



# COVID-19

## Handbook





Covid-19 is affecting not just the way that we do business today, but the ways that we will be doing business tomorrow.

We have seen the pandemic produce unprecedented operational challenges for members. Crew changes, quarantine requirements, disruptions and delays, have become day-to-day issues in these difficult times. Whilst the wider long-term effects are more unpredictable, what we do know is that those on board and ashore must put procedures in place to ensure the continuing safety of crew and the ongoing protection of their business activities.

The Swedish Club has put together this handbook to assist those in positions of responsibility at sea and for those supporting them on shore, to provide simple guidance and concise information on understanding and implementing the practices and procedures which are now necessary for safe and successful long-term operations on board ship.

The Swedish Club – with you at all times.

A handwritten signature in blue ink, appearing to read 'Lars Rhodin', with a stylized flourish at the end.

**Lars Rhodin**  
Managing Director  
The Swedish Club

# COVID-19 Handbook

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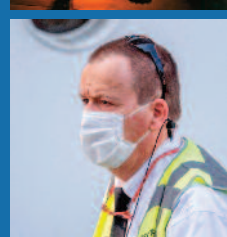
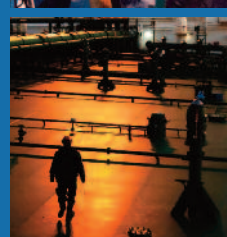
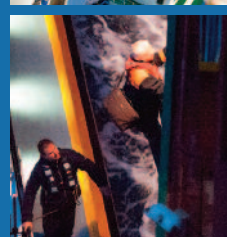
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# Essentials

Guidelines to reduce transmission are as follows:



## Wash your hands frequently

Regularly and thoroughly clean your hands using soap and hot water or alcohol-based (at least 65–70%) hand rub for 20 seconds.

### Why?

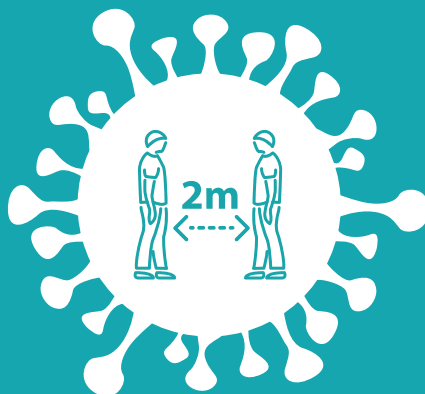
Washing your hands with soap and water or using alcohol-based hand rub kills viruses that may be on your hands.

## Practice social distancing

Maintain at least 1 metre (3 feet) distance between yourself and anyone who is coughing or sneezing.

### Why?

When someone coughs or sneezes, they spray small liquid droplets from their nose or mouth which may contain virus. If you are too close, you can breathe in the droplets, including the COVID-19 virus if the person coughing has the disease.



## Avoid touching eyes, nose and mouth with unwashed hands

### Why?

Hands touch many surfaces and can pick up viruses. Once contaminated, hands can transfer the virus to your eyes, nose or mouth. From there, the virus can enter your body and can make you sick.





## Practice respiratory hygiene

Make sure you, and the people around you, follow good respiratory hygiene. This means covering your mouth and nose with your bent elbow or a tissue when you cough or sneeze. Then dispose of the used tissue immediately.

### **Why?**

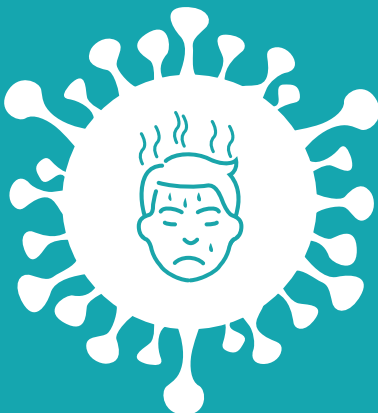
Droplets spread virus. By following good respiratory hygiene, you protect the people around you from viruses such as cold, flu and COVID-19.

## Stay informed and follow advice given by your healthcare provider

Keep up with the latest developments about COVID-19. Follow advice given by your telemedicine service, your national and local public health authority or your employer on how to protect yourself and others from COVID-19. For those that work at sea, this may be via a telemedicine service.

### **Why?**

National and local authorities will have the most up to date information on COVID-19. They are best placed to advise on what people should be doing to protect themselves.



