

# THE ARREST news

Issued by the industry network devoted to ship arrests, [www.shiparrested.com](http://www.shiparrested.com)

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## COVID-19 SERIES



In this issue of *The Arrest News* "Covid19 Series", members give an update on the measures being taken in their respective jurisdictions in response to the current pandemic.

## Updates by Jurisdiction

### Angola

#### Introductory remarks

Considering the public health emergency caused by COVID-19 and the need to put measures in place to prevent and combat the spread of the pandemic, the President of the Republic of Angola enacted Presidential Decree 81/2020, of 25 March 2020, declaring a state of emergency after hearing the Government and securing the authorization of Parliament.

The state of emergency, which extends to the entire national territory and falls in step with the recommendations of the World Health Organization, began 27 March, at 0.00am and will end at 11.59pm on 25 April 2020, without prejudice to its renewal for one or more periods.

The following rights are partially suspended for the duration of the state of emergency:

- (a) right to residence, movement and migration to any part of the national territory;
- (b) right to international movement;
- (c) ownership and private enterprise rights;
- (d) workers' rights;
- (e) right to strike;
- (f) right to assembly and protest; and
- (g) freedom of worship.

#### Impact on Mobility & Transports

Presidential Decree 82/20, of 26 March 2020 ("PD 82/20"), which also came into force at 0.00am 27 March, implements the temporary derogatory measures that will be in force for the duration of the state of emergency. Among other measures implemented by PD 82/20, the following are

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particularly noteworthy in which concerns to mobility & transports:

- i) restrictions to the freedom of movement and to being on the public highway, where citizens are required to stay at home (without prejudice to any urgent and required travel);
- ii) it is established a provincial cordon sanitaire, where traveling between provinces is generally forbidden across the national territory;
- iii) the payment of taxes on the import of food, medicines and other essential goods will be settled later, on terms to be defined;
- iv) the import of food, medicines, biosecurity material and other essential products is subject to a derogation license regime, on terms to be defined;
- v) public transport essential to mobility remains in operation only for the provision of minimum services and subject to specific rules; and
- vi) it is established a national cordon sanitaire, where no person may, as a rule, enter and exit Angola.

In addition to the above, reference must also be made to Executive Decree 129/20, of 1 April 2020 ("ED 129/20"), which enacts a number of transitory measures aimed at ensuring that the transportation sector keeps operating while the state of emergency is in place. Among others, ED 129/20:

- i) outlines the sanitary and biosecurity conditions that operators and agents are required to implement in order to control and prevent the spread of the COVID-19 and therefore protect their staff and service;
- ii) qualifies as essential public services:
  - in the aviation sector
    - a. the domestic and international transportation of goods and cargo;
    - b. transportation of passengers and cargo for humanitarian and emergency reasons;
    - c. transportation services rendered in support to the petroleum and mining activities;
  - in the port and maritime sector
    - a. maritime freight services, and loading and unloading operations;

b. cargo handling and repackaging for security reasons;

c. rescue and other urgent operational services;

d. maritime transportation services for the petroleum industry;

e. all material acts which are necessary for the carrying out of the above maritime operations, in particular the handling of cargo by terminals;

iii) lists the minimum services to be ensured by the regulatory bodies and companies operating in the sector, including the National Institute of Civil Aviation (INAVIC), the Port and Maritime, Institute of Angola (IMPA), the National Institute of Angolan Railways (INCFA), and the National, Institute of Road Transportation (INTRE); and

iv) establishes a number of special measures to be implemented in order to ensure that goods and cargo are cleared in a swift manner and lays down the duties assisting in respect thereof to shipping agents, the National Shippers Council, Port Authorities and port terminals.

Finally, it is worth mentioning that upon the publication of PD 81/20 the Port of Luanda issued a ruling establishing that:

– vessels wishing to dock must inform the port 72 hours in advance of the vessel's last 10 ports;

– all requests for direct berthing at the port of Luanda are suspended, vessels should anchor outside the port and be subject to inspection visits by Health and Maritime Sanitation entities; and – the port pilot shall only come onboard vessels once the inspection by the health authorities is conducted.

### **Impact on Litigation**

Even before the state of emergency was declared in the country, on the 25 March 2020, the Superior Council of Magistrates ordered the generalized suspension of the judicial courts for a 15-day period, safeguarding only the performance of minimal services. This means that courts continue to work at least to ensure the performance of in-person acts dealing with urgent and fundamental rights, notably acts regarding

interim measures and those involving remanded defendants.

In-person hearings and acts can be held in urgent proceedings under certain conditions; anyone summoned to same must therefore appear before the court. In any event, failure to appear before the court or to participate by any means of remote communication can always be justified based on health reasons, subject to the judge's acceptance of such justification.

Moreover, pursuant to PD 82/20, it falls to the Ministry of Justice and Human Rights, in articulation with the Superior Council of Magistrates and that of the Public Prosecutor, to adopt the measures found adequate to ensure access to the law and the courts as means to safeguard rights, freedoms and guarantees at harm or under the menace of being harmed. This means that until these measures have been adopted by the relevant authorities, rules regarding deadlines in ongoing proceedings should be viewed as unaltered.

A final note to add that pursuant to PD 82/20 statutes of limitations and expiry deadlines regarding all types of proceedings are suspended.



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## Belgium

During the COVID-19 pandemic Belgian courts operate at a limited capacity. Courts only handle urgent cases and cases which can be taken into consideration in writing. Seizure and arrest of ships are considered to be urgent cases and are handled as usual and on very short notice. These urgent cases will be treated by the courts in writing as to the extent possible, while most of the communication and submission of court documents can be done electronically. Also the court bailiffs continue operational for urgent matters, such as the arrest of vessels.

Our law firm D'Hoine & Mackay also has taken the necessary precautions. Our time together in the office is limited as much as possible, but we are hard at work in our own residences and are staying healthy. As always we are available during the day and night for all matters, urgent or otherwise and are able to provide our services by all means of communication.

