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ABOGADOS

SHIPPING TRANSPORT TRADE INSURANCE

Circular on COVID 19
in Legal and Port System in Spain

Content

On 14th March 2020, the Spanish government announced the "State of Alarm" due to the health crisis situation the country was facing because of the COVID-19.

At first, the State of Alarm was decreed for a period of 15 days, but this period has been extended on several occasions. Currently, the State of Alarm will remain in force until at least midnight of 9 May (last extension has been adopted by Order of the Parliament of 22nd of April of 2020).

The declaration of the State of Alarm means that the central Government under the directives of the Ministry of Health takes control of the country, being able to establish measures that can limit the rights of citizens, such as reducing the mobility of people (confinement), restricting the circulation of vehicles, limiting industrial activity, taking measures that affect the logistic and transport industry (including the ports), among others.



1. Judicial and Legal Measures (Time Bars)

From 14 March and until the end of the State of Alarm, all legal proceedings, both administrative and judicial, are paralyzed (except for essential, priority and emergency services that continue to be provided).

Therefore, all administrative and procedural, prescription and caducity time-bars for the exercise of actions are suspended. The calculation of the time limits will be resumed at the time when the State of Alarm is declared to be terminated.

Since 15 April (and subject to the peculiarities and limitations of some Autonomous Communities), legal professionals can, once again, submit documents via LEXNET (or the corresponding version of the Autonomous Community digital platform of communication with the Courts and Tribunals). However, the deadlines will not start to run, as we commented, until the first working day after the end of the State of Alarm.

One of the judicial applications that should not be restricted from being submitted to the Courts during the actual State of Alarm, and should be considered an urgent measure, is the ship arrest. While there is a certain degree of ambiguity as to what is the extent of the judicial measures that may be considered urgent, ship arrest should not be affected by the suspension ordered by the State of Emergency and some Courts that have been consulted by our law firm about this measure have declared to have power to exercise a ship arrest during the State of Alarm.

The administration has continued to operate since the State of Alarm was decreed, accepting the submission of written documents without limitation, but also in this case, any type of period is suspended and will not begin to count until the first working day after the State of Alarm ends, which as of today would be on 11th May but could be extended.

2. Restrictions on Land, Sea and Air Transport

Currently, in Spain, there are restrictions on the movement of citizens who must remain confined in their homes. Remote working is encouraged, but for cases where this is not possible, mobility to the workplace is allowed.

Border controls with France and Portugal have been re-established, only commercial means of transport (lorries carrying medical products, food, etc.) are allowed to enter by land, in order to guarantee the supply chain and, as far as possible, avoid freezing the economy.

International flights are restricted (except, transport of products) and only Spanish residents and nationals are allowed to enter the country.

Likewise, cruise ships and passenger ships are restricted if they come from foreign ports. In addition, the Order TMA/330/2020 of 8 April extends the restriction on the entry into Spanish ports for, passenger ships and ro-ro vessels providing regular services between Italy and Spain if they have embarked on passenger ships in Italian ports, with the exception of ro-ro cargo head drivers.





3. Situation of Port and Logistics Services

There are many changes that ports and logistic operators are having to face in this situation. These services have been qualified as services within a critical sector, so their operability must be guaranteed. In Spain, the operations and services of the Ports are working normally. All the professionals who provide their services in these ports, adopt all the recommended sanitary measures; the use of PPS, gloves, masks, decontamination and the obligation to respect the minimum distance of at least 1.5 meters. Examples are stevedores or logistics operators.

One of the new features brought by the declaration of the State of Alarm is that no change of crew would be authorised during the State of Alarm period, in any of the Spanish Ports. In the event that a crew change needs to be made for medical reasons, the ship agents would have to be notified immediately by means of the Maritime Declaration of Health so that the authorities could establish the corresponding protocol. Depending on the circumstances, and after a health inspection has been carried out on board the ship, the port authorities would decide whether the ship should remain at anchor or be allowed to berth at a designated berthing area.

On the other hand, one of the problems that the Ports are facing is the saturation of the available storage space. As some industries (steel, car and others) have suspended activity and supply chains are paralysed, many goods are stuck on port platforms, a clear example of this is the automotive sector. For this reason, some ports are already advancing their plans to prepare the space they have available for the accumulation of imports that is expected in the coming weeks, as the Chinese industry and its exports are already being reactivated.

3. Situation of Port and Logistics Services

Finally, it is worth mentioning the package of additional urgent measures to support the economy and employment that has been approved by the Council of Ministers on 22 April. We will now mention the measures that have been proposed to support businesses in the maritime sector and those aimed at increasing the competitiveness of the port sector.

The Port Authorities are given the autonomy to modify port dues, to reduce the minimum requirements of traffic and activity and to grant payment postponements. Some of the proposals are:

- 1** Increase the discounts on the occupation dues to between 20-60% depending on whether they are passenger or cargo terminals.
- 2** To grant 6-month postponements in the payment of port charges, without incurring in interest during this period or without requiring additional guarantees.
- 3** As a specific measure for shipowners and shipbuilders in port, they shall be exempted from payment of the port due provided they have been obliged to anchor or berth as a result of an order issued by a competent authority. If their stay in the port was not directly due to an order, but their stay has been prolonged in the port (e.g. cruise ferries) for this reason, a reduction in the port due will be applied to them from the first day at port, up to a 30% discount. Likewise, a reduction in port dues will be applied to vessels providing port services.

In addition to these, more reductions are being contemplated as an option to try to mitigate the effects produced by the health crisis and consequent economic crisis of the COVID-19 in the maritime sector.