## If you have fever, cough and difficulty breathing, seek medical care early

Advice for those ashore would be to stay home if you feel unwell. If you have a fever, cough and difficulty breathing, seek medical attention and call in advance. Follow the directions of your local health authority. At sea, self-isolation should be considered if exposure is a possibility.

### **Why?**

National and local authorities will have the most up to date information on the situation. Calling in advance will allow a telemedicine advisor to help you. This will also protect you and help prevent spread of viruses and other infections.





# Part one : Keeping safe

## 1. Introduction

**In accordance with the ISM Code, shipping companies are required to assess all identified risks to their ships and personnel and establish appropriate safeguards normally documented in their Safety Management Systems (SMS). As a result, your shipping company should have developed for each of its ships detailed plans and procedures related to different aspects and risks associated with the coronavirus (COVID-19).**

### Transmission

Human-to-human transmission of COVID-19 is understood to occur primarily through a person with COVID-19 coughing and sneezing, and droplets landing on objects and surfaces around the person. Other people then catch COVID-19 by touching these objects or surfaces, then touching their eyes, nose or mouth. People can also catch COVID-19 if they breathe in droplets from a person with COVID-19 who coughs, sneezes or breathes out droplets.

Seafarers (on board ship or on leave) should inform their healthcare providers if they have visited an area where COVID-19 has been reported within the past 14 days, or if they have been in close contact with someone with respiratory symptoms who has been to a place which has COVID-19.

### Symptoms

The main signs and symptoms of COVID-19 include a high temperature and a new continuous dry cough accompanied by fatigue. Other symptoms reported include loss of smell or taste, sputum production, shortness of breath, aching muscles and joints, sore throat, and headache. Nausea, stomach upset or vomiting have been reported in a small percentage of patients. However a significant proportion of individuals have been shown to be asymptomatic, with no obvious signs of the disease.

If seafarers have fever, cough or difficulty breathing it is important to seek medical attention promptly.

### Prevention

The key to containing this virus is to break the chain of transmission by means of, for example, regular and effective handwashing, social distancing, appropriate personal protective equipment (PPE) to reduce the chance of transmission, and self-monitoring.

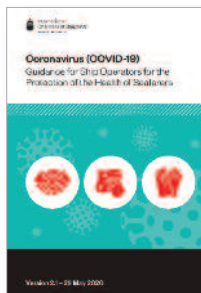
### Treatment

COVID-19 is spreading with astonishing speed, and research is being carried out around the world into both treatment and the prospect of a vaccine.



## 2. Keeping your crew safe

- Only persons cleared by local port officials, authorities and the Master should be allowed on board, including marine/ harbour pilots, technicians, ship agents, etc.
- Limit visitor access to the vessel as much as possible.
- Crew disembarkation from the vessel whilst in port must be minimised and allowed only in absolute need situations.
- Minimise interpersonal exchanges with people from ashore, avoiding contact with those who show symptoms of flu or high temperature, and take care of personal hygiene including more frequent handwashing, etc.
- Limit, as much as possible, direct access to internal spaces of the vessel for shore side visitors
- If possible, designate a central location/room with direct access from the outside and enclosed toilet to receive authorised persons from shore in order to avoid unnecessary physical contact and possible contamination inside the vessel. The room should have the minimum of furnishing and be easy to decontaminate with disinfectants. Social distancing MUST be observed. Wipe down areas and items visitors have touched, or may have touched, with disinfectant wipes and/or sprays.
- The Master should take precautions to minimise the potential spread of the virus among seafarers if symptoms appear. Isolate the seafarer to a location preferably with segregated ventilation and separate from the common areas used by seafarers such as seafarers' lounge, gym, mess rooms, etc.
- If authorised persons need to enter the vessel ensure mutual communication of the safety measures each is expecting the other party to follow.
- Handwashing is the best way to reduce the risk of infection being transmitted from one person to another.
- Shipowners must keep up to date with COVID-19 developments.
- Ensure proper training and provide information and education on the virus for the workforce including how the virus spreads, how to prevent the virus and how to dispel myths, fears and misconceptions.
- Keep up to date with details of the affected areas through the World Health Organization (WHO) or the local Centre for Disease Control's (CDC) disease outbreak updates and maps.
- Be aware and respect any quarantine restrictions that any country/port may apply, and of any requirements by Port Health in this respect.
- Engage with safety managers and ensure there is continual and ongoing communication with workers, providing updates on the outbreak and training refreshers and drills as and when required.