With respect to Force Majeure, one of the current hot topics, a party cannot, under Belgian law, be held contractually liable if his non-, late or improper performance of a contractual obligation is the result of an external cause, which makes the execution of the obligation impossible. Covid-19, and all of its consequences and the regulations imposed, can be considered as a non-foreseeable situation, depending on the period the contract has been agreed. Whether the Covid-19 circumstances will be regarded as a valid reason for invoking that it is impossible to execute the obligation, will much depend on the contexts and specific situation of the individual case, as well as contractual clauses which determine what constitutes force majeure.

Obviously, D'Hoine & Mackay Advocaten will be happy to deal with legal problems arising out of the current exceptional circumstances.



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## Denmark

**Q:** What is the status of the major courts or arbitral institutions in Denmark? Are they operating as usual, and if not what alternative procedures are in place?

**A:** Courts are officially closed, currently until 10 May 2020. This includes the Maritime and Commercial Court, as well as the Bailiff's Court, which normally considers arrest applications.

During this period, only critical matters will be dealt with. This includes:

- Applications for extensions of deadlines
- Certain arrest cases
- Certain matters before the Bailiff Court that cannot be postponed

The Danish Institute of Arbitration ("DIA") handles cases and answers inquiries by telephone and email in the usual manner. The DIA's staff is working from home – for the time being until May 10, 2020. The DIA is closed for personal inquiries, unless otherwise expressly agreed with the DIA. The arbitral tribunals have postponed physical meetings until the situation is normalized.

**Q:** What, if any, alternative procedures are in place, for filing documents in the local courts in Denmark (including but not limited to for the purpose of commencing claims)?

**A:** Court proceedings in Denmark are fully digital. Documents can still be filed via the courts' online portal ([www.minretssag.dk](http://www.minretssag.dk)).

**Q:** Given there are significant local movement restrictions, are there any new or alternate procedures in place for the purpose of serving documents on the other party and receiving documents filed in ongoing proceedings?

**A:** No. As court proceedings in Denmark are fully digital, documents may and should still be filed under the normal procedures.

The DLA Piper Denmark offices are not closed. All employees are working from home and are fully operational, but a few employees will ensure offices are manned during the Covid-19 crisis and will receive any physical documents delivered to the office.

**Q:** How are decision-makers (e.g. courts, arbitral institutions etc) approaching requests for extensions of time and hearings?

**A:** Courts and arbitral institutions are in general flexible with respect to extensions, which will be granted in the court's discretion based on the grounds put forward by the requesting party. Such grounds may include the need to obtain evidence or expert opinions, to allow lawyers time to consider matters where instructions

have been received only recently, and other grounds that would contribute to the cost-efficient handling of the matter. The Covid-19 situation is also a justified argument for postponement.

**Q:** What duties of care do I owe to my customers and suppliers?

**A:** As is the case under the laws of other civil law jurisdictions, the concept of a duty of care does not exist in Danish tort law. To establish liability in tort, a claimant must show that the tortfeasor's act or omission was negligent and caused a loss that was not too remote. The general standard of negligence (bonus pater familias) has been developed in case law and incorporates a variety of elements.

Obligations towards customers and suppliers would follow from the contracts with such parties and the principles of Danish law of obligations, including the obligation to act loyally towards a counterparty, and the duty to notify a counterparty when grounds for non-performance of the contract arises. Generally speaking, a claimant would need to establish a basis for the counterparty's liability for a breach of contract, which would depend on the terms of contract.

**Q:** Can I rely upon economic hardship as a basis for termination of my contracts?

**A:** No, generally speaking the right to terminate a contract requires a serious breach of the contract.

However, under Section 36 of the Danish Contracts Act (Aftaleloven), a contract may be set aside in whole or in part if it would be unreasonable or unfair to uphold it, taking into consideration the circumstances when the contract was entered into, as well as subsequent developments. The application of Section 36 has been the subject of extensive case law and is highly fact-sensitive.

**Q:** Can we terminate our contract due to Covid-19 concerns? What are some of the relevant considerations?

**A:** The common law concept of frustration, whereby a contract is automatically terminated due to a supervening event, does not exist under Danish law. As such, Covid-19 would not in itself entitle companies

to terminate contracts, unless the terms of the contract provide for such a termination right (e.g. by way of a force majeure clause).

A party to a contract may, however, be exempt from liability for breach of a contract where the breach is due to events that were unforeseeable when the contract was entered into, and which makes it impossible for the party to perform the contract. This applies for contracts for the sale of goods under Section 24 of the Danish Sale of Goods Act, and a similar principle applies for the performance of contractual obligations under other types of contracts. The burden of proving unforeseeability and impossibility will be on the party seeking to invoke the exemption from liability.

Section 36 of the Danish Contracts Act may also be relevant (see above).



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## Gibraltar

### Admiralty Claims in the face of COVID-19

COVID-19 is, unfortunately, everywhere: on our streets, on our news and on our social media. It dominates our work life and our personal lives. The outbreak has spread from China to Iran and Italy and continues to swiftly move into more and more countries.

At the time of writing to this article, fifteen people have tested positive for the virus in Gibraltar. Whilst this number compares favourably to other jurisdictions, our Government has been steadily taking measures to try and limit the spread of the infection including, from 00:00 on Tuesday 24 March 2020, placing Gibraltar on lockdown. This measure is largely due to the fast-increasing number of cases in Spain, the only country with which we share a land border. Spain sadly declared a state of emergency approximately 11 days ago.

On 11 February 2020, HM Government of Gibraltar issued the Civil Contingencies Emergency (Coronavirus) Regulations 2020 (later revoked and replaced by the Civil Contingencies Emergency (Coronavirus No.2) Regulations 2020). Pursuant to the former, and as followed in the latter, it became a requirement that any person entering the jurisdiction who had visited any one of a number of countries in the 14 day period preceding his date of entry into Gibraltar, had to report to the relevant authorities. In the case of any person entering by sea, the report had to be made to the Gibraltar Port Authority ("the GPA"). The regulations made it clear that a person could be refused entry into Gibraltar.

