches.

It is recognised that the 2020 Global Sulphur Cap could result in P&I liabilities not previously seen which may arise in limited circumstances, for example where there is a technical failure of an otherwise approved scrubber undetectable by the exercise of due diligence that causes the accidental discharge of non-compliant emissions or the discharge of polluting wash-water. There have been suggestions that non-compliance with the Sulphur Cap provisions in MARPOL may have the effect of rendering a vessel unseaworthy which in turn would prejudice the availability of cover. Whilst every case will depend on its individual circumstances, the International Group Clubs wish to make clear both that an infringement of the Regulations will not necessarily be characterised as unseaworthiness and, to the extent it were to be, it is not a necessary consequence that it would deprive a Member of cover.

Where there is any doubt, then the circumstances of the case should be discussed with the Club.

All Clubs in the International Group have issued similar Circulars.

CATHERINE DOYLE

DEPUTY DIRECTOR (CLAIMS)

The North of England P&I Association Limited / North of England P&I DAC