

THE ARREST

news

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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 and fellow member and chairman of our Strange Arrests conference session reflects on the "New World" that is ushering in.

Updates by Jurisdiction

England & Wales

How are the Courts of England and Wales managing?

The impact of the COVID-19 pandemic has created practical implications on the ability of the Courts of England and Wales to conduct face-to-face hearings. On 31 March 2020 the Ministry of Justice, through the Courts & Tribunals Service, issued a press release (See www.gov.uk/news/prority-courts-to-make-sure-justice-is-served) concerning temporary changes caused by the exceptional circumstances of the COVID-19. pandemic.

The Courts have taken unprecedented measures and its work will be consolidated into fewer buildings to maintain safety of all in line with public health advice. Priority court and tribunal buildings will be open for essential face-to-face hearings. Further guidance,

published on 2 April 2020, can be found at <https://www.gov.uk/guidance/changes-to-court-and-tribunal-hearings-during-the-coronavirus-outbreak>.

These guidance notes make it clear that parties will be contacted by the Courts and they should not travel to the Court unless the Court service requests their attendance. Alongside the priority Courts there will be "Staffed Courts" where judges and staff will be working but they will not be open to the public. These Courts will support video and telephone hearings, progress cases without hearings and ensure continued access to justice.

Therefore physical hearings that cannot be heard by video or telephone and which cannot be delayed will be held in these priority courts.

It is not yet clear which types of cases will be deemed as essential, but if a hearing does not fall within the essential category and it has not been adjourned, it

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may be that the Court will decide to conduct it remotely via video or telephone.

1. Remote Hearings and the 'Remote Hearing Protocol'

As of 9 April 2020, only 160 'priority' Courts and Tribunals remain open to the public, as opposed to the 370 that would normally operate daily. As stated, these priority Courts will only hear cases in which an essential face-to-face hearing is necessary and for remote hearings to be conducted.

Whilst the Admiralty and Commercial Courts remain open, a contingency plan was released on 26 March 2020 which deals with High Court matters during the pandemic. Cases will be classified as either "urgent business", which is defined as business that is sufficiently urgent so as to normally warrant an out of hours application, or "business as usual". Business as usual cases will be dealt with as far as possible but priority will be given to urgent matters. At any time during the normal working week, there will be at least one judge to deal with the business of each Court remotely.

Where a case does not fall within the urgent business category but is listed for a hearing, it is the decision of the judge, giving weight to issues such as the matters at stake and any issues the use of video/audio technology may present, as to whether a particular case is suitable to be heard remotely. It may not be possible or practicable to do so where there are a large number of parties or witnesses or where a hearing is expected to last a considerable amount of time.

The Remote Hearing Protocol provides further clarification, and a judge will be required to decide in which of the following categories a hearing falls:-

- It can be conducted remotely.
- It will proceed in court with appropriate precautions.
- It will be adjourned as a remote hearing is not possible.

Parties can make submissions with an alternative proposal for the hearing if they disagree with the judge's decision. The judge will then make a binding

determination regarding how the hearing is to take place.

The recent case of *Qatar National Bank (QPSC) v The Owners of the Yacht FORCE INDIA*, which involved a successful application to set aside an order of sale of the 'FORCE INDIA', is an example of the Admiralty Court exercising their ability to hear a case by telephone as a result of COVID-19. The hearing involved submissions from interested parties as well as further evidence, and demonstrated that the Admiralty Court have the necessary facilities to conduct hearings by telephone.

It is therefore likely that remote hearings will become much more commonplace during the COVID-19 pandemic and until the Government decides that face-to-face hearings no longer pose a risk to court staff and individuals.

2. Extensions to deadlines – PD51ZA

Prior to COVID-19, parties had the ability under Civil Procedure Rule 3.8(4) to agree an extension of up to 28 days without the prior consent of the Court, provided that any extension would not prejudice the hearing date.

However, it has been recognised that the COVID-19 pandemic may make it difficult for parties to adhere with deadlines contained in court orders. It may not be possible to obtain a signed witness statement, or instruct an expert, for example. In order to alleviate any potential issues, PD 51ZA came into effect on 2 April 2020.