Further information can be found in:  
**Coronavirus (COVID-19) Guidance for Ship Operators for the Protection of the Health of Seafarers**  
(see page 27)





# 3. Looking after the mental wellbeing of your crew

Seafarers working patterns have uniquely prepared them for the quarantine periods that much of the world has had to face. However, with new operating regulations likely to be in place in ports for some considerable time to come, crews will continue to experience disruption to work schedules and shore leave long after the rest of the world has returned to more regulated way of living and working.

It is important for those responsible for crews to be aware of the steps that individuals can take to ensure their mental wellbeing, both in a general sense, and in the new environment in which we are now working. The advice below should be shared with the crew, and steps should be taken to make sure it is followed.

## Scenario 1

### The vessel is quarantined

- Have enough activities to make time pass.
- Balance those activities - exercise and sport, connecting with others, and taking quiet time.
- Build relationships on board if you can.
- Make the most of the professional support that is available remotely from port e.g. ship visitors, chaplains etc.
- Be kind to yourself.

## Scenario 2

### Unable to land during port closure

In this circumstance anxiety levels may be high. There is the uncertainty of not knowing when you will dock, and if you are due for a crew change when it will begin? People are all different in how they manage worry and there is no one size fits all solution. Distract yourself and try things you haven't tried before – help others - engage with the crew. You are all quite literally in the same boat.

Remember you are not alone, and the entire shipping community is working constantly to ensure crew wellbeing in relation to extended time at sea due to COVID-19.

## Scenario 3

### Worried about family and friends

This is a natural human response to perceived danger, and there is the urge to rush home to be with your loved ones. It is important to take a breath and consider that such action may put themselves and yourself at risk. Be aware that you cannot change the situation they find themselves in, and knowing you are safe on board can be a great consolation to your family. Wait until the time is right and safe transportation is available before you plan to return home.

It is also a good idea to restrict your news to the essentials. Don't be over focused on the virus threat or the economic situation – there's a lot of news out there and much of it is speculation.

## Scenario 4

### Worried about your job?

This is a perfectly natural fear. This crisis will end, and the industry will face different challenges. The shipping industry has shouldered many ups and downs over the years, but with 90% of goods transported by sea, the world will need shipping for a long time to come.

With thanks to Dr Kate Thompson, ISWAN  
[www.seafarerhelp.org](http://www.seafarerhelp.org)











## 4. Coming into port

Different countries, and even different ports within those countries, are taking their own decisions on how to manage port access safely. Restrictions can change on a daily basis and may well continue to do so. This can make it extremely difficult to plan port calls and to make a well informed and safe port entry.

The Swedish Club can help members meet this challenge. The Club's TELP (Trade Enabling Loss Prevention) programme ensures that shore offices are automatically sent the relevant information that they need to help the Master meet any restrictions that have been put in place, in advance of port entry, giving valuable time to make the necessary preparations.

In addition, The Swedish Club's COVID-19 Port Information Portal links visitors to reports from Club Correspondents around the world. This can be accessed at <https://www.swedishclub.com/loss-prevention/health/coronavirus-port-information/>

### Communication

There are differing views globally regarding what risk-based measures are appropriate during the pandemic and therefore you will encounter different procedures being implemented relating to interaction, personal protective equipment (PPE), social distancing, hygiene and testing.

As part of the risk management and control process it is recommended that prior to arrival in port the ship communicates its requirements related to COVID-19 risk management to all the anticipated service providers and port officials expected to attend on board during the port call, which may be coordinated through the ship's port agent if appropriate.

It is further recommended that prior to arrival in port the shore-based service providers and port officials communicate their requirements related to COVID-19 risk management to the ship, again this may be coordinated by the ship's port agent if appropriate.

### Illness

You must report any cases of illness indicative of COVID-19 infection on board as early as possible before arrival to the relevant authority in the port.

### Performing a crew change

Extensive advice has been published by IMO to allow your shore office to implement the necessary procedures to ensure a safe crew change.

Further information can be found in: IMO Circular Letter No.4204/Add.14  
*COVID-19 – Recommended framework protocols for ensuring safe ship crew changes*  
(see page 27)









# 5. Visitors to the ship

The COVID-19 pandemic has created issues related to the shipboard interface between seafarers and shore-based personnel during port calls. These issues are often related to the ship's crews and shore-based workers, such as agents, inspectors, pilots, stevedores, surveyors etc., as individuals may be following different - and conflicting - advice to protect themselves from the virus. Shore based workers are being given guidance by national Administrations, local authorities, professional organisations and employing companies, which may differ from the advice being supplied to seafarers by flag States and shipping companies. This can mean that

both parties can have false expectations of the other, leading to anxiety and potential conflict.

