



IMPACT OF COVID-19 PANDEMIC ON SHIPPING

The COVID-19 Pandemic still rages unabated in April 2020, ravaging and affecting lives, businesses, individuals and industries worldwide in many ways that will change the world forever[1]. The International Labour Organization predicts that as many as 25 million jobs worldwide could be wiped out by a worldwide recession brought about by the Pandemic[2].

In many countries, governments imposed “lockdown” to restrict the movements of its citizens and to control the rapid spread of the pandemic. The lockdown was implemented throughout the countries in South East Asia countries in stages:

(a) **Malaysia:** The Malaysia Government announced a national lockdown on Mar 18, 2020, by issuing the Movement of Control Order (Restricted Movement) initially until 31st Mar 2020, but extended to 14th Apr 2020[3]. Specific exceptions have been given to transportation and some other essential service sectors[4].

(b) **Indonesia:** The Indonesia Government on 15th March 2020 formed the National Disaster Relieve Agency (BNP) and declared National Disaster – Non-Natural situation until 29th May 2020 and request all citizen to work, study and pray from home with all government official work from home effectively[5].

(c) **Singapore:** On 3rd April 2020, Singapore announced ‘circuit breaking’ measures an euphemism for lockdown[6]. Earlier measures implemented included trade measures such as[7] the Maritime and Port Authority of Singapore has started temperature screening at all sea checkpoints, including ferry and cruise terminals, PSA terminals and Jurong Port for inbound travellers. It has also taken additional precautionary measures such as prohibiting shore leave for personnel in Chinese ports, mandatory temperature checks, keeping a log of crew movements and restricting staff travel to China, among others[8].

(d) **Thailand:** The Country lockdown operates until 30 April 2020 Thailand[9].

(e) **Philippines:** President Rodrigo Duterte’s lockdown came five weeks after the first case was discovered, and the declaration of a State of Emergency on March 25, bestowed on him extraordinary powers[10].

Cruise Industry

As the Pandemic raged worldwide, the plight of the passengers and crew on board Cruise Ships and the Cruise Industry came into stark focus.

The Cruise Ships, with large numbers of passengers and crew and emphasis on communal dining and group activities, became incubators of the COVID-19 virus and infections on ships like the Diamond Princess with over 600 infections have been described as floating nightmares[11].

The Diamond Princess operated by Princess Cruise Lines departed from Yokohama on 4 February 2020 for a round trip cruise. On 20 January 2020, an 80-year-old passenger from Hong Kong, embarked in Yokohama, and disembarked in Hong Kong on 25 January. On 1 February, six days after leaving the ship, he visited a Hong Kong hospital, where he tested positive for COVID-19.

The ship was due to depart Yokohama for its next cruise on 4 February, but announced a delay the same day to allow Japanese authorities to screen and test passengers and crew still on board. On 4 February, the authorities announced positive test results for SARS-CoV-2 for ten people on board, the cancellation of the cruise, and that the ship was entering quarantine, affecting a total of 3,700 passengers and crew. By late March it was stated that 712 of 3,711 people on the Diamond Princess, or 19.2% had been infected by COVID-19[12].

From 15 March 2020, Australia banned cruise ships arriving from foreign ports. However, exemptions were granted to allow four ships, already en route to Australia, to dock and disembark its passengers. On 19 March 2020, the Ruby Princess, which was one of the four ships given the exemption, docked in Sydney, after a cruise to New Zealand. The cruise ship was forced to return to Sydney early after a passenger reported a respiratory problem, but when disembarking passengers were not told that anyone on board presented any symptoms during the voyage.

Many countries in Southeast Asia banned the Cruise Ships from disembarking their passengers for fear of importing the virus through infected passengers and crew[13]. The Cruise Ships are often registered under Flags of Convenience e.g. Panama, the Bahamas and other countries chosen for their low wages, cheap fees and lenient health and safety regulations, and, more often than not, non-existent tax regimes[14].

At the time of writing there are still cruise ships with passengers and crew infected by COVID-19 seeking safe harbor. These ships often find difficulty to find countries and ports willing to receive them to disembark passengers[15]. Even the disembarking of passengers and crew from the infected vessels could not proceed without problem[16]. Each country can set conditions for entry into their Ports and many have denied entry to these ships seeking safe harbor. Many of the ships disembarked their passengers at Port Everglades, Florida after arduous attempts to call and disembark elsewhere[17].

These incidents involving Cruise Ships pose the question whether the Cruise Industry can survive or recover from the effects of the Pandemic[18].