Parties are now able to agree an extension of up to 56 days without the prior consent of the Court. Where the parties are requesting an extension of more than 56 days, the permission of the Court is necessary but the Court is now also required to take into account the impact of COVID-19 when considering an application. This also applies where the Court is considering applications for adjournment of hearings or relief from sanctions.

PD51ZA is a temporary measure and will automatically cease to have effect on 30 October 2020 but it will help to ensure that parties remain able to adhere to deadlines whilst the pandemic continues.

3. Electronic Filing

Notwithstanding the above-mentioned changes, there are certain procedures that have already been in place for some time and work well to reduce the impact that COVID-19 is having on the Courts.

One such example is the requirement that any claims, including arrest papers, in the High Court (which covers the Admiralty and Commercial Courts) are to be issued online through the CE file system. Use of CE file has been mandatory since April 2017 and it allows claims to be issued within hours and all other pleadings to be uploaded via the Court's specially designed website.

4. Ports and arresting ships

The vessel arrest process should remain much the same given that the Admiralty Court remains open. Warrants of arrest are predominately served by Border Force who remain operational and can continue to serve arrest papers on vessels once sealed by the Admiralty Court through CE-file. There may be additional health and safety requirements within the port and access to vessels may be restricted. It may also be necessary for ports to request that an arrested vessel be moved in order to distance it from an isolated vessel, however this should be easily achievable given the High Court's prioritisation of urgent matters and dedicated remote Judge.

5. UK Ship Register

The UK Ship Register ("UKSR") has also put in place contingency plans to mitigate disruption to essential ship registration activities during the ongoing pandemic.

The UKSR has asked that all documents in relation to vessel registrations are now submitted via email to the relevant team and advised that postal applications may incur a delay. Once documents have been verified and authenticated, electronic versions of certificates will be issued together with a letter of authentication signed by the Registrar General.

In terms of ships that require a Continuous Synopsis Record (passenger ships on international voyages, cargo ships of 500GT and above on international voyages, Class A passenger ships operating within UK

waters), the UKSR is asking that documents are submitted electronically. The UKSR will process and issue an electronic CSR initially and a hard copy will follow.

6. Summary

It can be seen from the above that the Courts of England and Wales have been pro-active in dealing with the effects that COVID-19 has had on the justice system, by introducing procedural changes and new practice directions. The Admiralty Court has procedure in place to be able to deal with remote hearings to ensure the proper administration of justice.

The UKSR has also taken step to allow electronic applications which should allow business to continue albeit we are likely to see a slight delay in turnaround times.



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Latvia

Introductory remarks:

On March 12, 2020, the Cabinet of Ministers of Latvia adopted Order No. 103 "On declaring a state of emergency" (hereinafter referred to as the Order), which was later amended and supplemented. According to the Order, a state of emergency has been declared throughout the country up to May 12, 2020 in order to limit the spread of the COVID-19 virus.

The Order covers what has been described in English as the details of the "lockdown" in the country. Certain restrictions have been introduced covering life and commerce in general, but Members will be specifically interested in the main one which covers ports. The main point of interest is that from March 17, 2020, the Order covers international air transportation of passengers through airports, ports, buses and railways

being cancelled, excluding passenger transportation by state aircrafts and military vehicles.

Impact on litigation:

Measures to reduce the spread of the virus have not become an obstacle to the functioning of courts - courts in Latvia ensure the right to protect rights and legal interests even in emergency situations.

To reduce potential risks, oral hearings fixed by courts during an emergency situation are held only in cases of objective urgency.

Documents can be submitted to the court by mail, e-mail or via the Internet, or by leaving them at a special service point or in a mailbox.

Applications for interim measures, in particular for the arrest of a vessel, and written evidences may be delivered to the court by e-mail using the applicant's digital signature, and shall be considered by the judge on an ex parte basis within the time limits prescribed by law.

Further procedural issues that require an oral hearing (statements, complaints etc.) may be considered by means of video conferences.

In Latvia, bailiffs do not participate in the procedure of arresting a ship. The judge's order to arrest the vessel shall be delivered for execution to the Harbour Master, who shall inform the ship's agent, the master of the vessel and the state authorities involved, ensuring the prohibition for the arrested vessel to leave the port.

