

COVID-19:

NIGERIAN PORTS AND WATERS REMAIN OPEN FOR BUSINESS

- 1 With a view to mirror, allegedly, advice provided by the World Health Organisation (WHO), International Maritime Organisation ("IMO"), International Labour Organisation (ILO) and the Nigeria Center for Disease Control (NCDC).
- 2 <http://www.imo.org/en/MediaCentre/Hot-Topics/Documents/Circular%20Letter%20No.4204Add.6%20%20Coronavirus%20Covid-19%20Preliminary%20List%20of%20Recommendations.pdf>

Overview

The outbreak of the coronavirus disease ("COVID-19") has necessitated several developments worldwide, including restrictions and or directives that are affecting business operations. These developments have led Nigeria (and the ministries, departments and agencies of the federal and state governments) to issue several regulations, notices and directives which affect its seaports, logistics, shipping and oil services and international trade sectors. This briefing, therefore, highlights some of the aforesaid regulations, notices and directives as well as our commentary.

Docking at Nigerian Ports

The President of the Federal Republic of Nigeria, on [March 26, 2020](#), issued docking restriction directives (the "[Docking Directives](#)") which provide that only cargo ships that have been at sea for more than fourteen (14) days will be allowed to dock [in Nigerian ports](#) after the crew of such vessels have been tested by the Port Health Authorities and confirmed COVID-19 free. However, the aforesaid fourteen (14) day timeline does not apply to cargo vessels carrying oil and gas products as, by their nature, there is minimal human contact on such vessels.

Further, pursuant to the COVID-19 Marine Notice issued by the Nigerian Maritime Administration and Safety Agency ("NIMASA") on [March 30, 2020](#)¹, international marine vessels or crew members/passengers with history of visiting any country with reported cases of COVID-19 since February 1, 2020 are barred from entering into any Nigerian ports from [March 30, 2020 to April 21, 2020 at the earliest](#) and only international marine vessels with thermal screening facilities for passengers and crew may be allowed to berth at Nigerian ports.

The COVID-19 Marine Notice requires passengers and crew members on board vessels seeking to berth at Nigerian ports to fill out a Self-Reporting Form after which they would be subject to thermal screening by a Port Health Officer ("PHO") to declare them COVID-19 free.

Comments

As commendable as the above stated eligibility criteria for cargo ships to dock at Nigerian ports are, we note that they conflict with the IMO recommendation (further to the out-come of the G20 Leaders' Summit on COVID-19 which held on March 26, 2020) that governments and national authorities should strongly ensure that all visiting commercial ships continue to have access to berths in port and terminals.² The fact that a cargo vessel is at sea less than fourteen (14) days should not prevent her from berthing and discharging her cargo but same should be determined on a case by case basis. In the spirit of the exemption granted to cargo vessels carrying oil and gas products, we are of the opinion that vessels whose cargo require no contact with her crew for its discharge (or where minimal crew contact is required, and there is a healthy crew that can assist), should be permitted to dock and discharge subject to compliance with the COVID-19 Marine Notice.

We, therefore, recommend that the NPA, NIMASA and Department of Petroleum Resources ("DPR") (for reasons discussed below) promptly procure that the President implements the above stated IMO recommendation.

Taking into consideration the current turnaround time for COVID-19 tests and the limited number of testing kits in Nigeria,



- 3 <http://thenigerianmaritime-news.com/?p=6159>
- 4 Pursuant to The Quarantine Act, Cap Q2, Laws of the Federation of Nigeria 2004.
- 5 Regulations 1(1) and (2) of the COVID Regulations.
- 6 Also exempted from the Lockdown Regulation are (i) hospitals and businesses providing health care related and essential services; (ii) commercial establishments involved in (a) food processing, distribution, and retail companies, (b) petroleum distribution and retail entities, (c) power generation, transmission and distribution companies, (d) private security companies; (iii) the financial system and money market companies, and (iv) workers in telecommunication companies, broadcasters, print and electronic media staff who are able to prove they are unable to work from home.
- 7 Regulations 2(1) of the COVID Regulations.
- 8 Regulations 2(2) of the COVID Regulations.
- 9 Via a press statement released on March 31, 2020.
- 10 Further to the Managing Director of the NPA, Hadiza Bala Usman, visits to on March 2, 2020: <https://nigerian-ports.gov.ng/2020/04/03/md-mpa-tours-ports-in-lagos/>