On 26 February 2020, the GPA issued a circular attaching a Coronavirus Public Health Declaration ("CPHD") to be completed by all vessels intending to enter British Gibraltar Territorial Waters ("BGTW") and provided to the GPA prior to the arrival. The form requires that declarations are made about the countries either the vessel or the crew have visited or transited through, whether the crew has suffered from any symptoms associated with COVID-19, or whether any shore-based personnel have visited the vessel in the preceding 15 days. The list reflects the countries listed in the Regulations listed above and includes China, Thailand, Hong Kong, South Korea, Vietnam and Cambodia. The form has not currently been expanded to include Spain or the United States both of which, at the time of writing this article, are amongst the most affected countries in the world.

On Monday 16 March 2020, the Chief Justice followed suit, issuing the Supreme Court (Covid-19 Contingency) Rules 2020 ("the Rules") pursuant to the local Supreme Court Act which, from Tuesday 17 March 2020, had the effect of closing the Supreme Court Registry to the public until the expiration of the Rules (being 30 days after the date of commencement or until further extension or notice).

The Rules also provided for, amongst other things:

- > The vacation of all hearing dates;
- > the stay of all civil actions that had been commenced or were otherwise pending until 7 days after the Registry has been fully re-opened.

However, whilst all ongoing proceedings are stayed, the Rules provide for the issuance of proceedings and applications by email. They further provide for hearings to be conducted by telephone or any other method of direct oral communication as directed by the Judge.

Gibraltar has a long maritime history and is known internationally for its comprehensive legal and court system which deals with the arrest of vessels quickly and efficiently. Still further, Gibraltar still provides for the judicial sale of vessels by private treaty.

Usually, arresting a vessel is a simple and straightforward process but the various regulations set out above have left our clients wondering whether there is any possibility of bringing claims in rem and seeking arrests in the current climate.

In our view, Gibraltar is still open for business but clients must be aware of the following:

#### Hurdle 1: The vessel must be allowed to enter BGTW

For a vessel to be arrested, it must be within BGTW. Its entry into BGTW will depend on a decision by the GPA based on the CPHD provided by the vessel. If it has been to a high-risk area, there is a possibility that it will not be allowed to enter or will be instructed to isolate for a period of 14 days at the Eastern Anchorage.

#### Hurdle 2: Service of proceedings and the warrant of arrest

Claims in rem must be served on vessels as provided for by our Civil Procedure Rules. Most commonly, this is by fixing a copy of the claim form on the outside of the vessel in a position where it may reasonably be expected to be seen.

However, in the current climate, it may not be possible for the Court's bailiff to board the vessel, for the crew's health and safety as well as their own. The GPA has indicated that they will not be sending officers to board vessels and it is thus highly unlikely that the Admiralty Marshal will direct the court bailiffs to either.

If the Master refuses to allow anyone to board the vessel, it would be sufficient under our civil procedure rules to leave a copy of the claim form with him.

There are further alternative ways to serve proceedings. Should the arrest be a "friendly" arrest, the owner may well have instructed a legal representative within the jurisdiction to accept service on its behalf.

As a last resort, the rules also provide that service may be effected in any other manner directed by the court by way of alternative service, provided that the vessel is within the jurisdiction of the court.

In respect of the warrant of arrest, the rules provide that where it is not reasonably practicable to serve a warrant, service of notice of the issue of the warrant in the manner set out for service of the claim form or by giving notice to those in charge of the property, will be sufficient.

#### Hurdle 3: Preventing a vessel under arrest from leaving the jurisdiction

The Admiralty Marshal will always remove original certificates from vessels under arrest to prevent the vessel sailing. Where this measure is unlikely to be sufficient to stop the vessel from leaving BGTW, the Marshal will instruct ship keepers.

In the current climate, it may be that neither of these are options. In light of this, it is entirely possible that where an arrest is not "friendly" the vessel may sail out of the jurisdiction, even if properly served with proceedings. However, each vessel and crew is different and it may be that the crew agree to cooperate with the creditor even if the debtor is unwilling to.

#### Hurdle 4: Bunkers and supplies

On 18 March 2020 the GPA announced certain contingency measures during the Pandemic including that all STS Operations had been suspended and all bunker barge inspections by Bunkering Superintendents have been suspended until further notice.

Regardless, bunker suppliers continue to be operational in the Port with quality of service while protecting the health and safety of all involved.

Provisions and bunkers therefore continue to be supplied to vessels allowed to enter BGTW but with the

GPA requirements that there be minimal to no contact between the crew and the suppliers.

#### Hurdle 5: Valuation by a court appointed surveyor

Where it is the intention that a vessel be sold by public auction, the Admiralty Marshal will instruct a surveyor to appraise the vessel in order to ascertain its value. Clearly this would require a surveyor to physically attend the vessel. In the current climate, this would be difficult: the surveyor usually appointed would have to fly into Gibraltar (weather and flight permitting) and then attend the vessel, potentially putting himself and the crew at risk of infection.

There may be work arounds to this: it may be possible for the court to accept a desktop valuation prepared by its valuer in lieu of a physical inspection. This would have to be discussed with the Admiralty Marshal and the approval of the court provided.

#### Hurdle 6: Repatriation and crew changes

Often arresting parties wish to reduce crew to safe manning levels (in accordance with Flag and GPA requirements). Unfortunately, the GPA have already stated that this would not be possible. Similarly, change of crew on the purchase of a vessel will not be allowed either. Any potential purchasers should be aware that they would have to take on the crew until the vessel can be sailed to a port where crew changes are being allowed or take on the crew for the vessel.

As long as the above 6 hurdles can be overcome, it is believed that the arrest of vessels will continue in the jurisdiction, even as we face the realities of the virus. Certainly, given the proactive approach by the Court system in "normal" times, it is anticipated that the Court will facilitate applications and, where possible, conduct hearings by telephone or videoconference. Each vessel will, no doubt, be considered on a case by case basis.



