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## **PSL Release**

**Exemptions by Ministry of Home affairs during Lockdown**

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## Introduction:

Not-charging of any demurrage, ground rent beyond the allowed free period or any performance related penalty on non-containerized cargo during the period of effect of Covid-19 pandemic.

In view of the complete lockdown in India for the period of 21 days because of threat posed by spread of COVID-19, the Ministry of Home Affairs *vide* its order No. 40-3/2020-DM-I (A) dated 25.03.2020 issued an addendum specifically “***giving exemption to the operations of seaport for cargo movements and inter state movement of goods/cargo for inland***” in order to ensure uninterrupted supply of goods in the country. The aforesaid steps have been taken by the Central Government to ensure smooth functioning of the ports in country so as to maintain the smooth functioning of the trade and maintenance of supply of goods in the country.

Further, due to the lockdown, functioning of the ports are affected and some cargo owners have either suspended their operations or finding it difficult to transport goods/cargo due to various reasons, resulting in imposition of demurrage, ground rent beyond the allowed free period, penal anchorage/berth hire charges and others. Considering to which Ministry of Shipping, Government of India *vide* its order no. F.NO. PD- 14300/4/2020-PD dated 31.03.2020 directed all the major ports to consider exemption or remission of demurrage, ground rent beyond allowed free period, penal anchorage/berth hire charges and other performance related penalties that may be levied on port related activities for the reasons attributable to lockdown measures *i.e* effective 22nd March to 14th April 2020 and issued following guidelines to the major ports in country:


### A. Exemption/Remission on Penalties etc

In light of the MHA. order No. 40-3/2020-DM-I (A) dated 25.03.2020 and by invoking power under Section 53 of Major Ports Trust Act, 1963; each major port shall ensure that no penalties, demurrage charges, fee, rental are levied by the major ports user (traders, shipping line, concessionaries, licensees et) for any delay in berthing, loading/unloading operations or evacuation/arrival of cargo caused by the reasons attributable to lockdown measures from 22nd March to 14th April.

Therefore, each major port shall, exempt or remit demurrage, ground rent over and above the free period, penal, anchorage/berth hire charges and any other performance related penalties that may be levied on port related activities including minimum performance guarantee, wherever.

### B. Issues relating to Force Majeure

That Ministry of Shipping, Government of India, through its order dated No PD- 1313312020-PPP/e-339106 dated 20.03.2020 and letter dated 24th March, 2020, intimated the major ports in country that COVID-19 pandemic can be considered as a ‘*natural calamity*’ which would entitle invocation of ‘force majeure’ provision under various contract involving major ports, thus in the light of the aforesaid situation the major ports are directed that –

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- *The period for completion of any Project under implementation in PPP mode or otherwise, can be extended by the*
  - *For existing and operational PPP projects, the Major ports can permit waiver of all penal consequences on a case-to-case basis along with deferment of performance obligations as per relevant provisions of Concession*
  - *The period of Force Majeure starts from the date of order of Ministry of Finance referred above and will end when the competent authority so.*

In light of the above, the Directorate General of Shipping, Mumbai has issued a DGS Order No. 08/2020, dated 31.03.2020 as an advisory note to all parties involved for not charging of any demurrage, ground rent beyond the allowed free period or any performance related penalty on non-containerized cargo during the period of effect of Covid-19 pandemic.