

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

APRIL 20, 2020


BANWO & IGHODALO

Preface

There have been significant concerns regarding the current and long-term effects of the novel coronavirus (“COVID-19”) on international trade and the global economy, following the declaration of COVID-19 as a global pandemic in March 2020. Of particular importance to Nigeria is the adverse effect that this global pandemic has had on the price of crude oil in the international market (which has been on a freefall in the past few months),¹ considering how crucial revenues from the sale of crude oil is to the sustenance of the Nigerian economy.

There has been a flurry of regulatory actions aimed at mitigating the adverse effects of COVID-19 on various aspects of the Nigerian economy, in general. In relation to the oil & gas and allied sectors, in particular, certain key steps have been taken by governmental entities which are geared towards ensuring continuity of operations. In turn, those measures impact operations of marine vessels which complement upstream oil & gas activities, especially those undertaken on offshore Nigerian waters.

In the light of the foregoing, this briefing note evaluates the impact of the COVID-19 pandemic and attendant regulatory actions in relation thereto on the operations of marine vessels which support upstream oil & gas activities in Nigeria.



¹ The international price of crude oil was also adversely affected by disputes among major crude oil producing countries (particularly Saudi Arabia and Russia). Although the Organization of Petroleum Exporting Countries and other leading crude oil producing countries subsequently reached agreement regarding production cuts aimed at boosting price, significant glut of crude oil arising from global contraction in business activities and attendant huge reduction in demand for crude oil, following the advent of COVID-19, continues to bedevil the price of crude oil in the international market.

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

Some of the Regulatory Intervention Measures

As part of measures to curtail the impact of COVID-19 on offshore operations, there has been a number of directives and regulations issued by regulatory agencies such as the Department of Petroleum Resources (“DPR”) and the Nigerian Maritime Administration and Safety Agency (“NIMASA”). We shall specifically examine those actions which directly or indirectly affect the operations of marine vessels and contractual arrangements in relation thereto.

a. DPR Directives

Further to a Circular No. DPR/1160/A/Vol.11/49, dated March 23, 2020, the DPR directed oil & gas companies to reduce their workforce on offshore platforms as part of the measures to curtail the spread of COVID-19. In so doing, the DPR specifically directed that only staff who are engaged in essential duties should be nominated and permitted to travel to offshore/remote locations while non-essential staff currently at those locations should be withdrawn with immediate effect. Further, offshore staff are now required to work offshore for a minimum period of twenty-eight (28) days and, as such, the rotation cycle of offshore personnel for less than twenty-eight (28) days has been temporarily suspended. Government agencies which are required to monitor offshore operations have also been directed to have only one (1) personnel per rotation cycle.

The above steps taken by the DPR are understandable in view of current restrictions in various work locations, limiting operations to only essential services. In relation to the operation of marine vessels and offshore platforms such as Floating Production Storage and Offloading (“FPSO”) vessels and Floating Storage and Offloading (“FSO”) vessels, compliance with this directive should not be difficult considering that the crew men who are typically deployed on these vessels and platforms are typically only those who are strictly necessary for their operations. However, these directives may adversely



Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

affect cadets and understudies assigned on vessels to gain requisite sea time and experience for purposes of obtaining shipping certifications. In the event that operators are constrained to release such persons on the grounds that they do not constitute “essential staff”, we expect that such measures will be temporary and they will be reinstated when the effects of the pandemic subside.

In addition to the foregoing, the DPR issued another Circular, DPR/1160/A/Vol.11/53, dated March 30, 2020, addressed to “all oil and gas contractors / service providers” and requiring them to ensure that they comply with governmental directives to limit the number of personnel on project/construction sites and observe specific directives on social distancing, curfew, lockdown, etc. as may be applicable. In so doing, the DPR classified the COVID-19 pandemic as constituting “Force Majeure”,² and thereby stated that it was necessary “to ensure the safety and welfare of all personnel and to contain the spread of COVID-19.”

It is instructive to note that there has been various legal debates whether COVID-19, *strictu sensu* and on its own (without more) constitutes force majeure, pursuant to which parties to a contract may be released or excused from performance of their contractual obligations. It will appear that the compelling argument is that a lot will depend on the specific provisions of each contract and the relevant circumstances of each case. Using standard charter-parties (and specifically the Supplytime 2005) as a case in point, epidemics and acts of God are listed as occurrences that constitute force majeure events.³ However, parties are still required to ‘**make all reasonable efforts to avoid, minimize or prevent the effect of such events and/or conditions.**’ It is therefore doubtful that a party to a Supplytime 2005 can simply rely on DPR’s pronouncements in the aforesaid circular (without more) to declare force majeure and thereby seek reliefs from its contractual obligations under a charter-party. Indeed, a counter argument can be made that the directives of the DPR on the measures for continuous operations of offshore operations demonstrate that parties (particularly shipowners) are not prevented or hindered from carrying out their obligations (which, otherwise, would generally have constituted justification for seeking force majeure reliefs).