Port Congestion

Many countries have responded to the Pandemic by imposing lockdown or restricted movement. Retailers and manufacturers fail to pick up their cargo and containers because their warehouses are full or closed due to not being deemed essential service providers. Some ports remain open but have reduced workforce which exacerbate the cargo congestion. This causes disruption of the supply chain including movement of essential goods and foodstuffs[19]. The cargo and containers lying uncollected at the ports creating congestion and takes up space and capacity and hinders capacity for incoming cargo and containers[20].

Some Ports have taken the precaution to declare 'force majeure' to pre-empt claims and legal liability[21]. The closure of Ports and Port congestion have caused disruptions in the supply chain and import and exports.

Supply Chains

The Pandemic has exposed the fragility of the global supply chains and brought into acute focus the shortages of critical medical components needed in the fight against the Pandemic[22].

Wuhan and China in general were important manufacturing bases for manufacturing of key components for companies like Apple[23]. The Pandemic lockdown and measures taken stopped manufacturing of crucial component items and disruption of supply chain[24]. When the manufacturing Countries ravaged by the Pandemic find it hard to provide adequate medical care due to shortages of critical medical equipment such as ventilators, protective masks and other gear[25]. This has caused the rise of infections and spread of the COVID-19 virus.

In the US which is now one of the Centres of the Pandemic, President Trump has asked American manufacturers to manufacture ventilators to make up the acute shortages faced by the American hospitals[26].

The U.S. shortage has multiple causes, including problems with the global supply chain. Before this pandemic, for instance, China produced approximately half the world's face masks. As the infection spread across China, their exports came to a halt. Now, as the infection spreads globally and transmission in China slows, China is shipping masks to other countries as part of goodwill packages. The United States has not been a major recipient[27].

Crew

The Philippines, China, India, Indonesia are among the biggest suppliers of crew members. According to one report, the Pandemic has caused some 40,000 Indian crew serving on merchant and cruise ships to be stranded worldwide[28].

Airline and port restrictions in most of these countries have made it nearly impossible for crew members to get home if the governments do not make special arrangements. Even if a ship reaches an open port, the crew members may still be out of luck because most international air traffic is grounded[29].

The safe repatriation of the crew from the vessels will require the joint efforts of the governmental agencies, the crew manning agency and the owners[30].

Insurance

The Insurance implications arise from the disruption of shipping, logistics due to the Pandemic.

Cargo owners, importers, risk managers and insurers need to monitor closely: (a) Accumulation of Cargo; (b) Delay; (c) Delay Clause; (d) Demurrage Charges; (e) Deviation; (f) Force Majeure; and (g) Interruptions in Transit.

The insurance implications of the disruption include[31]: -

(a) Cargo and stock throughput – expected limited workforce being available at all key points of the supply chain will reduce capacity to distribute and handle goods. Cargo is also envisaged to be held for a longer duration at ports and for storage locations to see a volume increase whilst stocks await their next destination.

(b) These areas raise the limitations of cover of the normal marine cover:

- Delay – although many will want to keep their cargo moving to prevent any obstacles on trading, delay during the ordinary course of transit or whilst the goods are in storage could soon be inevitable. Most cargo and stock throughput policies exclude loss or damage solely caused by delay.
- Additional costs/charges –hold-ups or re-routing goods to an alternative destination due to government prohibition will incur an additional cost. Although these costs are usually sub-limited, the additional forwarding costs clause; or similar, will provide extra financial support should you experience added expenses on top of the usual outgoings.

- Vulnerable goods – perishable items such as pharmaceutical products and food produce operate on a stringent and well-monitored time schedule. The normal cover for marine insurance does not cater to the characteristics of these cargo, as insurance cover is excluded by the exclusions of inherent vice and delay, both will operate when ports are congested and cargo clearance are delayed in the current Pandemic outbreak.

Legal Disputes

The disruption caused by Pandemic has legal effects.

The cargo owner who charters vessels to ports to load or to discharge cargo is required to nominate a 'safe port' i.e. a port which the vessel can safely call at, conduct cargo operations and safely leave[32]. When the intended port is closed, the cargo owner / charterer would be obliged to nominate an alternative port. This is often not possible as there will not be any alternative destination the cargo can be discharged at.

If the cargo is non-essential cargo, it cannot be moved to the ports during a national lockdown. This may result in the Vessel arriving at the Port and finding no cargo to be shipped, causing incurring of costly demurrage.

