

Effect of COVID-19 on Maltese shipping industry

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Europe is presently facing its most testing challenge since World War II. Faced with the threat of the COVID-19 pandemic, many EU states are increasingly adopting stringent measures to ensure that the spread is, to the extent possible, contained. Malta is no exception in this regard.

Conscious of the fact that Malta is a small island with one of the highest population densities per square kilometre in the world, local authorities have been busy implementing various staggered restrictive measures aimed at social distancing. These measures range from the closing of all schools to stopping all commercial flights in and out of the island.

As a result, most sectors of Malta's economy have to some extent been affected by this epidemic. The local shipping industry has also been hit with several restrictions in recent weeks.

Restrictions on shipping

In early March 2020, all passenger vessels travelling from Italy were prohibited from entering Maltese ports. By virtue of Port Notice 05/20, the Authority for Transport informed the shipping community that it was imposing an immediate temporary ban on the entry of cruise liners and passenger vessels to Maltese ports. This restriction has now been extended. On 21 March 2020 the superintendent of public health extended the order of a travel ban on persons entering or leaving Malta to and from all countries, including by sea. However, an exception was made for all cargo ships, including container ships and ro-ro vessels carrying goods and essential commodities and tankers loaded with essential fuels.

Legal notices affecting court procedures

The measures taken to date have also affected the legal community. By means of Legal Notices 97 and 65 of 2020, the superintendent of public health has ordered the indefinite closure of:

any of the courts of justice, that is the superior courts and the inferior courts including appellate courts irrespective of their competence or jurisdiction, and includes also any tribunal established by law which operates from the building of the Courts of Justice, and any boards, commissions, committees or other entities which operate from the building of the Courts of Justice before which any proceedings are heard or procedures undertaken which are subject to legal, judicial or administrative time limits for filing any claims, defences or other acts.

The closure order came into effect on 16 March 2020 and will remain in force until it is revoked. Legal Notice 97 of 2020 also sets out the time frames in which an appeal of a decision by any other administrative tribunal, board or body may be filed in court once the latter reopens.

Notwithstanding the above, for now the court registry is still accepting filings in situations where any delay could be seriously detrimental to a party. In such cases, the claimant must file an application to open the court registry and justify the urgency at hand. Within the context of shipping, this effectively means that the filing of warrants of arrest of ships, urgent injunctions prohibiting the transfer of ownership of vessels or the entry of any further mortgages, or any such similar measures, can continue to be filed. Moreover, the processes involved remain expeditious and provided that all documents are in hand, an arrest or a flag injunction can still be carried out in a matter of hours.

Further, to ensure that the closure of courts does not prejudice the rights of any persons, the superintendent of public health has also issued Legal Notices 61 and 84 of 2020 to suspend all

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prescriptive periods and other time bars. During the period that the courts remain closed, the running of any legal and judicial times and any other time limits have been suspended, including peremptory periods applicable to proceedings or other procedures before said courts. This suspension also applies to prescription in criminal and civil matters.

With regard to the legal and judicial time frames, which are not peremptory in nature, Maltese law already caters for the possibility of extending said limits. Article 106 of the Code of Organisation and Civil Procedure, Chapter 12 of the Laws of Malta, allows for such a request on good cause to be made, provided that it is filed within the time period sought to be extended. However, it is not permissible to request such an extension once the original time period has expired. Therefore, in the given circumstances, said article alone would not have provided the necessary safeguards, particularly since it is still unclear when the courts will be reopened. Accordingly, the new legal notices ensure that further protection is offered by legislating the immediate suspension of all such time limits. By doing so, the legislature has also ensured that the judiciary will hopefully not be flooded with extension requests the moment that the courts are reopened.

On the other hand, most peremptory periods cannot be suspended or extended on the request of interested parties. This includes those time bars which cannot normally be derogated from. By way of example, this would include the one-year period to bring a claim in respect of damaged or loss of goods under the Carriage of Goods by Sea Act and those maritime-related time bars found under the Commercial Code. These periods have therefore also all been suspended by means of the superintendent of public health's legislative interventions.

The abovementioned suspension will last until seven days from when the superintendent repeals the court closure order. Thus, where a legal and judicial time frame or prescriptive period would have ordinarily expired in the period when the court is closed, the interested party now has seven days from the reopening of the courts to file the necessary acts or court papers.

Thus, any party involved in disputes or contentious matters which could result in a claim before the Maltese courts should bear the above in mind and also watch this space to see when the Maltese courts will reopen. In the meantime, with respect to urgent filings such as ship arrests and flag injunctions it is very much business as usual in Malta.

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