the required testing and screening of vessels (these include for vessels with oil and gas products, as the COVID-19 Marine Notice does not exclude them) that are allowed to berth will ultimately result in delays and a backlog of vessels waiting to be cleared at the Lagos seaports. Ship owners and charterers are advised to take precautions such as setting up pre-arrival declaration of health and containment processes to aid and/or minimize delay. Parties are also advised to review their charterparties and contracts of carriage to ascertain, inter alia, grounds for the de-fence of a delay or non-delivery claim as a result of the aforesaid COVID-19 regulations at Nigerian ports.

Operations at Lagos Seaports

Prior to the issuance of the Docking Directives, the Nigerian Ports Authority ("NPA"), the government agency that governs and operates Nigerian seaports, on [March 28, 2020](#) released a press statement wherein it directed all terminal operators in Nigeria to suspend all applicable terminal storage fees on consignments for an [initial period of twenty-one \(21\) days from March 23, 2020](#) (the "Terminal Storage Waiver"). This directive was taken by the NPA, not only in an attempt to aid the containment of COVID-19, but in line with its obligation to: (i) relieve the burden that the COVID-19 pandemic has taken on Nigerians as well as (ii) attain the Federal Government's Ease of Doing Business Policy during this challenging period. In recognition of the financial implication of the Terminal Storage Waiver, the NPA would be compensating the terminal operators with rent-free days for the duration of the Terminal Storage Waiver.³

The President also issued⁴ the COVID-19 Regulations 2020 (the "COVID Regulations") on [March 30, 2020](#) by which he declared COVID 19 "a dangerous infectious disease" and ordered, inter alia, the cessation of all movements in Lagos State (the epicenter of COVID-19 in Nigeria), Ogun State and the Federal Capital Territory, Abuja for an initial fourteen (14) days with effect from 11pm on March 30, 2020; and all businesses and offices within the aforesaid states are to remain closed during the aforesaid timeline (the "Lockdown Regulation")⁵.

The Lockdown Regulation, however, does not apply to Lagos seaports⁶ as the President ordered all seaports in Lagos to remain operational subject to the Docking Directives (the "Operational Regulation").⁷ The President also ordered the thorough screening of all vehicles and drivers conveying: (i) essential cargoes from the Lagos seaports into Lagos and other States in Nigeria, and (ii) food and other essential and humanitarian items into Lagos (including its seaports) from other parts of Nigeria.⁸

Further to the Operational Regulation, and to assure all stakeholders of its commitment to facilitation of trade in Nigeria, the NPA confirmed⁹ that arrangements had been put in place for (i) operations at Lagos seaport to continue without hindrance, (ii) safety procedures which will guarantee the wellbeing and security of stakeholders and staff, and (iii) all other government agencies, responsible for smooth operations in the ports, to be at their respective duty posts.

Comments

It is confirmed that terminals at Lagos seaports (such as APM Terminal, PTML Terminal, ENL Terminals and SIFX Terminal) are complying with the Operational Regulation¹⁰ and implementing the Terminal Storage Waiver. Notwithstanding, clients and other stakeholders should note that the Terminal Storage Waiver does not apply to demurrage and detention fees contractually provided for in charterparties and other contracts of carriage.