Impact on shipping:

In connection with the introduction of the state of emergency, Latvian ports Harbor Masters have issued orders on the activities of ship agents, cargo ship crews and cargo terminal workers.

In particular, the Harbor Master of the port of Riga issued a corresponding Order on 16 March 2020. According to the Order

- All vessels calling to the Port of Riga, in addition to other pre-arrival documentation via ship's agent shall submit also completed Maritime Declaration of Health Form prior entering the port.

- If in the last 14 days, the vessel has visited ports or a crew-member has joined the vessel in an affected area this fact must be stated in Maritime Declaration of Health Form.
- Upon crossing the Vessel Traffic Service (VTS) reporting line, all vessels shall call to the RIGA TRAFFIC and confirm that all crew members are in good health. The Master of the vessel shall also provide an identical report at least one hour prior departure from the port.
- All activities related to cargo and ship handling shall be carried out with a minimum of physical contact between persons within a minimum distance of 2 meters. Visits on board vessel shall be limited to essential crew only.
- In order to protect ship's crews and vice versa all pilots are equipped with personal protective equipment and instructed to keep on a "safe" distance, to minimize contact with vessel equipment. All these precautions should not affect the quality of pilotage.
- Crewmembers of foreign-flagged vessels calling at the Port of Riga shall not be allowed to come ashore, except when routine operation of the vessel requires so (for example, to inspect the draft marks, to receive ship supplies).

The Harbor Master has the right to keep the ship on the roadstead until the circumstances are clarified and further orders are received, if on board the vessel are crew members with COVID-19 symptoms, and this is confirmed by the ship's master.

According to the Harbor Master of Riga none of the vessels arriving at the port was quarantined on April 21, 2020.

In coordination with the operational headquarters for the emergency of Latvia, it is possible to arrange a change of crews in the ports of Latvia. However, each request for crew change is considered individually.

If written permission to change the crew in a Latvian port is received from the emergency headquarters, the crew can leave the vessel and will be sent through the

Port Immigration Service to the checkpoint for further passage.

Force majeure:

Civil law of the Republic of Latvia does not define the term “force majeure”.

The Order of the Cabinet of Ministers (see above) also does not say anything about whether state of emergency is a Force Majeure.

As a general rule, the basis for exemption from fulfillment of obligations may be either the law or the conditions provided for in the contract that preclude the parties from fulfilling their obligations and/or exclude the use of penalties for failure to fulfill obligations.

Thus, according to the Civil Law of Latvia, a loss is accidental when its cause is an accidental event or “insurmountable force”.

No one is obligated to indemnify for a casual loss.

The court may release the debtor from the disadvantageous consequences of the delay, when the execution did not take place due to insurmountable force.

Measures aimed at limiting the spread of the Covid-19 virus and listed in the Cabinet of Ministers Order can be regarded as an objective factor that directly affects the execution of previously concluded agreements.

Merchants whose sphere of activity is directly affected by the restrictions imposed (the sphere of education, entertainment, organization of leisure, recreation, cultural and sports events, travel services, passenger transportation, etc.) have the right to withdraw from the performance of contractual obligations without liability for damages.

However, COVID-19 and the declared state of emergency aimed at limiting its spread are not automatically universal grounds for termination or suspension of any treaty obligations.

The measures introduced may not serve as a pretext for releasing merchants from any unfavourable or inconvenient obligations.

Each case must be considered on an individual basis, taking into account whether there are other ways to fulfill obligations or reasonable mechanisms to do so.



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The Netherlands

Policies and measures applicable to seagoing vessels in Dutch ports - Part II

The Rotterdam port: keep calm and carry on

This article discusses:

- the dynamics at the port of Rotterdam during the COVID-19 pandemic;
- the effects this pandemic has had on the Dutch Maritime Industry; and
- possible financial assistance by Dutch banks.

The unusualness of measures taken by governments in order to slow the spread of COVID-19 raised a number of questions about the future of the global economy and the actuality of international trade, especially with trade restrictions, and States shutting their borders, and airports and ports closing. In a report about transport and trade facilitation, the United Nations Conference on Trade and Development (‘UNCTAD’) established that global trade *via* shipping is badly affected by the COVID-19 outbreak.¹ The report held that

“[e]ven after the spread subsides and China starts to return to normal business activity, it will take a long time to unwind the stresses inflicted on the world’s trading system. A return to medium and long-term trends in shipping and trade is unlikely before the second half or even fourth quarter of 2020”².

