

COVID-19 AND THE LEGAL IMPACT ON THE SHIPPING INDUSTRY AND THE CASE OF CYPRUS

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The Legal impact on the shipping industry

A ship, being a non-living object, cannot be infected by COVID-19, but the same does not apply to those executing shipping contracts. Parties to agreements directly or indirectly relating to shipping are often confronted with legal issues arising from the spread of the Coronavirus pandemic, also due to the fact that the shipping industry is strongly characterized by the element of foreignness.

At the end of January 2020, the World Health Organization (WHO) declared the outbreak of COVID-19 an "*international emergency of public health concern*". While the Coronavirus outbreak at the beginning was an issue that focused mainly on China, it has spread rapidly to all countries of the European Union, and eventually to the entire world. The virus did not take long, only a few weeks to become uncontrollable in several countries. Governments, in the absence of past experience, take measures necessary for the management of health systems but "deadly" for commercial contracts. Cyprus is one of the countries where "lock-down" measures were taken.

These measures have inevitably impacted on the shipping industry as well and the situation requires shipping industry players to pay close attention to the evolution of the pandemic and any legal issues that may arise. Explaining the prevailing situation, many ports around the world have introduced crew control and the isolation of vessels arriving from ports of countries with a high incidence rate. Furthermore, the number of vessels operating from, to or through these ports has decreased dramatically since January. Reservations for container vessels, oil tankers and dry cargo vessels, on the other hand, are decreasing rapidly.

The cruise vessel industry has also been affected and many cruise vessels have been placed in isolation due to large number of cases of infected passengers. They are also quarantined to prevent the virus from being transmitted from passengers if the ship reaches ports to the local population in the ports. However, governments have been criticised for quarantining cruise vessels, such as the *Diamond Princess*, which was quarantined off the coast of Japan due to an infected passenger, leaving several hundred passengers sick.

Unsurprisingly, the pandemic is affecting the settlement of shipping agreements. As evidenced by the situation described above, contracts for the sale of goods and charter agreements are some of the types of agreements that are affected. Legally speaking, the law of contracts provides for specific remedies in cases where unavoidable events, such as *Act of God*, make their implementation impossible. If the legal instruments in force are interpreted and used prudently, recognizing the gravity of the situation, the shipping industry will not "sink". Recently, Chinese shipyards invoked force majeure clauses in ship repair contracts that were delayed due to the closure of several shipyards but also due to lack of components.

As a rule, agreements are binding commitments. A basic principle of contract law is that the obligations arising from the agreements must be fully achieved. An exception to this principle is the principle of frustration of the agreement. Some features of this principle are the existence of a valid agreement, but due to an unexpected event, for which neither party is responsible, its implementation is no longer possible. A significant authority, is the English case *Taylor v. Caldwell* in 1863. In Cyprus Law, this principle is part of the Cyprus Law, the Law on Contracts, CAP. 149, Article 56.

A similar principle of frustration is the concept of Force Majeure as it has prevailed, but which differs substantially. The main difference between the two is that the concept of force majeure has no specific meaning. It has been highlighted in several decisions, in *Thomas Borthwick (Glasgow) Ltd. v. FawreFairclough Ltd. (1968)* that this is a descriptive concept in relation to which evidence can be provided as to its scope. However, it is accepted that it has a broader meaning than the 'Act of God', since in the case of *Matsoukis v. Priestman & Co (1915)* a strike that had caused serious problems in the defendant's business was considered to fall within the term.

The second difference is the legal effect of the two. In the event of frustration, invoking Article 56, the agreement will inevitably be frustrated at the same time, regardless of the will of the parties to the agreement. Conversely, when it is judged that a term of the contract which provides for the principle of force majeure applies, it may have different effects. For example, in the case of force majeure the result may be an extension of time to fulfil an obligation.

Most contracts used in the shipping sector include clauses on cases of force majeure. These clauses mainly provide that a party may be released from the contractual obligation to comply with the agreement if certain circumstances (unavoidable events) occur outside the control of the parties. However, the absence of such a term in an agreement does not mean that it cannot be annulled since Article 56, CAP.149, as described above, can be invoked. Whether a term is included in relation to the force majeure principle in the agreement or not, invoking the above should be mediated by facts which make it impossible to fulfil the agreement or modify the substance of the agreement.

