



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

CONTRACTS FOR THE CARRIAGE OF GOODS BY SEA AND MULTIMODAL TRANSPORT

**KEY ISSUES ARISING FROM THE IMPACTS
OF THE COVID-19 PANDEMIC**



**COVID-19
RESPONSE**

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Two related briefing notes on: "[COVID-19 implications for commercial contracts: carriage of goods by sea and related cargo claims](#)" (UNCTAD/DTL/TLB/INF/2021/1), and on "[COVID-19 implications for commercial contracts: International sale of goods on CIF and FOB terms](#)" (UNCTAD/DTL/TLB/INF/2021/2), prepared under the same project, may also be of interest to readers, and should be considered in context.

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Executive summary

Since the beginning of the COVID-19 pandemic, which was declared by the WHO on 11 March 2020, and in response to the emergence of new variants, countries have imposed, eased and re-imposed various restrictions on daily life, including for the entry and exit in ports. This has resulted in disruption and delay, with implications for the performance of commercial contracts for the carriage of goods. This report has been prepared to assist commercial parties to better understand the relevant implications and to consider potential approaches to addressing some of these. It examines some of the key legal issues arising from the pandemic as they affect contracts for the carriage of goods by sea, as well as time charterparties, and multimodal contracts of carriage that (may) involve carriage by sea. It also considers some of the existing standard form clauses that have been developed by industry associations for incorporation into charterparties to provide for commercial risk-allocation as between the parties. Finally, the report provides some relevant recommendations for commercial parties, as well as related considerations for policymakers.

Part A of the report provides an overview of the effect of the pandemic on carriage of goods operations as well as an overview of contracts of carriage of goods by sea, multimodal transport, and time charterparties; and highlights likely types of pandemic-related issues arising. Part B examines two general contractual issues relevant to all such contracts – frustration and force majeure clauses. Part C considers specific issues arising for: ocean carriage under bills of lading and waybills (Section 1); voyage charters (Section 2); time charters (Section 3); and multimodal transport contracts (Section 4). Part D presents and briefly discusses bespoke pandemic clauses that have been developed for incorporation into charterparties, to provide for commercial risk-allocation. Finally, Part E sets out some relevant recommendations for commercial parties, as well as related considerations for policymakers.

The main types of issues that arise from the pandemic in the context of the performance of contracts for the carriage of goods fall into the following categories:

- The carrier's right to redirect the cargo due to unsafety of the discharge port, congestion at the discharge port; or to deviate to drop off sick crew for medical attention; and liability under time charters for additional bunkers consumed.
- Effect of delays due to crew changes.
- Suspension of laytime during crew changes effected while sailing away from anchorage to another port; while vessel waiting to be called to berth.
- Concurrent causes of delay, e.g. quarantine and congestion.
- Cancellation of contracts due to the vessel not having obtained free pratique at the cancellation date.
- Economic loss due to delay caused by quarantines and congestion at ports, due to the pandemic.
- Detention of vessels due to crew overstaying the maximum period on board under the Maritime Labour Convention 2006.
- Physical damage to perishable cargoes due to delay caused by quarantines and congestion at ports, due to the pandemic.
- The effect of force majeure clauses on liability for such delay.
- The potential frustration of the contract of carriage or time charter due to the delays in performing the carriage or the nominated voyages, resulting from pandemic restrictions at ports.
- Delays on the final voyage under a time charter, due to COVID restrictions, resulting in late redelivery by the time charterer of the vessel.
- Insolvency of owners or charterers due to the pandemic.

The effect of a force majeure clause in the pandemic as regards delay will often be limited, as pandemic restrictions will generally not have prevented performance, only delayed performance and/or made

performance more costly. Some force majeure clauses will refer to 'unforeseeable hindrances', and here the time frame of the pandemic will be significant.

Implications for different types of contracts of carriage arising from the pandemic

As the analysis in this report shows, there are a number of implications arising from the pandemic for different types of contracts of carriage. Key observations in this respect include the following:

Voyage charters

The main issues here will be the allocation of risk as regards delays in entering ports and in loading/discharging once there. Initially, the risk of delay will fall on shipowners as until free pratique is obtained and the vessel is out of quarantine, owners will be unable to give a valid Notice of Readiness (NOR). Thereafter the risk of delay will be on charterers. For charters negotiated after the emergence of port delays and restrictions following the declaration of the pandemic on 11 March 2020 these risks can be addressed by negotiation as to laytime allowed and clauses regarding the start of laytime. The start of laytime and the readiness of the vessel will also be an issue as regards cancellation.

Time charters

The outbreak of COVID in a country to where the charterer has ordered the vessel to load or discharge will not make that port unsafe as safety precautions have been put in place which should protect the health of the crew, and any call at such port would not result in the barring of the vessel from access to ports in other countries; the fact that it may be subject to quarantine would seem to be insufficient to make the first port unsafe. The effect of quarantine periods on off-hire will depend on the wording of the particular off-hire clause. Looking at NYPE 1946 clause 15, the vessel would go off-hire for any quarantine related to crew testing positive for COVID-19 under the wording 'any other cause preventing the full working of the vessel'. More generally imposed quarantines, such as a routine 14 day quarantine on all incoming vessels, would need the addition of 'whatsoever' to 'any other cause'.

Bills of lading

The Hague and Hague-Visby Rules defences in Article IV (2) of restraint of princes (g), quarantine (h), and the 'catch all' defence in (q) should be applicable in cases of physical or economic loss caused by delays in loading or discharging the cargo, but it is possible that if quarantine is imposed due to crew testing positive for COVID at the discharge port, that the vessel could be regarded as unseaworthy before and at the start of the voyage; if that quarantine was a cause of the loss or damage then the carrier would not be able to rely on the defences in Article IV (2) unless it could show that it had exercised due diligence to make the ship seaworthy before and at the start of the voyage. This is a non-delegable duty, so fault on the part of crew members – coming back from shore leave knowing that they may have contracted COVID – would be attributable to the carrier. This possibility needs to be

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