However, the maritime industry has now proven more than ever its vital³ role in terms of provision of basic supplies and ensuring the availability of products

¹ UNCTAD Transport and Trade Facilitation Newsletter N°85- First Quarter 2020, available at: [link here](#)

² *Id.*

necessary for our daily lives, in particular, food and nutriment, medicines and medical equipment, and oil and gas, etc. For that, one cannot but thank maritime workers for being the unknown soldiers during this 'public health emergency of international concern' (as described by the World Health Organisation (WHO)), while most of us are working from the comfort of our homes.

Dynamics at the Port

In the port of Rotterdam, there are currently no weaknesses in the logistics chain according to the CEO of the Port of Rotterdam Authority, who nonetheless indicated that *'we should be all ready for adversities to come'*. While many ports around the world chose to stop -or at least minimize- their activity as a pre-emptive measure during this pandemic, the port of Rotterdam assumed its responsibility of being the main maritime gateway of goods from and towards Europe by keeping all sectors fully operational. Even the port calls in Rotterdam are continuing as usual.⁴

That is not to say that business is taking place in the port of Rotterdam without any consideration to the spread of coronavirus. In fact, cooperation on a high level is taking place daily between the Municipality of Rotterdam, the Municipal Health Service (GGD) and the Safety Directorate. Additionally, the representatives of the port service providers and the port business community are in constant communication with the Port Authority.⁵

Moreover, the Dutch authorities issued measures and guidelines in order to find a balance between slowing the spread of the coronavirus, but also ensuring an 'as much as possible' intact process of entry and circulation of goods.⁶ Nevertheless, in comparison with temporary measures applying in other ports, specifically other European ports, the temporary measures implemented in the port of Rotterdam are more or less flexible.⁷

3 The Rotterdam maritime business services industry: dealing with the corona crisis, RMSC, 1 April 2020, available at [link here](#)

4 Port of Rotterdam, COVID-19 Update 24 March 2020, available at: [link here](#)

5 See supra note 4.

6 Guidelines of the Harbourmaster of 13 March 2020.

7 COVID-19 Global Port Restrictions Map. available at: [link](#)

There are no restrictions on seagoing vessels coming from a high risk Covid-19 country arriving to the port of Rotterdam. However, docking is subject to a Maritime Declaration of Health (MDH) that needs to be provided by the harbourmaster 24 hours before docking⁸, and it must be sent at least 6 hours before the arrival to the Pilot Station. Also, unlike measures taken in many ports around the world, crew changes are permitted in the port of Rotterdam for vessels transporting commercial goods, and shore leave is also permitted.

The port authorities are nevertheless bound by the EU Health Gateway Guidelines that can be found on the following link: <https://www.healthygateways.eu/Novel-coronavirus>

Furthermore, after being registered *via* Portbase, seagoing vessels have the obligations of reporting illness cases taking place on board during the entire period of stay in the port. This obligation of reporting is also applicable to departing and narrative ships.⁹

Effects on the Maritime Industry

Notwithstanding the efforts put towards the full functionality of the port of Rotterdam, the maritime sector does not seem to go unaffected.

There are 'news' about inclinations in the numbers of ships coming towards or leaving from Rotterdam back when the coronavirus was still not widespread outside of China, as about 50% of containers in the port of Rotterdam either arrive from, or are shipped to Asia, and fewer container ships were arriving from China in general.¹⁰ However, according to the harbourmaster,

*"until now there has been no downward trend in the number of ship visits. On average, just as many seagoing and inland vessels visit the port of Rotterdam as last year around this time."*¹¹

There even seem to be a slight increase in turnover for ship suppliers.¹²

8 The submission of the Maritime Declaration of Health (MDH) to the Port Health Authority of Rotterdam (PHAR) should be done by email to porthealthauthority@portofrotterdam.com

9 Port of Rotterdam, COVID-19 Update 14 April 2020, available at : [link here](#)

10 Coronavirus outbreak 'permanently' affects Rotterdam port, 9 March 2020, available at: [link here](#)

11 See supra note 9.

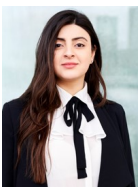
12 Id.