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## Malaysia

The Prime Minister of Malaysia has announced a Movement Control Order (MCO) on the 16th March 2020. The MCO will last until 28th April 2020, as the extension from 14th April was announced. During the MCO, both the West and East Malaysian Courts operate in a limited manner. Cases can still be filed via e-filing, including for the Admiralty Court. However, since the Admiralty Court does not operate via the e-Review system, manual Case Managements will be fixed after 28th April 2020. Urgent cases such as ship arrests can still proceed, whereby the application to conduct online Hearing will have to be made three days before the fixed date. Difficulties to effect arrests may be expected, as written exemptions from the Court will have to be produced before the authorities (ie Royal Malaysia Police and the Marine Department) in light of the MCO.



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## Mozambique

### Introductory remarks

Considering the public health emergency caused by COVID-19 and the need to put measures in place to prevent and combat the spread of the pandemic, the President of the Republic of Mozambique has enacted Presidential Decree 11/2020, of 30 March 2020 ("PD 11/2020"), after hearing the Council of State and the Security and Defense Council, thereby declaring a State of Emergency.

The State of Emergency, which extends to the entire national territory, began at 0:00 am of April 1, 2020 and shall extend to 12:00 pm on April 30, 2020, without prejudice to potential renewals.

With regard to the limitation of rights, freedoms and guarantees, pending the State of Emergency, and to

the extent necessary to prevent and/or combat the COVID-19 pandemic, the following restrictive measures have been approved under PD 11/2020:

- (a) Suspension of entry visa issuances and cancellation of visas already issued;
- (b) Compulsory 14-day home quarantine for all persons who have recently travelled abroad, for those arriving in the country and for all persons who have had direct contact with confirmed COVID-19 carriers;
- (c) Suspension of classes from all public and private schools;
- (d) Prohibition of public or private events; and
- (e) Mandatory implementation of prevention measures in all public and private institutions and passenger transport.

PD 11/20 enables the Council of Ministers to take the necessary and appropriate measures to combat COVID-19, which shall be done with respect for the principle of proportionality and shall be limited to the extent, duration and means strictly necessary to restore normality.

#### **Impact on Mobility & Transports**

Following the enactment of PD 11/2020, Decree 12/20, of 2 April 2020 ("Decree 12/20"), was approved. Decree 12/20 sets out general temporary derogatory measures to be implemented during the State of Emergency. Among other measures implemented by Decree 12/20, the following are particularly noteworthy in which concerns to mobility & transports:

- (i) The issuance of visas and other official documents is suspended;
- (ii) International agreements for the suppression of visas are suspended;
- (iii) The procurement of urgent goods and services required to control and combat the pandemic is subject to a yet to be defined derogation regime;
- (iv) The import of food, medicines, biosecurity material and other essential products is subject to a derogation license regime, on terms to be defined;
- (v) The payment of taxes on the import of food, medicines and other essential goods will be settled later, on terms to be defined;

(vi) Public transport essential to mobility remains in operation but subject to specific rules;

(vii) All crossing points are closed, excluding:

- Negomano (Cabo Delgado)
- Mandimba, Il Congresso and Entrelado (Niassa)
- Melosa (Zambézia)
- Cassacatisa, Cuchamano and Zóbwè (Tete)
- Machipanda (Manica)
- Chichualacuala (Gaza)
- Ressano Garcia and Namaacha (Maputo)

(viii) All airports are closed, excluding:

- the airport of Pemba (Cabo Delgado)
- the airport of Lichinga (Niassa)
- the airport of Nampula (Nampula)
- the airport of Quelimane (Zambézia)
- the airport of Chingodzi (Tete)
- the airport of Chimoio (Manica)
- the airport of Beira (Sofala)
- the aerodrome of Inhambane and Vilanculos (Inhambane)
- the airport of Maputo

(ix) All Ports are closed ,excluding:

- the Port of Nacala (Nampula)
- the Ports of Quelimane and Pebane (Zambézia)-
- the Port of Beira (Sofala)
- the Port of Maputo (as from 17 March passenger ships are not allowed to berth at this Port)

#### **Impact on Litigation**

Pursuant to Directive 01/TS/GP/2020, of 23 March 2020, Courts will continue to work during the State of Emergency and will ensure the performance of in-person acts as usual. Notwithstanding, this Directive recommends that:

- hearings must be only attended by individuals who are crucial to the legal proceeding;
- distancing and safety measures recommended by health authorities shall be abided to.



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## The Netherlands

### Policies and measures applicable to seagoing vessels in Dutch ports

Here are some relevant messages and useful links for seagoing ships entering Dutch ports:

1. The Harbourmaster of the Port Health Authority in Rotterdam issued on 13 March 2020 the following statement

#### QUOTE

I am writing to inform you about the measures currently in force in the port of Rotterdam.

Port Health Authority Rotterdam (PHAR)

The Port Health Authority Rotterdam is the competent authority for the management of infectious diseases in the port of Rotterdam. The Port Coordination Centre is the contact desk for ships, crew and other parties working in the port of Rotterdam. The parties working with the PHAR include: Rotterdam-Rijnmond Municipal Health Service, the Harbour Health Centre, Erasmus Medical Centre Rotterdam (EMC), Royal Netherlands Sea Rescue Institution (KNRM), the Dutch Coastguard, Rotterdam-Rijnmond Safety Region, Dutch Food and Commodities Authority, Seaport Police, Radio Medical Service, the Port of Rotterdam Authority and the Harbour Master. The Harbour Master Division and the Rotterdam-Rijnmond Municipal Health Service are coordinating the response to COVID-19 (the coronavirus) and they consult daily.

### More stringent procedure for the Maritime Declaration of Health (MDoH)

As of today, ALL seagoing vessels must submit the Maritime Declaration of Health (MDoH) in good time. It should be sent by email to the Port Health Authority Rotterdam (PHAR):

[porthealthauthority@portofrotterdam.com](mailto:porthealthauthority@portofrotterdam.com).