Before the Vessel can take on cargo, the Vessel must be cleared by the health authorities of the port, a process of obtaining 'free pratique', i.e. that the Vessel is free of infectious disease[33]. In the Pandemic affected countries the process of vetting the crew may take time and this delay will fall on the shipowner, rather than on the Charterer.

The effects of the Pandemic may possibly be covered in the Force Majeure Clauses in some contracts but these are not uniform and will not be always be available. The disruptive effects of the Pandemic will cause losses and the result in the most part will be to determine who will bear or share these losses.

While these legal issues and disputes do not immediately arise, they will certainly surface once the Countries recover from the immediate effects of the Pandemic.

Important Information

Azmi & Associates has set up Azmilaw Task Force to look into all issues arising from COVID-19 and MCO. Clients' are welcomed to contact their usual Partner who will bring their issues to Azmilaw Task Force for our further Action.

1. See How the Coronavirus is reshaping Asia's borders, business and trade <https://asia.nikkei.com/Spotlight/Cover-Story/How-the-coronavirus-is-reshaping-Asia-s-borders-business-and-trade>
2. See Jobs Destroyed Worldwide as Coronavirus Sparks Recession : <https://www.bloomberg.com/news/articles/2020-04-03/jobs-destroyed-worldwide-as-coronavirus-sparks-recession>
3. Under the Prevention and Control of Infectious Diseases Act 1988 and the Police Act 1967. Specific exceptions have been given to transportation and some other essential service sectors see: <https://www.straitstimes.com/asia/se-asia/coronavirus-malaysia-seeks-to-clear-congested-ports-to-move-essentials-amid-curbs>
4. <https://www.straitstimes.com/asia/se-asia/coronavirus-malaysia-seeks-to-clear-congested-ports-to-move-essentials-amid-curbs>
5. <https://www.csis.org/programs/southeast-asia-program/southeast-asia-covid-19-tracker>
6. See <https://www.scmp.com/week-asia/health-environment/article/3078297/singapore-close-schools-most-workplaces-next-week>
7. Stefania Plama, "How Singapore Waged War On Coronavirus," The Financial Times, March 2020. <https://www.ft.com/content/ca4e0db0-6aaa-11ea-800d-da70cff6e4d3> .
8. <https://www.bangkokpost.com/opinion/opinion/1882665/asias-maritime-trade-torpedoed>
9. <https://www.channelnewsasia.com/news/commentary/coronavirus-lockdown-malaysia-philippines-thailand-indonesia-sea-12589898>; the lockdown had caught the migrant workforce unprepared and stranded see: <https://www.aljazeera.com/news/2020/03/coronavirus-lockdown-leaves-migrant-workers-stranded-thailand-200328060111830.html>
10. <https://www.channelnewsasia.com/news/commentary/coronavirus-lockdown-malaysia-philippines-thailand-indonesia-sea-12589898> ;see also : <https://edition.cnn.com/2020/03/17/asia/coronavirus-covid-19-update-intl-hnk/index.html>
11. See <https://www.theverge.com/2020/2/20/21145315/coronavirus-cruise-ship-outbreak-diamond-princess-policy-impact>.
12. See McFall-Johnsen, Morgan (28 February 2020). "How the 'failed' quarantine of the Diamond Princess cruise ship started with 10 coronavirus cases and ended with more than 700". Business Insider.
13. See : <https://www.thestar.com.my/news/nation/2020/03/08/malaysia-bans-cruise-ships> . In the case of the Holland America Line Cruise Ship Westerdam, the Cruise Vessel allowed to call and disembark in Cambodia, there is evidence of evidence of infection in passengers who disembarked see: <https://www.cnn.com/2020/02/22/malaysia-says-american-coronavirus-case-now-tests-negative-for-virus.html>
14. See Bridie Nolan writing on the case of the Ruby Princess <https://www.linkedin.com/pulse/save-our-souls-catastrophe-cruising-under-flag-bridie-nolan/?trackingId=fPiSuASRD1A9LFDc7iQEfA%3D%3D>
15. See Costa Fortuna, accepted by Singapore after rejected by Thailand and Malaysia: <https://www.thesundaily.my/world/singapore-to-allow-ship-barred-by-malaysia-and-thailand-to-dock-AF2106002> ,
16. In the case of MS Amadea Phoenix Resen, only European crew was allowed to disembark at its port of registry at Bremerhaven : <https://www.thestar.com.my/news/nation/2020/04/04/msian-duo-not-allowed-to-disembark-at-ships-port>
17. As many as 120 ships carrying some 120,000 passengers were allowed to disembark, see Maritime Executive Report: <https://www.maritime-executive.com/article/250-000-cruise-passengers-disembarked-in-u-s>
18. See the Video Feature, Can Cruise Lines recover from Coronavirus? <https://youtu.be/uDiR4Qm4O-w>
19. See the disruption at the Philippines Ports see: <https://www.scmp.com/week-asia/economics/article/3078166/coronavirus-philippines-cargo-containers-packed-food-pile-ports>; also <https://www.bloomberg.com/news/articles/2020-03-30/lockdown-leaves-thousands-of-containers-piling-up-in-manila-port>
20. See the Federal Maritime Commission to address port congestion : <https://www.thompsonhine.com/publications/fmc-to-address-covid-19-port-congestion-by-engaging-industry-stakeholders>; directive by Malaysia's Ministry of Transport see : <https://www.thestar.com.my/news/nation/2020/03/28/container-congestion-at-ports-being-eased-off>; also <https://www.thestar.com.my/news/nation/2020/04/03/dr-wee-freight-forwarders-hauliers-given-another-four-days-to-move-essential-goods>
21. Standard P & I Club has usefully collated the Indian Position and these notices : <https://www.standard-club.com/risk-management/knowledge-centre/news-and-commentary/2020/03/news-indian-ports-declare-force-majeure-due-to-the-covid-19-outbreak.aspx>
22. See : <https://www.weforum.org/agenda/2020/03/covid-19-coronavirus-lessons-past-supply-chain-disruptions/> ; On the factors needed for the recovery of the Supply Chain see : <https://www.greenbiz.com/article/what-it-will-take-china-rebuild-global-supply-chain-resilience-after-covid-19>
23. The manufacturing of components of iPhone were disrupted by the Wuhan Virus lockdown. This and the earlier imposition of tariffs on China manufactured goods due to trade war has caused manufacturers like Apple to consider moving their supply chain to other countries or to move back manufacturing to home countries see: <https://www.businessinsider.my/wuhan-coronavirus-apple-reliance-china-iphone-production-foxconn-supply-chain-2020-2?r=US&IR=T>
24. See: <https://www.cnn.com/2020/03/16/coronavirus-wreaks-havoc-on-retail-supply-chains-globally.html>