Such differences make communication between ship and shore side essential, both prior to entering port and when berthed.

The shipping industry has published a 'Hierarchy of controls' to assist the Master in making the correct decisions at the correct times, to minimise the risks to crew. It is designed to help those from ship and shore to reach agreement on the safety measures each is expecting the other party to follow.

## Simple precautions

**If attendance on board a ship is unavoidable, the following are some simple steps and precautions that should be taken:**

- Minimise the number of persons attending.
- Limit interaction with crew members to those involved in performance of duties on board.
- Use outer walkways rather than access through the crew accommodation.
- Limit time inside crew accommodation to the absolute minimum necessary to perform duties on board.
- Do not shake hands, use a wave, a nod or a bow.
- Provide sanitising stations at appropriate locations e.g. the ship's gangway, entry points to accommodation, the bridge, control rooms.
- Follow general COVID-19 guidance - maintain social distancing, frequently clean your hands with soap and hot water for at least 20 seconds or use an alcohol-based hand rub, avoid touching eyes, nose and mouth.
- In the 14 days following a ship visit, if either any shore-based person attending onboard a ship or any of the ship's crew develop the COVID-19 symptoms, there is then a moral duty to contact those who may have been infected as a result to disclose this information.



## 1. Eliminate

Elimination of the hazard is the most effective measure to reduce risks.

Work on board should not be conducted if there is a safer method to undertake the task, such as not going to a ship. In a number of instances e.g. conducting audit, surveys, inspections and training, remote possibilities exist which may eliminate the need to go on board or reduce the numbers of personnel needing to attend.

- Is attendance on board necessary at this time?
- Can the work be undertaken remotely?
- Can the work be postponed?

If attendance on board cannot be eliminated, then can the risk be reduced? For example, can numbers attending be reduced and/or can part of the work normally conducted on board be reduced e.g. can review of documents and interviews etc. be conducted remotely?

## 2. Reduce

Can attendance on board be reduced? Where it is not possible to fully eliminate the hazards, the risk could be reduced by minimising the onboard element of the work.

- Can the numbers of persons attending on board be reduced and/or the duration of time spent on board be reduced?
- Can part of the work be undertaken remotely e.g. visual inspections, witnessing drills, interviews?
- Is it necessary to attend on board in person or can meetings be set up remotely to reduce numbers attending and reduce duration?
- Can information be provided for remote review to reduce shipboard attendance?

Once attendance on board has been reduced as far as possible, then consideration should be given to how to control the remaining risk.

### 3.Communicate

If onboard attendance of shore-based personnel cannot be eliminated, communicate and understand all participant requirements.

Ensure requirements of each party, the ship and the shore-based organisation have been communicated in good time to each other and are assessed and understood.

If there are differences in requirements control measures should be agreed and understood by all parties prior to the shipboard intervention taking place.

- Have the ship's and shore-based organisations requirements related to risk management and control of COVID-19 been communicated in good time to all parties prior to arrival? It is envisaged that the ship's agent will need to play an important role in this regard.
- Are the requirements of each party understood by the other parties?
- Are requirements aligned e.g. requirements for the use of PPE? If risk management and requirements of any party are not aligned or not understood, then additional administrative control measures may be necessary.

### 4.Control

If the requirements of each party, the ship and the shore-based organisation have been communicated to each other and assessed, and are either not understood or there are differences then administrative control measures need to be taken so that all requirements are understood and so that requirements can be mutually agreed and understood by all parties prior to the shipboard intervention taking place.

If the control measures of the ship and the shore-based organisation are not initially aligned or not fully understood, identify actions required to rectify the situation.

Considerations should include:

- Does additional explanation of requirements need to be provided?
- If requirements are not understood and or aligned, can control measures be implemented through clarifying requirements and or agreeing mutually acceptable requirements?
- What protective measures are in place on board and for the attending personnel?
- Are alternative measures acceptable e.g. ship's provision of personal protective equipment (PPE) to shore-based personnel?
- Can social distancing be maintained?
- Can entry into crew accommodation spaces be avoided/minimised?

