



CMI Questionnaire on Court procedures in your jurisdictions and flag administrations
Reponses of the Spanish Maritime Law Association

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1. Are the Courts in your jurisdiction open and functioning as per normal?

No. By the Royal Decree 463/2020 of 14th March declaring the “State of Alarm” under art. 116 of the Spanish Constitution all the legal and administrative terms were suspended until the end of the said state, that has been so far extended twice times by Approval of the Congress and will be in force at least until 26th April 2020 save if the Government requests to the Congress additional extensions. Several Royal Decrees, Royal Decree-Laws and Ministerial Orders have been published since then but the situation stays the same.

The General Council of the Judicial Power (the independent power head of the Judiciary under our Constitution) took a similar Agreement on the 16th March for all the Spanish Courts and so did the Constitutional Court, the Supreme Court and others.

2. If not, are there any exceptions to the arrest of ships and / or are other injunctive or enforcement procedures available?

There are NO specific exceptions for arrest of ships on other injunctive, precautionary or enforcement procedures.

The General Council of the Judicial Power and the Courts have issued guidelines to interpret the different Royal Decree-Laws and Royal Decrees, as well of more than 100 proposals about how to reinstate the complete judicial activity when the Covid-19 “state of alarm” situation be lifted.

The listed exceptions are:

- i. Criminal Law: Habeas corpus, protection orders, detention and other proceedings before the Courts on Duty (“Juzgados de Guardia”) of each city and village.
- ii. Fundamental rights: the procedure for the protection of the constitutional rights of the citizens is always available.
- iii. Civil law: urgent matters to protect mentally-ill persons and to bury passed away persons.
- iv. Labour law: collective dismissal of workers.



Under the terms of the Royal Decree, each Court or Judge can, however, “decide to practice any procedural activity that may be needed to avoid irreversible prejudices on the rights and interests of the parties”. This general exception may be applied to arrests of vessel in case the claimant is able to prove that if the arrest is not ordered they will suffer irreversible damages. At the end the decision will depend of each case and each Court.

3. Can Judicial Sale of Ships still take place?

The guidelines issued by the Courts do not contain any specific paragraph for Judicial Sales of Ships, so that the claimant will have to argue and prove prima facie that not starting or non-continuing a judicial sale procedure will cause an irreversible prejudice.

The judicial sales on-going at 16th March should have been suspended.

4. Do you know how long the Courts in your jurisdiction will be closed for?

As said, until the “State of Alarm” be lifted and so far until the 26th April 2020. Once lifted, a specific recovery plan step-by-step will have to be activated. Today (9th April) the Prime Minister has announced in the Parliament that most probably he will apply another 15 days extension after 26th April.

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?

Public Administration is an essential activity and is functioning but many public servants are confined at home, so that the services can't work at their normal pace.

As well as the legal and judicial terms, all the administrative terms were suspended by the Royal Decree 643/20 of 14th March. However, the Administrative Body in charge can decide to take the measures strictly needed to avoid serious (“grave”) prejudices to the parties, if the parties so agree or request. Ship flagging and de-flagging and registration of mortgages (both before the movable goods registry of the province of the port of flagging and the vessel's registry of the Port's Captain and General Directorate of the Merchant Marine (Central Vessel's Registry) are open and will act if the applicants prove that it is urgent and not acting can cause serious (“graves”) prejudices.

6. Has your flag administration issued any special exemptions for the period of the Pandemic?

Marine and port traffic are essential activities so that vessels and ports can operate, even if there are exceptions (such as cruises that are forbidden to enter Spanish Ports).



In fact, the Orders of the Ministry of Transport TMA 258/2020 of 19th March and TMA/309/2020 of 31st March extend for the same term that the duration of the State of Alarm and counting from the expiry date:

- Seaman's licences
- Certificates issued under IMO, ILO and EU Treaties and Regulations to render service in vessels
- Certificates of seaworthiness of leisure boats and yachts
- SCTW certificates

The General Directorate of the Merchant Marine has also published a General Guideline on 20th March and can issue certificates of extension upon request.

However, marine inspections both for Spanish and foreign are suspended during the State of Alarm period by the said Orders and Guideline and only shall be inspected in case of emergency affecting either the safety of the navigation or the protection of the environment. Foreign vessels only shall be inspected in case of priority.