This MDoH must have been signed in the last 24 hours and it must be sent at least 6 hours prior to arrival at Pilot Station.

The Port Coordination Centre coordinates the follow-up and asks the Rotterdam-Rijnmond Municipal Health Service for recommendations about the reported case.

In addition, we follow the national guidelines. To limit the spread of the coronavirus as much as possible, everyone is advised to respect hygiene measures. These are:

- Wash your hands regularly
- Cough and sneeze on the inside of your elbow
- Use paper tissues and throw them away immediately after using them once
- Touch your nose, mouth and face as little as possible.
- Do not shake hands

It is also very important as an employer to comply with government recommendations relating to your employees. In this way, we can prevent the spread of the virus among our employees and any possible spread by employees going on board vessels.

### Yellow flag (quarantine)

In the Netherlands, the MDoH is used to report possible infectious diseases to the authorities. Some countries work with a yellow quarantine flag. This is not necessary in the Netherlands. As soon as a ship has submitted an MDoH and it has been assessed by the Municipal Health Service, the captain will be informed whether additional measures are necessary. If a ship continues to sail under a yellow flag, we request you to inform the Port Coordination Centre (+31 (0)10 252 1000 or VHF channel 11).

If there are any relevant changes, you will be informed through the PHAR website:

<https://www.portofrotterdam.com/en/shipping/port-health-authority>

You may contact the Port Health Authority Rotterdam by email to share any questions and/or comments.

The Harbour Master of Rotterdam

#### UNQUOTE

### 2. Policies and measures of the government of The Netherlands

In the context of the prevention of infection with the COVID-19 ("Corona") virus, the government of The Netherlands (RIVM) has drawn up a number of policies and measures which are also in effect and applicable to seagoing vessels and the implementation thereof on board: <https://kustwacht.nl/sites/default/files/20200316%20Coronavirus%20and%20prevention%20on%20board%20ships.pdf>

### **3. Guidance for Ship Operators for the Protection of the Health of Seafarers**

[https://www.ics-shipping.org/docs/default-source/resources/coronavirus-\(covid-19\)-guidance-for-ship-operators-for-the-protection-of-the-health-of-seafarers.pdf?sfvrsn=6](https://www.ics-shipping.org/docs/default-source/resources/coronavirus-(covid-19)-guidance-for-ship-operators-for-the-protection-of-the-health-of-seafarers.pdf?sfvrsn=6).

### **4. Application for Ship Sanitation Certificate**

<https://www.ggdrotterdamrijnmond.nl/professionals/ship-sanitation-certificate/applicationform/>



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## **Panama**

Despite the ongoing Covid-19 pandemic, Panama remains open for ship arrests.

As part of the country's efforts to stop the spread of the virus a national lockdown has been ordered under the State of National Emergency. The Supreme Court of Panama has issued Accord No. 158 which suspends judicial terms from March 16 to April 9, 2020. Furthermore, all courts and administrative judicial offices are officially closed from March 23 to April 9, 2020, inclusive.

Notwithstanding, the maritime jurisdiction remains open to urgent measures, which include arrests, injunctions and petitions to lift these. The First and Second Maritime Courts have established a special schedule in order to guarantee that there are officials on duty 24/7 during the closure of judicial offices. The

schedule will be in force until 17 April 2020, and may be extended. During this period, the Maritime Courts will exceptionally favour the exchange of information between users and courts by computer and other technological means.

Our firm, Patton, Moreno & Asvat, effectively arrested a vessel on 16 March 2020, just three days after the President of the Republic declared the State of National Emergency. Once the arrest order was granted, the Marshal obtained approval to board from the National Health Authorities and the Panama Canal. The vessel was arrested before crossing the Panama Canal and allowed to transit under arrest. It currently sits in anchorage under arrest with a custodian appointed by the Marshal on board.

To avoid any issues with the national lockdown, the Maritime Court has allowed that maintenance fees as requested by the Marshal be paid via wire transfer, and writs and petitions are to be filed electronically via email. Court Secretaries and Marshals have provided telephone contact numbers for urgent measures as required.

Even as the world comes to a much-needed halt to stop this pandemic, shipping is still going strong and **Panama remains open for ship arrests.**



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## **Poland**

The Polish Minister of Health has declared the "state of an epidemic threat" effective as of 14 March 2020 and has raised the alert level to the "state of epidemic" as of 20 March 2020. Those announcements have been followed by the legislative measures adopted by the Polish parliament within the framework of the so-called "Anti-Crisis Shield" effective as of 31 March 2020.

Despite the statistics still showing significantly lower levels of persons infected with COVID-19 in Poland as

compared to its neighbouring EU countries, very strict restrictions have been imposed, including forcing most of the population into lockdown and closing down whole sections of the economy and public administration

Pursuant to the act on counteracting the COVID-19 epidemic, court hearings have been suspended. However, that does not apply to sessions in camera as well as cases classified as urgent either in the “Anti-Crisis Shield” itself or declared as urgent by the president of the respective court. All procedural deadlines in court, administrative and enforcement proceedings have also been suspended, as a result of which the deadlines in pending procedures have been extended until after the state of epidemic is revoked.

At least in theory, the measures described above should not directly affect the courts’ decisions in ship arrest cases, even though they have not been explicitly listed as ‘urgent’. That is because the arrest decisions are normally made in camera and immediately enforceable. However, Polish courts currently work in a crisis mode with limited staff, which is likely to result in extraordinary delays in any kinds of proceedings.

Strict restrictions have been imposed on persons crossing Polish state borders, including the borders with the neighbouring EU and Schengen Area countries. Any person entering Poland is obliged to fill out a ‘localisation card’ and maintain a 14-day home quarantine. However, ship crew members as well as lorry drivers are exempted from such restrictions and Baltic ferries continue their operations.

Cargo transports are exempted from the above restrictions, with only limited restrictions on transports of essential healthcare materials out of the country. Polish shipyard and ports, including the Deepwater Container Terminal (DCT) in Gdańsk, continue their activities uninterrupted, although with additional health and safety precautions in place.