Once mutually acceptable requirements that differ to normal practice for either party are agreed the requirements concerned should be clearly communicated and agreed by all parties impacted i.e. all ships' crew and all shore-based participants.



# Personal protective equipment (PPE)

Understand what PPE is required and expected to be used by crew and shore-based personnel during attendance on board, and at what times. Remember, your first contact may take place before you berth, when the pilot embarks.

The following should then be assessed:

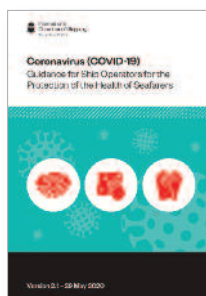
- Is the agreed PPE available to both parties? If not, can it be provided by the other party if necessary, either prior to or at the time of boarding?
- Does available PPE comply with appropriate recommended specifications and is it compatible with the other PPE and equipment to be worn during the intervention. Does the provided PPE allow for the intended work to be carried out effectively?
- Is the PPE sterile, where applicable?
- Has the user been instructed how to inspect, wear, use and dispose of the PPE?

## Using PPE

You should know how to use the PPE you are given.

If you are required to wear a mask in accordance with advice from your shipping company or by national authorities it is important for the crew to understand and follow best practice in how to wear, remove, and dispose of the mask and for hand hygiene after removal.

- If wearing a face mask, be sure it covers your mouth and nose.
- Do not touch a face mask once it is on.
- Immediately safely discard single-use masks after each use.
- Clean your hands after removing masks.



Further information can be found in *Coronavirus (COVID-19) –Guidance for ensuring a safe shipboard interface between ship and shore-based personnel* (see page 27)











# Part two : Your Club cover

## 1. Your P&I Club cover and contracts of carriage

### (i) Illness

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***There is an outbreak of COVID-19 amongst the crew on board your vessel.***

The member is covered for the liability which it incurs under the crew contracts to pay damages or compensation for the illness or death from the infection of any member of the crew of the entered vessel, including costs for hospital medical and repatriation, or funeral or other expenses incurred in relation to any infected crew member who is on board the entered vessel or proceeding to or from that vessel under a contract in force.

Reasonable disinfection costs of the entered vessel are also covered as well as additional costs or expenses incurred by the member as a consequence of an infectious disease such as COVID-19.

Cover will not be engaged, however, for costs incurred as a result of mere suspicion of infection or routine precautionary measures if there has not been an outbreak of the disease on board the entered vessel. These are regarded as operational costs.

There is also cover for a crew member who contracts COVID-19 in transit to join the vessel or during repatriation after disembarking (including while under quarantine whilst under a contract in force).

It should be noted that there are complex logistics, administrative difficulties and, in some countries, an uncompromising and harsh approach by the authorities which can prevent or

inhibit the ability to provide medical aid to the crew on board the vessel or ashore or carry out crew changes. The Club will do its utmost to provide advice and assistance to the member for such matters, drawing on the experience and knowledge which it has developed over the past few months as well as deploying the assistance of its network of local correspondents.

***A crew member becomes gravely ill with COVID-19 symptoms during a laden voyage and it is decided to divert the vessel to a port to provide medical care.***

The carrier is likely to be permitted to make the deviation under the Hague or Hague Visby Rules on the grounds that it is an attempt to save life at sea or reasonable, and as such will not itself be a breach of the contract of carriage, subject to the question of unseaworthiness (discussed below).

The carrier remains obliged to continue to the discharge port after the diversion. Depending on safe manning requirements, it may be necessary to replace the sick crew member to continue with the necessary complement of crew.

There is P&I cover for fuel, insurance, wages, stores, provisions and port charges attributable to the diversion, in excess of those which would have been incurred but for the diversion, provided that such costs and expenses are incurred with the approval of the Club. In addition, the sick crew member's medical, hospital and repatriation expenses are covered.

If there is any doubt as to whether the diversion is a lawful deviation, the Member should contact the Club and discuss the option of taking out

Shipowners Liability (SOL) cover for unauthorised deviation.

There might be some practical constraints in disembarking the crew member at the nearest port such as: local regulations prohibiting the crew member to come ashore; complex procedural/administrative requirements to be completed in advance; unsuitable or inadequate local medical facilities or repatriation capacity.

The Club can assist with assessment of the most suitable disembarkation port by obtaining guidance from local correspondents about such matters if the member provides adequate notice and sufficient details of its intentions.