Considering that most of the EU is under a lockdown (or a partial lockdown), longer storage periods are required due to less production and thus, less consumption. There is an extreme demand of storage and increased storage costs, and we are witnessing a number of cancellations and renegotiations of storage contracts, especially for oil.¹³ Furthermore, there seem to be some uncertainties in shipping on port call restrictions and (dis)agreements with cargo owners on discharge locations.¹⁴ For that matter, there is available storage space at the port of Rotterdam and in the hinterland sufficient for goods and containers despite the crisis, and such space is provided by various parties.¹⁵

Financial Assistance

Dutch banks seem to be responsive during this crisis and ready to assist the maritime enterprises that are facing financial trouble. Especially after the Dutch central bank have relaxed the capital requirements temporarily for financial institutions in order to keep credit available.¹⁶

In this regard, banks seem to be prioritizing the borrowers facing financial challenges **because of** the coronavirus outbreak, and not giving as much assistance to the borrowers that already were facing financial challenges prior to the outbreak.¹⁷ The policy of the banks is also to prioritize sectors that are vital for the infrastructure, and the maritime industry falls under this category of vital sectors.¹⁸



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¹³ Industry developments, RMSC, 1 April 2020, available at: [link here](#)

¹⁴ Id.

¹⁵ See supra note 9.

¹⁶ See supra note 12.

¹⁷ RMSC - Webinar impact corona on Maritime Business Services, Pieter Baan of ING, 4 April 2020.

¹⁸ Id.

Peru

Through a Presidential Decree, the Peruvian courts ceased all operations in its lower and upper instances. This means that for the past five weeks, there are only two courts open in Peru which are for emergency matter such as Habeas Corpus, however, there are no courts available for filing injunctive reliefs that would lead to the arrest of a vessel sailing through Peruvian waters. The new extension of the nation-wide quarantine and curfew is now until May 10th, only then will the courts indicate when their start of operations will take place.

For any questions involving Maritime Law, feel free to call or write us.



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COVID-19 and its impact in what is now a New World by Richard Faint, Charterwise Ltd. (UK)

There is a book which springs to mind in these different circumstances. Brave New World [author J. Huxley] is a novel published in 1932 which describes life in the future (2540) in a society called the World State. It warns of the dangers of giving the state control over new and powerful technologies.

It is story of life in a dystopian society¹ called The World State built upon the principles of mass production, homogeneity, predictability, and consumption of disposable consumer goods.

Perhaps we are not yet in such a Brave New World but, given that we have to deal with SARS-CoV-2 (now better known as Covid-19) we do have to be Brave in a New World.

¹ Dystopia - from Ancient Greek meaning a 'bad place'. Usually taken to mean a community or society that is undesirable or frightening. Sir Thomas Moore, an English lawyer, published a book in 1516 called Utopia. Utopia is considered to be the start of Dystopian novels. He was tried for treason & beheaded in 1535.

In this New World, we are looking on as the world enters its worst economic crisis since World War II with risk of going back to the depression of the 1930s.²

Covid-19 is a pandemic where references have been made to earlier precedents such as “Spanish flu” (1918-1919) or Asian flu (1956-1957).³

In this “New” connected world Covid-19 has affected the entire planet where half of the population of the planet has been confined or “locked down”.

We have to accept that economic activity has plunged and is still on a downward trend. The business of the international sale of goods carried by sea has been seriously disrupted. Aviation is now a fraction of what it was before Covid-19.⁴

World Trade not only has to deal with the US/China trade war but the battles between the oil producing countries of the world.⁵

The drop in demand for oil is understandable – and for most if not all industrial raw materials.

For Agricultural [Commodity] Markets we have different problems, excellent harvest prospects with a fear of shortages (panic buying in domestic markets and export restrictions in countries such as Vietnam, Ukraine and Russia).