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## Portugal

### Introductory remarks

Considering the public health emergency caused by COVID-19 and the need to put measures in place to prevent and combat the spread of the pandemic, the President of the Republic enacted the Decree of the President of the Republic no. 14-A/2020, of 18 March 2020 (“PD 14-A”), declaring a state of emergency in Portugal for the period comprised between 19 March and 2 April 2020. On 2 April, the state of emergency period has been extended until 17 April and, if deemed needed, may still be renewed for more periods.

The state of emergency encompasses the partial suspension of the following rights:

- (a) right of movement and settlement anywhere in the national territory – the public authorities may impose any restrictions required to reduce the risk of contagion and implement measures to prevent and combat the epidemic, including compulsory confinement, ban on travel and on loitering;
- (b) property and private enterprise – the public authorities can proceed with the requisition the provision of any services and the use of both real and personal property, of healthcare units, commercial and industrial establishments, companies and other production units;
- (c) workers’ rights – the public authorities may order staff from both public-law and private-law entities to report to work and, if required, to perform their duties in a different workplace, for a different entity or on different conditions and during different work schedules.
- (d) international circulation – public authorities can establish border checks for persons and goods, including health checks at ports and airports;
- (e) right of assembly and protest – the public authorities can impose any restrictions required to reduce the risk of contagion and implement measures to prevent and combat the epidemic, including limiting or banning meetings or protests;

(f) freedom of worship – namely as regards religious events and gatherings;

(g) right of resistance – acts of resistance to orders issued by public authorities as part of the state of emergency are prohibited.

### **Impact on Mobility & Transports**

Upon the enactment of PD 14-A and Decree-Law 10-A/2020, of 13 March 2020 (as amended), which sets out the general temporary derogatory measures to be implemented during the state of emergency, a number of ordinances, instructions, rulings and other administrative measures were implemented with a view to control and prevent the spread of the COVID-19. Among other measures implemented and temporarily in place in this respect, the following are particularly noteworthy in which concerns to mobility & transports:

(i) it is established a national cordon sanitaire, where no person may, as a rule, enter and exit the country;

(ii) the documentary control of people at the borders is restored;

(iii) public transport essential to mobility remains in operation only for the provision of minimum services and subject to specific rules;

(iv) citizens are required to stay at home on quarantine (without prejudice to any urgent and required travel);

(v) cruise ships are authorized to berth in Portugal for fuel supply and maintenance, but both their passengers and crew are prohibited to disembark, unless a special approval is granted by the health and sanitary authorities; this prohibition does not apply to national citizens and citizens holding a residence permit in Portugal;

(vi) ports shall continue operating and merchant ships are generally allowed to berth; still, ports operators and the entities serving at the ports are required to develop and implement contingency plans in accordance with the provisions and recommendations of the International Health Regulations 2005 (RSI) 1, the World Health Organization (WHO), the Norms and Guidelines of the Directorate- General of Health (DGS)

and the Port Health Authority related to infection by the COVID-19, as applicable;

(vii) seafarers are generally authorized to perform functions higher than their ranking;

(viii) special measures were implemented in regard to the certification of ships not certified according to International Conventions and to the renewal of statutory certification of ships and shipping companies;

(ix) the DGRM - Directorate-General for Natural Resources, Safety and Maritime Services is authorized to issue a declaration clearing the cross-border movement of crew members from their place of residency to their place of embarkation and vice versa, should this prove to be necessary;

### **Impact on Litigation**

Courts continue to work at least to ensure the performance of in-person acts dealing with fundamental rights, notably acts regarding minors at risk or educational guardianship of an urgent nature, proceedings/judgments of remanded defendants, provided that such acts and proceedings do not require the presence of more persons than recommended by the health authorities or set forth in the guidelines of the proper superior councils. The temporary derogatory measures in response to the epidemiological situation caused by COVID-

19 entail that, if technically feasible, in person hearings and acts may be conducted through appropriate means of remote communication, such as teleconferencing or video calling.

The court holidays regime applies to most pending cases. Deadlines in urgent proceedings are suspended, being the performance of such acts admitted through adequate remote communication means, including by video conference or conference call.

The interpretation of the rules approved on the litigation aspects, notably deadlines, raises application doubts.

Statutes of limitations and expiry deadlines regarding all types of proceedings are suspended during the

epidemiological crisis. The suspension prevails over any regimes establishing compulsory maximum statutes of limitations or expiry deadlines, which will be extended for as long as the present circumstances prevail.



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## Singapore

Beginning 1 April 2020, the Singapore courts will disallow more than two lawyers or litigants per party to appear at a hearing, as part of the measures introduced in the midst of the COVID-19 pandemic. The judiciary will allow more matters to be heard via tele-and video conferencing, as well as written submissions and e-mail.

In order to minimise the number of people in the courtroom at any one time, hearings before judges and registrars in the Supreme Court have been assigned staggered timings to avoid congregation of those attending court. All practitioners, court users and visitors are required to complete a declaration form before they enter the court building; an individual will not be allowed entry if he is serving a quarantine order, stay-home notice, leave of absence or is feeling unwell and has a fever and/or flu-like symptoms. Practitioners and court users who are not permitted to enter the court building to attend scheduled hearings may be able to attend hearings by video conference or otherwise seek an adjournment of the hearing through online channels.

Various measures have been implemented, or may soon be implemented, at the Supreme Court, State Courts and Family Justice Courts to enable remote hearings. These include video conference hearings for selected matters before the Court of Appeal and the High Court. All Family Justice Courts hearings will be

conducted by video conference using Zoom or by way of written submissions for counsel.



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## Spain

### **The CGPJ (General Council of the Judiciary) Guidelines to guarantee the judicial public service adapts to the health authority's recommendations**

Following the declaration of a state of alarm, judicial activity in Spain has been affected and measures adopted for the protection of people's health as well as the proper functioning of courts and tribunals.