Standard charterparties and contracts of carriage (such as BIMCO GEN-CON 1994) provide for a 'laytime' within which the cargo is to be loaded and discharged from the vessel, after which the charterer is liable to pay demurrage. As such it is very likely that the Docking Directives may cause charterers to exceed the laytime to discharge their cargoes and be liable to pay demurrage to the shipowners/shipping companies. Charterers are, therefore, advised to review the provisions of their charterparties or contracts of carriage to identify, inter alia, steps to mitigate exposure that may arise as a result of the delays in discharging their cargo during this COVID-19 period.

Operations Within Nigerian Waters

Other than the port related operations, as discussed above, we highlight herein regulations, notices and/or directives that affect general shipping operations within Nigerian waters.

Crew Disembarkation / Crew Changes

In relation to crew disembarkation and crew changes, the COVID-19 Marine Notice, which applies to vessels arriving at Nigerian ports and vessels already operating in Nigerian waters, requires:

- (a) all maritime stakeholders to develop risk assessments and safety intervention guidelines for their personnel and operations on the areas of vulnerabilities of their maritime operations that can be affected by the COVID 19 pandemic including but not limited to offshore operations such as [crew/personnel changes, visits from onshore and other locations for provision of supplies, maintenance and repairs](#), etc.
- (b) all ongoing and/or other scheduled offshore operations requiring new crew or crew changes from affected countries shall ensure that pre-departure tests for COVID 19 are conducted on such persons, and self-isolation procedures for the prescribed period are instituted for such new crew/personnel before exposure to other personnel.
- (c) shipping agent/master of vessels shall submit all documents related to crew and passengers regarding their travel to/from the COVID-19 affected countries.
- (d) That no sick passengers/crew shall be allowed to board any ship by the shipping agent and/or master of vessel.
- (e) Any crew member or passenger exhibiting symptoms of the disease would not be permitted to disembark from the vessel and would be quarantined on the vessel and their samples sent to a facility to test for COVID-19.
- (f) That when seafarers certificates expires and the need to renew arises within the prevalent conditions in relation to COVID-19, a flexibility on a case by case basis would apply.
- (g) That strict compliance with Port Health and Nigerian Immigration Services laws should be adhered to in relation to the issuance of shorepass to local and international seafarers.
- (h) That where a seafarer is confirmed to have contacted the COVID-19, the Shipping Company, Agent or Crewing/Manning Company should report to the Agency in addition to submission of daily situational report on action taken.



- 11 <http://www.imo.org/en/MediaCentre/HotTopics/Documents/Circular%20Letter%20No.4204Add.6%20%20Coronavirus%20Covid-19%20Preliminary%20List%20of%20Recommendations.pdf>
- 12 <https://guardian.ng/news/covid-19-rivers-government-closes-all-borders/>; <https://www.channelstv.com/2020/03/27/covid-19-wike-orders-closure-of-all-markets-in-rivers-state/>
- 13 <https://www.dpr.gov.ng/dpr-orders-oil-firms-to-reduce-offshore-workforce/>
- 14 This directive was issued after the NPA announced that six (6) workers, on an offshore support vessel, used to support offshore rig operations, were diagnosed with COVID-19: <https://www.offshore-technology.com/news/nigeria-dpr-oil-offshore-workforce-coronavirus/>
- 15 <https://www.dpr.gov.ng/industry-circular/>

Comments

Despite the foregoing, we note that the Lockdown Regulation does not exempt crew of vessels, so disembarking crew or crew required to replace others would likely be restricted during the period(s) of the Lockdown Regulation. These are in contrast to some of the IMO recommendations that: (i) professional seafarers and marine personnel, regardless of nationality, be designated as "key workers" providing an essential service; and (ii) professional seafarers and marine personnel be granted with any necessary and appropriate exemptions from national travel or movement restrictions in order to facilitate their joining or leaving ships.¹¹

It is also not clear how disembarking crew or crew change from ports at littoral states (like Rivers State¹² and Delta State) who have closed their borders and effected some form of lockdown within their states, would be effected. We, however, note that some multinational oil companies and oil servicing companies operating within the waters of some of the aforesaid littoral states have made request for the review of the relevant COVID-19 related orders or regulations so as to permit their operations and we expect same would be (or have been conceded to).