Further, it is useful to note that the Supplytime 2005 & 2015 specifically address the rights and obligations of the parties to a charter-party arrangement in the event of an ‘Epidemic / Fever’ with a view to mitigating adverse impacts of such occurrences; and parties’ compliance with those provisions should obviate the need to declare force majeure. In this regard, clause 25 provides that the relevant vessel ‘*shall not be ordered to nor bound to enter without the Owner’s written permission any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel. Notwithstanding the terms of clause 13 (Suspension of Hire), Hire shall be paid for all the time lost including any loss (sic) owing to sickness to the Master, Officers, Crew or*

² It would appear that the DPR used the term “force majeure” loosely because, in strict legal terms, a party will typically only be able to claim force majeure relief if – (i) such a clause is expressly included in the relevant contract (as same is not implied by law); and (ii) as, drafted in such contract, the force majeure provisions are actually applicable in the circumstances, having regard to the particular facts in question.

³ Please refer to clause 32 of the Supplytime 2005.

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry



passengers or to the action of the Crew in refusing to proceed to such place or to be exposed to such risks.'

Therefore, we are of the view that the DPR's actions are actually geared towards ensuring business continuity (notwithstanding DPR's reference to force majeure) and thus should not be construed as having a supervening quasi-judicial influence in the interpretation of private contracts.

b. NIMASA Marine Notices

Further to the IMO Circular Letter No. 4202/Add.5/Rev.1, NIMASA issued a marine notice MN04/20/SN01 (the "**Certificate Marine Notice**") communicating an extension of the validity of the statutory and trading certificates for all Nigerian registered vessels. This includes all certificates issued pursuant to the:

- Standard of Training, Certification and Watchkeeping (STCW) Convention 1978 (as amended);
- International Convention for the Safety of Life at Sea (SOLAS) 1974 (as amended);
- International Convention for the Prevention of Pollution from Ships (MARPOL) 1973/1978 (as amended);
- Maritime Labour Convention (MLC) 2006 (as amended);
- National Requirements for Power Driven Small Crafts;
- Mandatory and Safety Certificates; and
- Certificates of Medical Fitness and Certificates of Ship Registry.

In this regard, certificates with expiry dates between March 1, 2020 and July 1, 2020 have been

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

extended for a period of three (3) months or until full resumption of NIMASA, whichever is earlier. However, the Master of each affected vessel will be required to attest to the satisfactory condition of the vessel. Specifically, in relation to STCW Certificates, Certificates of Safety Training and Certificates of Medical Fitness which are due to expire between March 1, 2020 and July 1, 2020 (both dates inclusive), such certificates are extended for a further three (3) months period commencing from the date reflected on the certificate. Ship owners are however required to have valid and subsisting insurance policies at all times.

The Certificate Marine Notice is a welcome development for many Ship Owners, Ship Managers and Seafarers who had expressed serious concerns regarding the renewal of statutory and trading certificates during this period. Indeed, further to the issuance, by the President of Nigeria, of the COVID-19 Regulations 2020, a number of the relevant offices of NIMASA in Lagos ceased to be fully operational, with most personnel working remotely. The extension thus allows Ship Owners, Ship Managers and the Seafarers to continue their operations uninterrupted without the fear of being penalized for working with expired certificates.

In addition to the foregoing, NIMASA issued a COVID-19 marine notice MN03/20/SN01 for *'the purpose of helping shipping companies and all maritime stakeholders to follow advice provided by... the World Health Organization, International Maritime Organization, International Labour Organization and the Nigeria Center for Disease Control'* (the **"Healthcare Marine Notice"**). While the Healthcare Marine Notice contains several directives, relevant provisions affecting marine vessel operators engaged in offshore operations include:

- Development of 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.
- Ongoing and/or other scheduled offshore operations which require new crew or crew changes from affected countries shall ensure 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;
- Shipping Agents / Masters of Vessels are required to submit all documents related to crew and passengers regarding their travel to/from Covid-19 affected countries;
- Shipping Agents / Masters of Vessels should disallow sick passengers/crew from boarding any vessel; and

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

- Shipping Company, Agent, Crewing / Manning Agency should report confirmed cases of COVID-19 to the Agency in addition to submission of daily situational report on action(s) taken. ⁴

It must be emphasized that compliance with the above-stated directives and regulations on COVID-19 is not optional. Failure to do so will not only constitute regulatory infraction but also breach of relevant contractual provisions of charter-parties dealing with health and safety requirements. In this regard, clause 28 of the Supplytime 2005 & 2015 provides that Ship owners are required to ***'comply with and adhere to all applicable international, national and local regulations pertaining to health and safety...'***

Conclusion

The effects of the COVID-19 pandemic across various sectors continue to evolve with far reaching consequences, particularly for marine vessel operators who service the oil and gas industry in Nigeria. It is therefore important that operators stay abreast of the latest local and international developments and obtain appropriate advice on how to mitigate the myriad of issues which will continue to arise in the coming months. We remain available to provide the required support.



The Grey Matter Concept is an initiative of the law firm, Banwo & Ighodalo.

DISCLAIMER: This article is only intended to provide general information on the subject matter and does not by itself create a client/attorney relationship between readers and our Law Firm or serve as legal advice. We are available to provide specialist legal advice on the readers' specific circumstances when they arise.

⁴ Please note that there are other specific requirements for international marine vessels which call at Nigerian Ports accessible at <https://nimasa.gov.ng/covid-19-marine-notice/>

Assessing The Impact Of The Covid-19 Pandemic On The Operations Of Marine Vessels In The Nigerian Oil And Gas Industry

Contact:



Ken Etim

Partner

E: ketim@banwo-ighodalo.com



Kehinde Ojuawo

Partner

E: kojuawo@banwo-ighodalo.com



Tunji Adeyemi

Senior Associate

E: tadeyemi@banwo-ighodalo.com