Considerations moving forward in this New World

1. Shiparrested.com members are of course interested in vessels being detained in the search for security for claims and, of course, in arranging the release of such vessels.
2. The Shiparrested.com website mentions that Members are also active as Commercial and Maritime Lawyers.
3. Since we have to accept that Trade has been disrupted and, where there is disruption to Trade, disputes will follow with claims being put forward. I offer some comments as a commercial commodity and maritime arbitrator.

4. Disruption to Trade/Shipping has not been helped by what I would consider as the ill-conceived withdrawal of funds from the WHO by the USA. This has led to a joint statement by the WHO director and the WTO director-general. This can be seen at [this link](#).

It reads:

COVID-19 has rapidly progressed to become a global pandemic, causing unprecedented, far-reaching impact on the health, social and economic well-being of communities around the world. The World Health Organization (WHO) and World Trade Organization (WTO) are committed to responding effectively to the situation, working together with other international organizations and our respective memberships. Global, coordinated action is required to deal with the extraordinary challenges the pandemic poses to people's health as well as their livelihoods.

Protecting lives is our top priority, and these efforts can be impeded by unnecessary disruptions to global trade and supply chains. Governments' trade policy decisions significantly influence both getting medical equipment and supplies to where they are urgently needed and catalyzing the supply of critical inputs for the production of medicines and health technologies to fight the pandemic. Keeping trade in health technologies as open and predictable as possible is therefore of vital interest. This will help countries to respond to this crisis, to recover from it and to build the health systems that will foster greater resilience in the future.

WHO and WTO are working together to support efforts to ensure the normal cross-border flow of vital medical supplies and other goods and services, promoting them where possible, and to resolve unnecessary disruptions to global supply chains, in furtherance of the International Health Regulations (2005) and WTO rules.

² The period when Brave New World was written. See also “1984” written by George Orwell.

³ President Trump has failed to get the world to call this “Chinese Flu”.

⁴ World trade is set to plummet by between 13 and 32% in 2020 due to the COVID-19 pandemic., [WTO press release 08.04.20 https://www.wto.org/english/news_e/pres20_e/pr855_e.htm]

⁵ Saudi Arabia and Russia have only recently moved to some kind of agreement over production. But what about states like Iran that needs the income from oil production and of course the desperate situation in Venezuela.

The purpose of the International Health Regulations is to prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with public health risks, with a view to minimizing interference with international traffic and trade. WTO rules provide governments with the flexibilities they may need to address essential medical supply shortages and/or public health challenges. But any measure taken to promote public health that restricts trade should be “targeted, proportionate, transparent and temporary”, consistent with recent calls from world leaders. Governments need to avoid measures that can disrupt supply chains and negatively impact the poorest and most vulnerable, notably in developing and least developed countries that are typically reliant on imports of medicines and medical equipment.

We call on our Members to continue to share information about their measures with WHO and WTO, in line with the established transparency mechanisms, which are now especially valuable in supporting a coordinated response. To ensure that health technologies, including diagnostics, medicines, vaccines and other medical supplies vital to treating patients infected by COVID-19, reach those in need quickly, we emphasize the importance of streamlining conformity checks based on regulatory cooperation and international standards.

While we are heartened by the remarkable research efforts and the rapid mobilization of public and private resources to develop COVID-19 health technologies, we call upon governments to implement policy measures that can further facilitate their research and development, and to promote their rapid dissemination within countries and across borders so as to ensure equitable access to those technologies. Such initiatives include targeted investment, ensuring open access to clinical test results, the sharing of relevant intellectual property rights, increasing manufacturing capacity, open and transparent procurement regimes, the elimination of tariffs on relevant health technologies, and trade facilitation measures to reduce costs and delays.

Global action, solidarity and international cooperation are more necessary than ever to address this health situation. WHO and the WTO are working together to play their part.