While it is true that the judicial offices are closed except for urgent proceedings, the CGPJ has adopted guidelines, approved March 11, to ensure that judicial activity is not completely paralyzed.

The instructions approved by the CGPJ has two parts, an informative one with the recommendations of individual and collective protection against the disease and another one that establishes guidelines in relation to the judicial action according to different scenarios: (1) a general one for the entire national territory, and (2) another for territories where particularly intensive measures have been established to limit the spread of the disease.

These instructions are, however, open to change in view of the instructions and recommendations issued by the health authorities at any given time and the incidents reported by the presidents of the High Regional Courts of Justice.

With regard to arrest of ships, these are considered as urgent interim measures and, therefore, the Commercial Courts ab initio must deal with them, given that in the field of the Administration of Justice, e-working has been encouraged for members of the Judicial and Fiscal profession. However, it is necessary to be cautious and contact the competent Judicial

Authority in each Port beforehand (through the attorneys) to confirm availability for the adoption of the measure, since not all regions have been affected by COVID19 in the same way, nor is their operation homogeneous.

The CGPJ instruction includes two action scenarios. Currently, the measures foreseen for both scenarios are being applied throughout Spain, as the state of alarm has been extended to the entire national territory:

(1) Scenario 1, which covers the entire national territory; and includes the following measures: Procedural actions are suspended, non-urgent legal proceedings are postponed and e-working is recommended.

(2) Scenario 2, which includes the territories in which particularly intensive measures have been established to limit the spread of COVID-19, which currently, as mentioned, affects all the Spanish regions. Further measures have been included, such as the suspension of procedural and administrative deadlines and the suspension of scheduled court proceedings of the judge, subject to authorisation by the President of the Supreme Court or the AN, whenever the conduct of the proceedings involves a risk to human health or the spread of the disease.

Notwithstanding the above and according to the instruction, the following actions must be ensured, inter alia:

- 1.- Any legal action which, if not taken, could cause irreparable damage.
- 2.- Urgent internments of article 763 of the L.E.C. (Non-voluntary internment for reasons of psychological disorder)
- 3.- Interim measures (which includes ship arrests) or other actions that cannot be postponed, such as measures for the protection of minors.

In a nutshell, ship arrests shall be considered as interim measures and, hence, would be included in the legal proceedings that could be carried out given the nature of urgency, in spite of the state of alarm.

On the other hand, we must also consider the enforcement of the arrest measure once it has been ordered by the judicial authority, that the port activity has been considered essential and has not been paralysed, so the communication of the arrest to the competent authorities for its enforcement (Port Authority, Civil Guard, etc) could actually be performed.



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## Turkey

The Turkish Ministry of Justice and the Council of Judges and Prosecutors have adopted various measures following the official recording of the first corona virus case in Turkey on 11 March 2020, which have an impact on all legal matters as well as shipping related matters. An outline of the judicial measures introduced until this date is as follows:

· All the court hearings and proceedings except the urgent ones and the ones for the criminal cases whereby the defendants are under arrest have been suspended until 30 April 2020 (inclusive this date) with the decision taken by the Council of Judges and Prosecutors. The courts, judges and court staff have started to work alternately and deal with only urgent matters, which will include ship arrest applications. Accordingly, there are no legal restrictions to file and review arrest applications at the moment. One important internal decree sent to the courts is that the applications for conservatory measure, which include the arrest applications, will be reviewed by the court on duty on the date of application which may not necessarily be the specialized admiralty court.

· The measures adopted with respect to the actions of the Bailiff Offices will bring significant restrictions to shipping matters since the arrest orders given by the courts have to be enforced through the Bailiff Offices. The judicial measures adopted with respect to Bailiff Office actions are as follows: filing of new enforcement

and bankruptcy proceedings including the enforcement of any conservatory measures, which will include enforcement of arrest orders, have been suspended as of 22 March 2020 (inclusive this date) until 30 April 2020 (inclusive this date) with the transitional provision added to Amendments to Certain Laws which was issued on 25 March 2020 and published in the Official Gazette on 26 March 2020. Due to these restrictions, the enforcement of arrest orders given by the courts may not be carried out by the Bailiff Offices. As the intention may not be to stop such proceedings, additional measures in that area are expected to be taken.

All the time limits regarding the origination, use and termination of any rights including filing lawsuits, commencing execution proceedings, applications, complaints, warnings, notices, submissions, objections, time limits which are regulated under the Code of Administrative Procedure, Code of Criminal Procedure, Code of Civil Procedure and the time limits for mediation and reconciliation proceedings as well as the time limits prescribed in the Enforcement and Bankruptcy Code and in other Codes related to enforcement proceedings have been suspended until 30 April 2020 (inclusive this date) with the transitional provision added to Amendments to Certain Laws which was issued on



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## United Kingdom

Like much of the world, England & Wales are currently in the midst of a government imposed “lockdown” due to COVID-19 which affects many aspects of normal life. English & Welsh courts are not immune to this - many court staff are working remotely, and hearings are now frequently held by video conference or telephone where possible. Notwithstanding the obvious disruption that this will cause, the Admiralty Court, and

specifically the Admiralty Marshal, will continue to process applications for vessel arrests.

This is, in part, because of the relatively simple process of obtaining a warrant of arrest in England & Wales. For example, unlike many jurisdictions, there is no need to physically attend at court or appear before a judge to obtain a warrant of arrest. Instead the process of obtaining a warrant of arrest has, for a number of years, been by way of a filing the required forms on the court’s online filing system. These forms are then considered by the Admiralty Marshal and, if in order, issued. With such a simple / streamlined process a warrant of arrest could, in normal circumstances, often be obtained within a few hours of initial instruction by a client. It is not thought that even with court staff working remotely this process will be significantly disrupted.

Once obtained by a party the warrant of arrest (and associated documents) must then be physically served on the vessel. Here it is possible that there is more scope for the present situation with COVID-19 to cause potential issues for an arresting party. Usually service of the relevant documents on the vessel is undertaken by UK Border Force at the request of the Admiralty Marshal. Undoubtedly UK Border Force will be under significantly more pressure at the moment and may well have staff shortages due to COVID-19. There is, therefore, the potential that UK Boarder Force will have to focus only on their core duties and be unable to assist with ancillary tasks such as vessel arrests.

