

ASSOCIAZIONE ITALIANA DI DIRITTO MARITTIMO



Genoa 13 April 2020

CMI COVID-19 QUESTIONNAIRE **Court procedures in your jurisdiction and flag administration**

1. ARE THE COURTS IN YOUR JURISDICTION OPEN AND FUNCTIONING AS PER NORMAL?

No, they are not.

Law Decree 17 March 2020, n. 18 on urgent measures to face COVID - 19 epidemiological emergency, in its art. 83 dictates provisions regarding civil, penal, tax and military justice. There, in § 1 it is stated that from 9 March to 15 April the hearings in the civil and penal proceedings are adjourned ex officio to a date after 15 April 2020.

In § 2 it is further stated that in such a period of time the running of the terms in the civil and the penal proceedings is suspended. This applies also to the running of the terms to filing any pleadings, summons, motions in any proceedings whatsoever, to the running of the terms regarding enforcement proceedings, and to those for filing appeals and delivering decisions and judgments.

In § 3 a number of exceptions to the adjournments and suspensions referred to in §§ 1 and 2 are listed, such exceptions including the conservative proceedings concerning protection of fundamental human rights.

According to art. 23, 3 of the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris the 10 December 1948, *“Everyone who works has the right to just and favourable remuneration...”*.

This principle is also established in art. 36 of the Italian Constitution, which provides that *“The worker has the right to a remuneration proportioned to the quantity and quality of his work...”*.

Entitlement to payment of wages by seafarers may therefore be considered a fundamental human right, thus allowing crew members to apply for the arrest of the ship.

§ 3 then states that the exceptions to adjournments and suspensions generally include all the proceedings whose delayed handling may cause serious prejudice to the parties.

In such cases the decision whether urgency is in existence is on the President of the competent Court and is written down at the bottom of the summons or of the application, by way of a decree not subject to appeal.

With regard to a proceeding already pending, the decision is also delivered and written down by the Judge in charge of the proceeding and is similarly not subject to appeal.

With a similar and more extensive Law Decree 8 April 2020, n. 23, it is provided, in art. 36, that the term of 15 April under art. 83 of Law Decree n. 23/2020 is extended until 11 May 2020.

Either art. 83 of Law Decree 18/2020 and art. 36 of Law Decree 23/2020 also provide that in the time period between 16 April and 30 June 2020 the Presidents of the Courts, upon consulting with the Regional Health Authorities and the Bar Associations, are to take organization measures regarding the handling of the judicial affairs which are deemed necessary to allow compliance with the sanitary indications provided by the Ministry of Health.

It looks that the provisions regarding suspension of terms as a consequence of the COVID - 19 sanitary emergency are like those ruling on the summer suspension of the judicial terms, which stands for a period of 31 days, i.e. from 1 to 31 August of every year.

However, and differently from Courts summer recess, as provided by Law 7 October 1969, n. 742, the COVID - 19 provisions extend also to enforcement, arrest and bankruptcy and composition proceedings, unless proof of their urgency is offered.

2. IF NOT, ARE THERE EXCEPTIONS TO THE ARREST OF SHIPS AND/OR ARE OTHER INJUNCTIVE OR ENFORCEMENT PROCEDURES AVAILABLE?

Yes, there are exceptions, provided proof of urgency is offered.

However in the matter of arrest of ships by crew members to secure payment of their wages, such proof of urgency does not seem to be needed, as they are acting in protection of a fundamental right.

3. CAN JUDICIAL SALE OF SHIPS STILL TAKE PLACE?

Yes, provided proof of urgency is offered. See the responses to question n. 1.

4. DO YOU KNOW HOW LONG THE COURTS IN YOUR JURISDICTION WILL BE CLOSED FOR?

Until 11 May 2020. See the responses to question. 1.

5. IS THE FLAG REGISTRY IN YOUR JURISDICTION (IF APPLICABLE) OPERATING AS PER NORMAL IN TERMS OF THE REGISTRATION OF SHIPS AND REGISTRATION OF MORTGAGES AND DELETION OF SAME?

The Italian ship's Registry operates on a Regional basis through local ships Registries with the various Harbor Authorities.

Normal operations may therefore vary according to the local contingency situation.

From direct experience, the request of registration of an hypothec was duly recorded in the ship's Register, however the actual registration is being deferred.

6. HAS YOUR FLAG ADMINISTRATION ISSUED ANY SPECIAL EXEMPTIONS FOR THE PERIOD OF THE PANDEMIC?

With letter 20 March 2020 the General Commander of the Coast Guard reported to IMO that, within the measures to fight COVID - 19, the Seafarers Training Centers have been closed, whilst the extension of validity of the certificates of proficiency has been made subject to limitations.

With a subsequent letter 23 March 2020 the General Commander of the Coast Guard informed IMO

that as a result of the Coronavirus out break, dry docking is slowed down, with access banned in some cases.

As a consequence ships may no longer be in a position to start the dry docking survey by the time required by SOLAS Regulation I/10 (a) (v).

Should it be impossible for a ship to dry dock, it has been decided that the ship inspection may be deferred subject to the satisfactory result of an in water survey.

This suspension/exemption stands until 30 June 2020.

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