***A crew member who has signed off is subsequently diagnosed with COVID-19.***

Usually a member will not be liable for the ill health of a crew member who has signed off unless the illness was contracted in the course of employment (including in transit to or from the vessel) in which case the member may be liable for the cost of medical care and compensation under the terms of the crew member's employment.

There is P&I cover for the member's liability for the cost of medical care, expenses and compensation for the illness and, in the sad event of the infection being fatal, funeral expenses. There is no fixed approach as to how the Club may assess the incubation period to determine the likelihood of post-disembarkation Coronavirus illness being attributed to the period of employment.

***A visitor on board your entered vessel, such as a superintendent or surveyor, contracts a COVID-19 infection while on board the vessel.***

Usually third-party visitors are permitted to board vessels only upon signing a form of waiver/indemnity which acknowledges that they are boarding at their own risk and waive any right to claim damages for personal injury or death. In some jurisdictions, however, such waivers are rendered invalid by statute and the member may be held liable to the visitor for the consequences of infection by COVID-19. Also, superintendents

may be engaged in terms which enable them to bring personal injury claims against the member.

There is P&I cover for liability to pay compensation for personal injury, illness and death of any persons on board or in relation to the entered ship if it is proved (the burden of proof being on the claimant) that it was caused by negligence on behalf of the member (in addition to cover in relation to crew and passengers).

## **(ii) Quarantine restrictions**

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***There is cargo damage as a result of deterioration due to delay from quarantine restrictions imposed at the discharge port due to crew infection (actual or potential).***

The carrier may be able to rely on exceptions to liability for cargo damage pursuant to Article IV rule 2 (g) ('restraint of princes') or (h) ('quarantine restrictions') of the Hague and Hague Visby Rules. This is subject to the question of whether, when the voyage began, the vessel was seaworthy in that its crew did not suffer from physical disability or incapacity as to prevent them from performing their duties competently. It is possible in principle for infection of the crew to make a vessel unseaworthy (prior to the Hague Rules it was held by the English Courts that a vessel was unseaworthy because of its call at a port with a particular infection problem leading to quarantine restrictions).

Unseaworthiness is a breach of Article III rule 1 unless the carrier establishes that it occurred despite the exercise of due diligence. In the case of crew infection resulting in quarantine delays, or deviation to land a sick crew member, this may involve examining extent of the sanitary measures on board the vessel to check and safeguard the crew from infection by reference to standard industry practice.

There is P&I cover for the member's liability for cargo damage resulting from breach of the carrier's unseaworthiness obligations under the contract of carriage.

***Expenses and costs (such as payment of wages, accommodation and subsistence allowances) are incurred as a result of the crew being held in quarantine as a precautionary measure when they are in transit on their way to board the entered vessel or in the course of repatriation after they sign off.***

In the absence of such matters being the consequence of the occurrence of COVID -19 on board the entered vessel they will not be covered by P&I. These expenses are considered as operational costs. There would be an exception for a crew member who became infected while in quarantine (as covered above) or who has to be repatriated due to failing a health check in the embarkation port prior to boarding (in which case the cost of repatriation is covered).

### **(iii) Port restrictions**

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***Restrictions at the intended discharge port prevent the vessel from calling there to discharge cargo.***

If it is not possible for the vessel to safely reach the nominated discharge port and the bill of lading terms (either expressly or by incorporation of the terms of a charter party) include a provision which gives the carrier liberty to discharge the cargo at an alternative port (for example the BIMCO clauses for infectious or contagious diseases, or a clause permitting discharge at a port 'so near thereto as she may safely get') the carrier may do so provided that the cargo can be safely delivered to the consignee at that alternative port. Otherwise, all the parties involved may wish to consider making an agreement with the carrier for switching the full set of original bills of lading with replacement bills nominating the alternative port.

There is no cover for liabilities arising from delivery of cargo at an uncontractual discharge port. It is important for the member therefore to be certain that there is adequate liberty under the contract of carriage to discharge at an alternative

port or to be certain of the integrity of **switch the bills of lading**. It is prudent for the member to also obtain a Letter of Indemnity ('LOI') to cover the risk of wrongful discharge in such circumstances.

### **(iv) Delays due to COVID-19 restrictions**

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***COVID-19 restrictions delay the bills of lading in transit and the vessel is ready to discharge the cargo before they can be presented.***

The carrier will be exposed to mis-delivery claims if the cargo is discharged without presentation of an original bill of lading regardless of the fact that the non-production was due to restrictions caused by the pandemic. The carrier might, however, have agreed a term in the relevant charter party by which it is contractually obliged to discharge the cargo against provision of an LOI in an agreed form.