25. See The New England Journal of Medicine Report: <https://www.nejm.org/doi/full/10.1056/NEJMp2006141> ; also World Economic Forum : <https://www.weforum.org/agenda/2020/04/covid-19-ventilator-shortage-manufacturing-solution/>
26. See : <https://www.vox.com/recode/2020/3/20/21186749/ventilators-coronavirus-covid-19-elon-musk>
27. See The New England Journal of Medicine Report: <https://www.nejm.org/doi/full/10.1056/NEJMp2006141>
28. The Economic Times 5 April 2020 : <https://economictimes.indiatimes.com/news/politics-and-nation/about-40000-indian-seafarers-stranded-across-globe-on-account-of-lockdown-maritime-bodies/articleshow/74991612.cms?from=mdr>
29. New York Times 25 March 2020 : <https://www.nytimes.com/2020/03/25/world/europe/coronavirus-ship-crews-trapped.html>
30. As in the case of the coordinated repatriation of the Philippines crew see Inquirer Net 5 April 2020: <https://globalnation.inquirer.net/186493/nearly-1000-stranded-filipino-cruise-ship-workers-arrive-in-ph-dfa>; see also <https://gulfnnews.com/uae/coronavirus-philippine-embassy-to-send-stranded-filipino-seafarers-back-1.70788463>
31. Alert: The Impact of COVID-19 on Marine Insurance at <https://www.aon.com/getmedia/0c251378-6888-4df1-82d1-062e3c11cdde/COVID-19-Impact-on-Marine-Cargo-Insurance-March-2020.aspx>
32. See <https://www.maritime-executive.com/article/coronavirus-shipping-needs-to-consider-charterparty-obligations>
33. See eg the Port Regulations of the Maritime and Port Authority of Singapore Circular No 11 of 2014 : <https://www.mpa.gov.sg/web/wcm/connect/www/9755aabc-24b7-410a-9706-975f44675953/pc14-11.pdf?MOD=AJPERES>

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We hope the above discussion is of assistance to you and your company. If your company's operations or contractual obligations are affected by the COVID-19 outbreak, we are ready to assist you on any queries you have.

Corporate Communication
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