5. I have underlined the keywords – “resolve unnecessary disruptions” and “avoid measures that can disrupt supply chains”.
6. The disruption will lead to disputes with a party suffering losses looking to obtain security by way of arrest of ships, cargoes (or any other assets that they can find).
7. If this does lead to an increase in those seeking security for their claims then the following may assist in a better understanding of the reasons behind the request for security.
8. In plain words the phrases highlighted in para. 7 cover loading and discharge of cargoes. As the Director General of the WTO remarked in a press conference on 8 April [see f/n 4 above].
This crisis is first and foremost a health crisis which has forced governments to take unprecedented measures to protect people’s lives. The immediate goal is to bring the pandemic under control and mitigate the economic damage to people, companies and countries. But policymakers must start planning for the aftermath of the pandemic.
9. Arrests may well flow from a number of different contracts, Bills of Lading [Bs/L], Charterparties, Insurance contracts as well as the underlying sale and purchase of the commodities being carried.
10. While progress is seemingly being made in flattening the curve of COVID-19 this problem will not go away until a valid, safe vaccine has been developed.
11. The comments from the Director-General of the WTO [described in para. 8 above] cover the reasons why governments around the world have been forced to take unprecedented measures in an attempt to bring the pandemic under control.
12. The WTO is working to limit the economic damage.

13. Some brief examples of problems that could be behind a possible rise in parties seeking security are given below:

I. Infectious diseases

Safe Port Issues - what makes an infected port “unsafe”?

a. Is a shipowner obliged to proceed to a port if there is a risk of contracting an infectious disease?

b. Under English law a port will be “unsafe” if at the relevant time the vessel cannot reach, use and depart from that port without being exposed to danger. Absent any abnormal occurrence which cannot be avoided by good navigation and seamanship.

With an infectious outbreak the concept of safety might be extended to the crew and such a health risk may render the port unsafe.

c. A vessel on Time Charter is obliged to follow the Charterers instructions and the wording of the Charter may well include an express or implied safe port warranty.

Charterers are under an obligation to nominate a safe port (at the time of nomination). If it becomes unsafe after that nomination Owners can request a new nomination - Charterers may well be obliged to cancel that nomination and nominate a new safe port.

d. The position of a safe port under Voyage Charters is different and not so clear. Unless there is a deviation clause in the Voyage Charter Owners may well be in breach, or repudiation, if they failed to proceed to a named port and be liable in damages to Charterers.

e. Whether a port is safe is always a question of fact - which makes “safe port” analysis subject to [and open to] interpretation.

II. Seaworthiness

a. There have been discussions as to whether a vessel can become unfit to receive carry cargo after calling an infected port.

b. Where a vessel is delayed due to quarantine regulations, which then leads to cargo damage, may be considered to render that vessel being considered unseaworthy.

III. Liability to cargo interests (under Bills of Lading)

a. Consider the position when a vessel is ordered to discharge in an unsafe port e.g. a port under lockdown because of Covid-19 or other infectious disease.

b. Under the B/L contract Owners will have a continuing duty of care to the cargo on board. Known in English as a bailee liability.

c. It follows that failure to perform under the B/L contract could be a breach of the delivery obligation and cargo interests may look to proceed against the carrying vessel.

IV. Delay or off-hire

a. Some vessels have already encountered delays because of Covid-19.

b. The USA and Argentina are just two countries with new protocols to address the threat of infectious diseases such as Covid-19. Stricter scrutiny by Health Authorities, and other authorities, is becoming the order of the day.

c. Where there are stowaways or where crew members are afflicted there will be delays.

d. Examination of the relevant Charterparty will need to be undertaken quickly.

e. With regard to stowaways and crew changes, care should be taken with regard to ISPS obligations.

V. Demurrage

a. The question of whether lay time will continue to run (and demurrage accrue) will

depend on the wording of the Charterparty and whether or not the vessel is required to be in *Free Pratique*.

b. If the Charterparty requires the vessel to be in *Free Pratique* before lay time commences Owners will be unable to claim demurrage.

VI. Force Majeure (“FM”)

a. An outbreak of Covid-19 could give rise to attempts to claim FM.

b. Members should be aware that English law [and that of the USA] does not recognise FM. In other words, where the contract is governed by English law and jurisdiction, unless there is a FM clause in that contract there can be no FM claim.

c. How FM will be dealt with under your own jurisdiction is not the subject of this note.

This article is offered by way of assistance but with an ulterior motive as the writer helps to organise the session on “Strange and/or Extraordinary Arrests” at the next annual get together for Members of Shiparrested.com.

I would therefore be very interested to hear if the Covid-19 problem leads to requests to arrest any assets.



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