There is no cover for liabilities arising from delivery of cargo without production of original bills of lading. It is important for the member therefore to ensure that the terms of the LOI adequately cover its exposure for mis-delivery of the cargo and is satisfied that the guarantor issuing the LOI is of adequate financial standing to meet its potential indemnity obligations under the LOI.

***The crew who are due to sign off are obliged to remain on board the vessel because of travel restrictions or logistical problems due to COVID-19, resulting in the member incurring additional costs for the crew contract extensions or crew overlap.***

The costs are operational and are not covered. The member will, however, be liable for any illness or injuries which occur to the overstaying crew during the extended period while the crew contract remains in force.

***\*Please note that in all scenarios reference to Club cover is always subject to the specific terms of entry (including deductible) for the entered vessel and the merits of each individual case.***



## 2. Charter parties and contracts of carriage

### (i) Port safety

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Time charterers may not order a vessel to an unsafe port in breach of an express or implied warranty in the charter party. The test is whether at the time when the order is given the vessel can reach it, use it and return from it without being exposed to dangerous features that are not the result of an abnormal occurrence. There is also an obligation to change voyage orders if the port subsequently becomes unsafe before the vessel reaches it.

In some charters (the Baltime form, for example), there is an express prohibition on the charterer ordering the vessel to a port where fever or epidemics are prevalent. Where there is no express provision such as that, however, there is likely to be substantial doubt as to whether the safe port warranty permits the rejection of an order by reference to concerns about Covid-19. It involves questions of fact and law.

#### Case law

Generally, case law deals with the risk of physical damage to the vessel or detention due to political risks. In theory it is conceivable for a port to be unsafe if the spread of infection at the port would put vessels at risk of being disabled by crew sickness or would cause vessels calling at the port to be barred or detained at other ports.

Such scenarios, however, seem unlikely in practice: health risks can be avoided if the crew takes proper and effective precautions. Although vessels might be subject to quarantine delays at subsequent ports, it is unlikely that they will be permanently blacklisted, detained or impounded. Also, it is questionable whether an outbreak of COVID-19 would be a feature of the affected port, rather than an abnormal occurrence.

#### Individual circumstances

Each case will be decided on its specific facts and will require careful consideration bearing in mind that the refusal of a legitimate order can constitute a repudiatory breach of the charter. Aside from that, if the vessel is laden, the owner will be subject to separate obligations to the shippers/consignees under the bill of lading contract to deliver the cargo at the contractual discharge port.

#### Time charters

If an owner accepts a time charterer's voyage orders in full knowledge of the unsafe features of the nominated port the owner may have waived the right to refuse to obey the order. This will not necessarily mean that the owner has waived the right to damages for breach of the safe port warranty or an indemnity for complying with the charterer's orders.

#### Voyage charters

The position is different for voyage charters, where the port has already been nominated without an express warranty of safety. The general view is that there is no implied warranty of safety under a voyage charter, and the charterer is not under a duty to re-nominate on grounds that the nominated port is unsafe.

### (ii) Port closure

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#### Time charters

If COVID-19 results in the closure of a port to marine traffic it will not be possible for a vessel on time charter to perform the charterer's order to load or discharge cargo at the port and the charterer should give replacement orders.

## Voyage charters

In a voyage charter if the closure prevents the vessel from arriving at the port to load cargo before the end of the laycan period the likely outcome will be that the charter will be cancelled. If the discharge port is closed there will probably be a liberty which permits discharge of the cargo at some other port (e.g. 'so near thereto as she may safely get').

## Owner's protection

Also there is some protection for the owner in that situation under Article IV(2) of the Hague and Hague-Visby Rules (if incorporated into the charter) which states that neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from: (h) quarantine restrictions; (j) strikes or lockouts or stoppage or restraint of labour from whatever cause, whether partial or general; (q) any other cause arising without the actual fault or privity of the carrier.

### (iii) Delays

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Delays in port to vessels in or arriving from affected areas might arise in relation to granting free pratique (the 'licence' given to a ship to enter a port on the assurance that she is free from contagious diseases), the availability of pilots, or quarantine arrangements. Precautions that owners may take to minimise the risk of such delays include making a pre-arrival declaration of health and documenting measures taken on board to reduce the risk of contamination. The allocation of risk between the owner and charterer for delays will depend on the relevant facts and the charter party wording.

