

Country: GIBRALTAR

1. THE MOST CRITICAL PHASE OF THE CRISIS

As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?

- *Is there special legislation on the effects of the crisis on civil justice?*

Yes, all civil proceedings commenced in Gibraltar (prior to the date of implementation of the Rules) are currently stayed by virtue of the Supreme Court (Covid 19 Contingency) Rules 2020 (“the Rules”). The Rules came into operation on 17 March 2020 and under rule 2(1), the Rules were to cease to have effect after 30 days in the absence of an extension or abridgment by the Chief Justice. Civil claims will remain stayed until 7 days after the Court Registry reopens. In addition, any listed hearings during the period when the Registry is closed have been automatically vacated.

The Chief Justice has by Notice dated 8th April 2020 extended the operation of the Rules until 7 May 2020.

- *Does the crisis have an effect on court hearings?*

Yes, as stated above, previously listed Court hearings during the period the Rules are of effect have been vacated.

- *Do court hearings take place during the crisis?*

When the Rules initially came into operation, it was only possible for “urgent applications” to be dealt with by application at a Court hearing. Since the Rules have been implemented, applications are no longer limited to those which are “urgent” but extend to applications made “In the interests of justice”.

The Rules therefore permit an application for a freezing injunction or proprietary injunction provided such an application is “urgent” or could be certified to be “in the interests of justice.”

Subject to appropriate measures (e.g. reducing to a minimum the number of participants (e.g. advocates only) and appropriate social distancing within the Court room), oral hearings can therefore proceed.

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- *Do court hearings take place in the form of video conferences?*

Arrangements have not been put in place for video conferencing. However, arrangements have been put in place for hearings to be conducted by telephone conference (as opposed to video conference). It is also possible for applications to be dealt with on the papers (without an oral hearing) with the Court determining the application exclusively on the basis of the documents submitted electronically. For all applications to be dealt with without an oral hearing, the English Commercial Court Guide at CPR Volume 2 at 2A-92 is to be followed as closely as the circumstances allow.

- *Does the crisis have an effect on deadlines (of procedural and substantive law)?*
 - *Are deadlines of ongoing proceedings affected?*

Yes, as mentioned above, claims issued and proceeding prior to the implementation of the Rules are stayed.

- *Are deadlines for bringing actions affected (limitation periods)?*

It is still possible to issue claims/other originating process and there has therefore been no extension of the limitation period. However, the Court can after inviting submissions proceed to stay proceedings after they have been issued.

- *Does the crisis have an effect on enforcement?*
 - *Are enforcement orders issued?*

Yes, enforcement orders can be issued. However, it is not possible to obtain a writ of possession re: the recovery of property.

- *Are there any effects on deadlines?*

Yes, as stated above, all existing civil proceedings (prior to the implementation of the Rules) are stayed until 7 days after the Court Registry re-opens. Currently this means the stay of such claims operates until 14 May 2020. It is however possible for parties to agree to comply with existing deadlines/directions.

- *Can enforcement acts be postponed due to the crisis?*

Yes, in particular with reference to the recovery of property by landlords. Any fines and compensation do not need to be paid until 14 days after the Registry re-opens.

- *How do courts work during the crisis?*
 - *Are courts closed?*

The Court Registry is closed to members of the public in accordance with the Rules. Claims and applications may still however be issued by sending the same electronically

to a designated email address and a suitable undertaking re: the payment of the Court fee.

- *Can courts / judges be contacted?*

Yes, via the designated email address.

- *Are documents served?*

Yes, documents (e.g. application notice) would still need to be served (unless the application was without notice). There is existing provision in our local civil procedure rules (Supreme Court Rules 2000) to allow the Court to order service by an alternative method or for service to be undertaken electronically on the adverse party.

- *How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?*

These would be dealt with within the existing procedural framework under the Civil Procedural Rules when read in conjunction with the Rules. The relevant application would therefore need to be submitted electronically in accordance with the Rules and the application would then proceed either by telephone hearing or by oral hearing (subject to a minimum number of participants and appropriate social distancing). Any such application would usually require sworn evidence.

- *How do lawyers work during the crisis?*

Lawyers are continuing to work albeit mainly virtually from home albeit some firms are operating with a skeletal staff or staff working on rotation at the local office.

- *How do banks work during the crisis?*

Banks remain open albeit local banks have implemented respective Contingency Arrangements concerning the provision of banking services. Alternative methods of banking are encouraged e.g. use of ATMS for encashments and Online Banking platforms for payments. However, access to banking halls is limited. By way of example, Gibraltar International Bank (a local retail bank) has limited access to its main branch to 5 people at any one time. Customer meetings can also be conducted by telephone or videoconference as opposed to face to face meetings.

- *Does the crisis have an effect on insolvency law?*

At present, no legislation has or rules been published on this aspect albeit rules are expected which will have an effect on insolvency law. It is anticipated these are likely to result in some form of moratorium.

- *Are there any further effects not addressed in the questions above?*

No – not with reference to Court procedure.

2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?

The consequences are likely to be wide ranging with the inevitable shrinking of the local economy and the consequential effect on businesses both locally and abroad. Gibraltar is by no means unique in this regard. It is also envisaged that that the “new normality” will be a gradual return to ways of the past coupled with a new approach to lifestyle and business. It is however hoped that the help offered by Government to date to certain sectors of the economy will serve to mitigate any long-term economic damage.

- *Which measures introduced during the crisis will be withdrawn immediately?*

The Rules themselves will have an end date so they will cease to be of effect on the date designated.

- *Which measures will remain in place?*

It is not envisaged that the Rules will continue to operate so therefore the measures such as the current stay of civil proceedings will no longer apply and remain in place. It may however be a natural consequence of the Rules that more proceedings take place by telephone or on the papers than previously was the case prior to Covid 19 outbreak. However, strictly speaking that will not be by virtue of the measures themselves as the CPR already provided for telephone hearings etc.

- *Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?*

It is not anticipated that the enforcement of economic crime will be weakened due to lack of financial resources.

- *Do you expect a rise of new anti-corruption prosecutions after the crisis?*

There is a high risk of coronavirus related scams (e.g. frauds in relation to the supply of personal protective equipment) and in that respect, fraudsters (given their very nature) are seeking to benefit in these difficult times. In addition, so-called security experts and cybercriminals may seek to promote other bogus products and services. There is also the possibility of prosecutions against individuals or companies who seek to benefit dishonestly or fraudulently from local Covid 19 financial support and stimulus measures which have been introduced to assist certain companies and individuals locally.

- Will the ratio of third party funded matters rise?

Third party funding is an existing and viable potential funding mechanism to enable claims to be brought by individuals (e.g. liquidators) or companies alike subject to the commercial terms of the arrangements agreed. There is therefore every prospect that when cash flow is tight, individuals or corporations may therefore be attracted to third party funding for the purpose of funding or insurance for insuring costs liabilities in civil claims. Whether the ratio will increase is a matter for debate. However, third party funding will certainly remain an attractive option for litigants to consider. Individual circumstances will dictate whether third party litigation funding is warranted.

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