If this is the case then it may well be that alternative service arrangements for the warrant of arrest and associated documents would need to be made by the arresting party. This would, ultimately, either be by way of instructing a process server and/or service by solicitor (assuming that the Admiralty Marshal permitted such alternative service). An arresting party should allow for additional time if service by process server or service by solicitor is required.

In light of the potential issues with service if UK Boarder Force are unable to assist, and with potential disruption to usual court working patterns, the advice that this firm has received from the Admiralty Marshal

is that any party planning for an arrest should, where possible, give as much lead time before the vessel's arrival in England & Wales to the Admiralty Court to assist them in managing both the issuing of the warrant of arrest and for arranging service of the same.

Once arrested, if further "assistance" of the court is required (for example resolving a dispute as to the level of security or dealing with an application to set aside an arrest) then we expect that such matters would be dealt with efficiently by telephone or video conferencing (which the English Commercial and Admiralty Courts are already using with success). So whilst not quite business as usual, the English courts handling of "commercial" matters are continuing to function and the lawyers are expected to adapt to new ways of working.

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## USA

U.S. Federal and State Courts are grappling with the delicate balance between keeping the courthouses open for business, while also ensuring the health and safety of courthouse staff, jurors, and the public is not jeopardized. Judges and courthouse staff around the country are taking numerous measures to manage and respond to the pandemic. We briefly summarize the current status and procedures implemented at Courts in New York, Texas, and Florida as of April 15, 2020.

**New York:** In the Southern District of New York, activity in federal courthouses has been dramatically curtailed. Jury trials have been suspended until June 31, and courthouses are generally closed for all but essential matters. Electronic filing of new cases, pleadings, and other filings remain available via the Court Managed-Electronic Case Filing (cm-ECF) system. Judges have implemented telephonic and videoconference appearances to attempt to minimize case interruptions

where possible. In addition, the U.S. Marshal Service and court clerks have adjusted the procedure for ex parte relief, to limit the necessity for in person meetings to obtain and serve the Orders, writs, and warrants in attachment and arrest cases.

In the New York state court system, the filing of new cases and the use of the electronic filing system for existing cases remains prohibited until further notice. All Courts are continuing to allow for the filing of emergency applications. Starting April 13, 2020, Court proceedings for pending non-essential matters in New York State Courts will be heard virtually, with all interactions taking place by video (utilizing Skype and Zoom) or telephone. Courts in Kings County, New York County, and Bronx County will release protocols as electronic conferencing systems are implemented. New York state Chief Judge DiFiore has acknowledged and commended the Court staff's ability to adapt to a "virtual court system" to "stop the spread of the virus and save lives."

**Texas:** In Texas, all the federal courthouses in the Southern District of Texas are closed to the public until further notice. This includes courthouses in Corpus Christi, Victoria, Brownsville, Galveston, Laredo, McAllen and Houston. To ensure public safety, Chief Judge Rosenthal of the Southern District of Texas has ordered all civil and criminal jury trials previously scheduled to begin through May 31, 2020 are continued and will be rescheduled. The Southern District of Texas clerks' offices are all operating with a skeleton crew, enough to keep up with the mail and criminal intake needs. The Judges of the Southern District of Texas have already started holding conferences, hearings, and mediations via Zoom, and have even acknowledged the potential long-term use (and cost savings) of such technology even after things start to return to normal. In the Eastern District of Texas, the Beaumont Division is also closed to the public until further notice. In both the Southern District and Eastern District, the U.S. Marshal Service has confirmed their continued assistance with admiralty and maritime matters to attach/arrest vessels during COVID-19 and have made social distancing changes

to procedures as well, including but not limited to, seizing vessels through service of the seizure order on the vessel's agent to avoid unnecessary travel to/from foreign flagged vessels by the deputy marshals.

The Supreme Court of Texas has similarly encouraged Texas State Courts to modify deadlines and procedures as necessary to manage their docket. Notably, Texas has granted courts wide latitude to modify or suspend deadlines and procedures as needed. Civil statute of limitations have also been extended. The Harris County District Clerk is operating in a reduced capacity and monitoring a dropbox at the courthouse for those who lack e-filing capability and need to physically file court materials. Despite the physical closure of the courthouses, functionally the courts and clerks' offices remain open for business and the state's e-filing system permits filing of new cases, pleadings, and motions in all courts.

**Florida:** All federal courthouses in the Southern District of Florida remain open for business, albeit with minimum staffing levels. The clerk's office, probation, and bankruptcy courts are also operating with reduced capacity. All jury trials have been continued until no earlier than July 6. Joining other districts across the country, Chief District Judge Michael Moore has encouraged the adoption of video and teleconferencing for court proceedings where practicable. All Florida state courthouses in Miami-Dade County are closed to the public except for essential matters. Florida's federal and state courts all continue to accept new pleadings and filings electronically.

While it remains unclear how long these measures will be necessary, the legal system has proved itself capable of adapting to these unusual circumstances. We hope you and your loved ones continue to stay safe and healthy. If you have a question or need assistance with a legal matter, please contact us at [info@chaloslaw.com](mailto:info@chaloslaw.com)



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## IMO Circular Letter

**To: All IMO Member States**

**Subject: ICS Coronavirus (COVID-19) Guidance for ship operators for the protection of the health of seafarers**

The Secretary-General has received the attached Coronavirus (COVID-19) Guidance for ship operators for the protection of the health of seafarers, prepared by the International Chamber of Shipping in response to the coronavirus outbreak. Member States and international organizations are invited to make use of the Guidance, as they see fit, and circulate it to all interested parties, as deemed appropriate.

Link for full letter: <http://www.imo.org/en/MediaCentre/HotTopics/Documents/Circular%20Letter%20No.4204-Add.4.pdf>

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