## Time charters

Time charterers are obliged to pay hire continuously throughout the charter period unless they can prove that an exception applies. Some examples of possible off hire events under the NYPE form are: 'deficiency of men' where time is lost due to crew members being incapacitated/

repatriated due to illness or the imposition of quarantine restrictions; delay caused by the refusal of free pratique as a result of suspected infection on the ship where off hire events extend to 'any other cause whatsoever preventing the full working of the vessel'. In the Shelltime 4 form time lost due to 'quarantine restrictions' is an explicit off hire event.

An owner may be entitled to an implied indemnity, arising from compliance with the time charterer's orders to call at a port in an infected region, for losses resulting from consequential delays, including loss of income for off hire periods.

## Voyage charters

For a voyage charter, it is necessary to examine specific laytime/demurrage provisions and exceptions. A valid Notice of Readiness (NOR) requires the vessel to be physically and legally ready for cargo operations. While a 'wifpon' ('whether in free pratique or not') provision may permit NOR to be given before clearance has been granted by the health authorities, it probably does not override the common law position which prevents laytime from commencing if it is not simply an administrative formality but instead is specifically refused or delayed for reasons related to the health status of the crew.

It is possible that some charters may include provisions (including a force majeure clause) that exclude from the running of laytime or demurrage periods of delay directly caused by quarantine restrictions imposed on shore labour. The rules of construction should be examined to determine the applicability of such provisions.

## Doctrine of frustration

It will only be in relatively rare cases that the doctrine of frustration will enable the parties to treat the charter as terminated for reasons related to COVID-19, including delay. For frustration to apply, the delay (or other circumstances related to COVID-19) must be of such nature and magnitude as to constitute an unforeseen event which makes it impossible to perform the charter or at least radically changes

the nature of the contractual obligations outside the reasonable contemplation of the parties at the time of the fixture. Also, it must not be 'self-induced' in the sense that the party seeking to rely on it cannot have made the performance impossible by its own choice.

## (iv) Force majeure

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There is no English common law doctrine of force majeure which excuses a party from performing its contractual obligations (other than an event which brings the contract to an end under the doctrine of frustration). There can, however, be contractual terms which provide that a supervening event in a specified category beyond the control of one or both contracting parties may excuse non-performance or result in the cancellation of the charter.

The key points to consider in relation a force majeure clause is whether the non-performance of the obligation due to a Covid-19 issue fits within the force majeure wording (e.g. if force majeure events include 'quarantine', 'embargo', 'disease' or 'epidemic') and the event itself, rather than a consequence of it, is the proximate cause of the party's inability to perform its obligations by reason of circumstances which are beyond its control.

### Performance

It is necessary to make a distinction between an event which prevents performance and one which renders performance more difficult or uncommercial. The latter event does not itself

prevent performance but rather the non-performance is due to the party making a commercial choice to avoid loss of profit and will not meet the requirements of a force majeure clause which describes event that prevent performance of contractual obligations.

## (v) Recommended clauses

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Both BIMCO and INTERTANKO have published clauses for use in charters which deal with infectious or contagious diseases. For further details, including accompanying guidance notes, see:

[https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/infectious\\_or\\_contagious\\_diseases\\_clause\\_for\\_time\\_charter\\_parties\\_2015](https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/infectious_or_contagious_diseases_clause_for_time_charter_parties_2015)

[https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/infectious\\_or\\_contagious\\_diseases\\_clause\\_for\\_voyage\\_charter\\_parties\\_2015](https://www.bimco.org/contracts-and-clauses/bimco-clauses/current/infectious_or_contagious_diseases_clause_for_voyage_charter_parties_2015)

<https://www.intertanko.com/info-centre/model-clauses-library/templateclauses>

This section is not intended to address these matters in detail nor be a comprehensive assessment of all potential issues arising under charter parties in relation to Covid-19, particularly as the situation is constantly changing. It addresses the issues from the perspective of English law. Members should also take into account the advice and guidance of local correspondents on practical, regulatory and procedural matters in operation at specific ports.





# Where to go for help

The Swedish Club has set up a source of internal and external resources to help you deal with COVID-19 where all publications referred to in this handbook can be found.

Visit: **[www.swedishclub.com/loss-prevention/coronavirus/](http://www.swedishclub.com/loss-prevention/coronavirus/)**

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