With regard to the contracts concluded before the outbreak of Coronavirus, it is accepted that the measures taken by the governments in relation to the pandemic constitute a sufficient reason for evidence of force majeure. However, due to the increasing publicity of the pandemic, it is now widely known that there is a risk. As a result, the agreements reached after the outbreak of the pandemic are deprived from the invocation of the force majeure principle, as it will now be considered a reasonably predictable event and therefore will not be considered a force majeure event.

It can also be argued that the breach of the terms of the agreement due to the virus is a matter of force majeure even if it is not related to any government measures, at least in severely affected geographical areas, as long as there is causation. Another case is when in charter agreements, charterers, due to the virus, are called upon to designate safe ports for the ship to sail. Port security has to do both with physical factors (port depth, location, etc.) and with factors such as whether there is a state of war in that port or even if there is any form of embargo by International Organizations.

If the port where the vessel is called to dock is considered unsafe, charterers may be required to designate an alternative port. It is debatable, however, from a purely legal point of view, whether the crew contamination is sufficient to make a port dangerous, in the sense that there is no risk of physical damage to the vessel. It is more practical in the case where the local authorities order a boat not to enter their port.

The Contracting Parties may include in the Agreement explicit provisions delimiting such matters. An example of a standard clause is the BIMCO Supplytime 2017 form, which in clause 25 includes the "BIMCO Infectious of Contagious Diseases" clause for time / travel charter parties. If this clause is included in the agreement, charterers may be required to issue alternative travel orders to avoid areas affected by infectious and contagious disease, while charterers are responsible for all additional costs and liabilities.

The Case of Cyprus shipping industry

The impact of COVID-19 on the Cypriot economy, business and society in general has been enormous. Businesses have been forced to operate in an emergency situation, while the demand in many sectors, such as tourism, construction, investment, transport and trade in goods other than food and medicine have been dramatically decreased, causing uncertainty. One can compare the current situation in Cyprus is similar with the situation existed during the financial crisis in 2013, but the main difference, is that this financial crisis affected mainly the financial banking sector of Cyprus, while nowadays concerns all the sectors. The entry restrictions and lockdowns imposed by many countries are causing serious disruption to the shipping sector, while reduced production activity is significantly affecting shipment volumes and traffic. The COVID-19 outbreak was expected to cause short-term uncertainty in the industry, while the shipping sector remains under high pressure which is expected to continue for a few months.

The cumulative consequences of the pandemic on the shipping sector and the legal consequences of this have not yet been clearly defined. The Baltic and Maritime Council (BIMCO) clearly expressed that the sector shall work collectively in order to solve the problems that arose. Many answers will not be found in the contracts nor in the laws, hence the parties involved ought to give a valiant effort to address and discuss their current issues caused by the pandemic and discover the best solution for all the parties. In Cyprus, the Deputy Ministry of Shipping (DMS) responded immediately and provide support to shipping companies and shipowners flying the Cypriot flag. Today, the DMS remains fully operational and continues to provide high-quality services without interruption in order that all Cypriot flag vessels continue to operate as before.

Circular 9/2020 issued on 9 April 2020 aims to support shipping companies and shipowners with the Cypriot flag, minimizing the impact of the COVID-19 epidemic. The circular contains published DMS instructions on the restrictive measures implemented by both the Cyprus Port Authority and Contractors / Operators / Authorized Representatives for port services and port facilities during the pandemic.

There is the need to support the Cypriot shipping industry, which was also affected by the pandemic. It is of high importance to mention that passenger vessels are not operating due to the current situation and many Cyprus vessels remain docked. Furthermore, commercial vessels are still operating but they are also facing a decrease in the voyage's contrary to the past. Many actions are needed to be taken in order to support the shipping industry in Cyprus, as if the current situation remains, the shipping industry will face serious problems as it is a driving force for the trade. Regarding the risk of infection by the Cyprus

marinas and ports, Cyprus has taken all the reasonable measures for the control of passengers and crew members.

The sudden spread of the virus is affecting humanity at all levels. In addition to the many deaths, the pandemic will leave behind a huge financial crisis at both private and public level. The shipping sector could not pass unscathed. Legal tools as mentioned above are present, not to eliminate but to mitigate the damage. For shipowners and other stakeholders, it is important to approach the situation in good faith and with negotiating patience in order to overcome this critical situation.

The shipping industry worldwide has been affected and the future of the industry remains uncertain due to the impact of the pandemic. No one knows if the pandemic is going to exist in the future and if yes, the ways to combat the effects and the disaster caused by COVID-19.