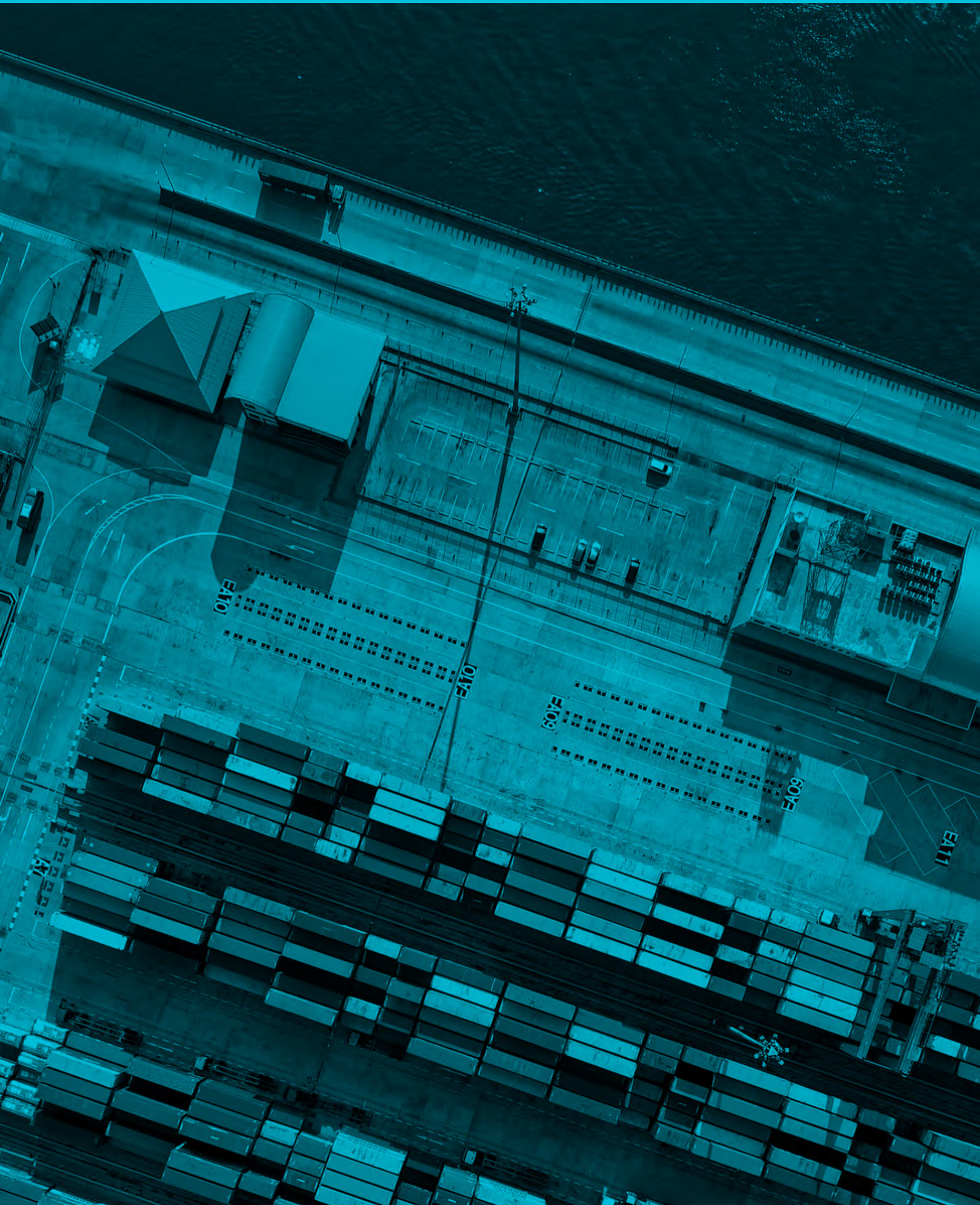
4. Port State Control Inspections and Extension of the Validity of Titles

By order dated 19th March issued by the Ministry of Transport, a set of measures have been implemented regarding Port State Control Inspections and to extend the validity of administrative titles that expire during the State of Alarm.

PORT STATE CONTROL AND INSPECTION ACTIVITIES

Scheduled inspections by the Maritime Administration have been suspended. Only unscheduled inspections that arise from emergency situations that pose a risk to maritime safety or the marine environment may be carried out. PSC inspections may only be carried out on ships to which priority factors apply, such as:

- a) Ships subject to suspension or withdrawal of Class for safety reasons since their last inspection.
- b) Ships that are subject to the report by another Member State.
- c) Ships that cannot be identified in the inspection database.
- d) Ships involved in a collision or grounding or other casualties.
- e) Ships that have been denounced for not complying with the provisions regarding the discharge of dangerous substances.
- f) Ships that have navigated erratically or insecurely.



4. Port State Control Inspections and Extension of the Validity of Titles

EXTENSION OF THE VALIDITY OF TITLES

The validity of certain titles that expire during the State of Alarm is extended. The titles to which this order affects are:

- a) Professional titles relating to the Convention of Standards of Training, Certification and Watchkeeping for Seafarers (STCW) as well as other certificates contemplated in Spanish legislation.
- b) Certificates and documents issued under the International instruments of the IMO, the ILO and the European Union for the provision of ship services.
- c) Certificates and documents issued under national legislation for ships that provide services.
- d) Certificates of maritime training issued for seafarers and provided for in the STCW Convention and the health regulations, for a maximum period of 6 months since the date of their expiry.
- e) Certificates for the revision of first aid-kits on board ships provided for by ILO and national regulations, for a maximum period of five months since the date of their expiry.
- f) Medical certificates for seafarers, in conformity with the STCW Convention and national legislation, for a maximum period of three months since the date of their expiry.

5. Conclusion

In summary, the message is that Spanish Port and Transport System is working normally under the circumstances and the central authority (Ministry of Health) in charge of the Country is committed to guaranteeing that the system keeps working.



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