Nonetheless, we, therefore, recommend that NIMASA, the NPA and DPR (for reasons highlighted below) should procure that the President exempts professional seafarers and marine personnel disembarking or joining a ship from the Lockdown Regulation and other applicable state restrictions as long as they are COVID-19 free.

Offshore Operations

In order to curb the spread of COVID-19, the DPR, the government agency responsible for ensuring compliance to petroleum laws, regulations and guidelines in the Nigerian oil and gas industry, on March 29, 2020 generally directed all its stakeholders to reduce the workforce on offshore platforms (the "DPR Offshore COVID Directive")¹³.

Details of the DPR Offshore COVID Directive¹⁴ are as follows:

- (a) only staff on essential duties, and with the requisite Offshore Safety Permit ("OSP"), should be nominated and permitted to travel to offshore/remote locations.
- (b) Non-essential staff currently at offshore/remote locations should be withdrawn with immediate effect.
- (c) Staff rotation less than twenty-eight (28) days or more that twenty-eight (28) days is hereby temporarily suspended. This implies that staff are required to stay a minimum of twenty-eight (28) days at these locations per rotation.
- (d) Representation by government agencies at offshore/remote locations shall be limited to a maximum of one (1) person per rotation subject to having an OSP.

By an industry circular dated March 30, 2020 (the "DPR COVID Circular")¹⁵ made further to the COVID Regulations and the DPR Offshore COVID Directive, the DPR also:

- (i) directed all stakeholders to ensure strict compliance with relevant Government directives (on social distancing, curfew, lockdown, etc. as may be applicable) and limit the number of personnel at project/construction sites accordingly.
- (ii) reiterated the demobilization of personnel from sites to the extent required to satisfy the above requirements.
- (iii) declared the COVID-19 pandemic a "force majeure" to ensure the safety and welfare of all personnel and to contain the spread of COVID-19.

Comments

As a result of the DPR COVID Circular, marine spread (like offshore support vessels, rigs and FPSOs) used in support of oil and gas operations would need to reduce their crew to the minimal safe manning required for their operations. This process would require the disembarkation of crew and the restocking of supplies, all of which would be affected by the COVID-19 Marine Notice, Lockdown Regulation, etc.

DPR's unilateral declaration of the COVID-19 pandemic as a force majeure event may conflict with the terms of time charterparty agreements entered into for the relevant marine spread and this may lead to the (i) off hire of vessels, as well as (ii) early termination of charterparty agreements.

Charterers and Owners of marine spread in the Nigerian oil and gas industry are, therefore, advised to review the charterparty agreements to determine the potential effect of the pandemic as well as ensure compliance with their obligations.

Supply of Necessaries

The Lockdown Regulation exempts (i) food processing, distribution, and retail companies, (b) petroleum distribution and retail entities, (c) and private security companies. As such, necessaries (like food, water and bunkers) can be supplied to vessels within Lagos waters subject to compliance with the COVID-19 Marine Notice.

For other states apart from Lagos, we reiterate our comment above on the littoral states who have closed their borders and effected some form of lockdown within their states and we believe same would apply to the supply of necessaries in these areas. Notwithstanding, it is important to note that the aforesaid lockdowns would not affect movement within the waters bordering those states.

For more information on this Article, please contact



Adedoyin Afun

Partner

adedoyin.afun@bloomfield-law.com



Michael Abiiba

Senior Associate

michael.abiiba@bloomfield-law.com



Ademide Peters

Associate

ademide.peters@bloomfield-law.com

or your usual contact at Bloomfield LP.



© 2020 All rights reserved

www.bloomfield-law.com

DISCLAIMER

This is a publication of Bloomfield LP and is for general information only. It should not be construed as legal advice under any circumstance and Bloomfield LP shall bear no liability for any reliance on this publication. For further information about the Firm, its practice areas, publications and details of seminars/events, please visit: www.bloomfield-law.com.

