

WHAT DOES THE COVID-19 CRISIS MEAN FOR VICTIMS OF FRAUD?

Country: PORTUGAL

We have been requested to prepare a memorandum addressing a set of questions concerning the impact of the Covid-19 crisis on victims of fraud within the Portuguese jurisdiction, notably the effects of such crisis during its most critical phase on civil justice and the long-term consequences of the pandemic, once its has been abated, in the gradual return to the normality.

It is relevant to point out that the information provided and the opinions expressed in this memorandum are of a general nature, not replacing the use of adequate legal advice for the resolution of specific cases, whenever necessary.

I. 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?**

Over the past few weeks, several exceptional and temporary measures have been adopted in the civil justice field, aimed at safeguarding the several constraints that are currently affecting the normal functioning of the courts and other bodies and entities of the judicial system. The measures under consideration are fundamentally contained in one legal act: Law No. 1-A/2020, of March 19 (as amended by Lay No. 4-A/2020, of 6 April) ("**Law 1-A/2020**").

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

Law No. 1-A/2020 determined the suspension of procedural deadlines from 09.03.2020 until the cessation of the measures implemented for the prevention, containment, mitigation and treatment of the Covid-19 pandemic. This exceptional regime entails, *inter alia*, the suspension of procedural acts to be held in person, such as court hearings and examination of witnesses.

Despite this generic suspension, Law No. 1-A/2020, of March 19 expressly foresees the possibility of performing procedural acts (notably court hearings) whenever all the parties agree that the conditions to ensure their practice through remote communication means (e.g. teleconference, video call or other equivalent) are fulfilled.

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

In addition to the possibility just mentioned, it should be noted that, under Law 1-A/2020, urgent proceedings (e.g. precautionary proceedings) shall continue to be conducted without suspension (or interruption) of time limits, acts or steps during this period. As a rule, court hearings and other face-to-face procedural acts in urgent proceedings shall be performed through remote communication means. Notwithstanding, in those proceedings concerning the life, physical integrity, mental health, liberty or immediate subsistence of the interveners, whenever remote means are not feasible or possible, procedural acts can be held in person, provided that this does not involve the presence of more persons than provided for in the recommendations from the health authorities and in accordance with the guidelines set by the competent higher councils.

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

Please see the previous section.

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

- **Are deadlines of ongoing proceedings affected?**

Except in the case of urgent proceedings, the deadlines of ongoing proceedings shall remain suspended from 09.03.20 until the ceasing of the current situation, to be determined by law.

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

Pursuant to Law 1-A/2020, prescription and limitation periods regarding all types of

proceedings and procedures are also suspended.

- **Does the crisis have an effect on enforcement?**

Likewise, enforcement proceedings (aimed at obtaining the payment of an amount, the delivery of a specific object or at forcing the counterparty to carry out a certain action) remain suspended.

Moreover, over this period, any acts required to be performed in connection with enforcement proceedings (e.g. those relating to sales, arrangement with creditors, surrender of real estate properties to the legal authorities and seizure proceedings), as well as their preparatory measures are also suspended.

In this respect, the only legally admitted exception concerns those acts whose suspension would cause serious harm to the creditor's livelihood or whose non-performance would cause him other irreparable damage (which depends on a prior court decision). Yet, it is likely that the current pandemic crisis will have an impact on the performance of such acts, affecting, for instance, situations where personal contact is required.

- **Are enforcement orders issued?**

In light of the generic suspension of procedural deadlines, as a rule, during the crisis enforcement orders shall not be issued.

However, it is noteworthy that, as provided by Law 1-A/2020, the suspension of procedural deadlines shall not preclude a final decision being rendered in those cases where the court does not find necessary to take further steps. Thus, it shall not be excluded the possibility that, in the proceedings where the status of the case allows the issuance of a final decision, enforcement orders may be rendered.

- **Are there any effects on deadlines?**

The procedural deadlines of ongoing enforcement proceedings remain suspended until the ceasing of the current crisis.

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

As mentioned above, with exception to the acts whose suspension may produce serious damage to the creditor's livelihood or other irreparable damage, any acts to be performed in connection with enforcement proceedings shall be suspended until the ceasing of the pandemic crisis.

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

- **Are courts closed?**

Although some restrictions to the physical presence of judges and clerks at the courts facilities may apply as a consequence of the determinations issued by the Higher Council of Magistracy, courts remain open.

Following a Presidential Decree declaring the state of emergency, on the grounds of public calamity, was approved on 18 March (Decree No. 14-A/2020), the Higher Council of Magistracy issued a number of exceptional management measures, determining, *inter alia*, that only the following procedural acts and steps should be conducted in person: i) urgent acts arising from the decree of the State of Emergency; ii) the urgent service provided for in law; iii) procedural diligences concerning minors at risk or urgent educational guardianship proceedings; and iv) trials of detained or imprisoned defendants.

According to the information made available so far, beyond the aforementioned acts and those to be performed in the context of urgent proceedings, other services under the responsibility of the judges have been mainly ensured through remote communication means.

- **Can courts / judges be contacted?**

To date, there have been no significant limitations on contacts with the courts.

A note should be made on the fact that, according to the practice in Portuguese judicial system, judges are not directly contacted by lawyers or other procedural interveners, all the contacts being made with the relevant court clerks.

- **Are documents served?**

Generally, postal notifications and summons shall continue to be served to the parties over the current exceptional period.

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

As previously referred, urgent proceedings continue to be conducted without suspension of deadlines, acts or steps and, therefore, precautionary or interim measures (e.g. injunctions, freeze orders) shall continue to be discussed and judged.

- **How do lawyers work during the crisis?**

A large number of lawyers and law firms have been operating remotely, while maintaining full access to their firm's electronic files through VPN systems. Litigation lawyers have continuing to advise and represent their clients in ongoing proceedings where the suspension of acts and time periods does not apply, as well as preparing for the moment when the courts will resume normal activity.

- **How do banks work during the crisis?**

A large number of bank branches have been operating behind closed doors, with banks repeatedly advising customers to use online services to carry out transactions and only visit the branch when absolutely necessary.

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

Under Law 1-A/2020, the deadline for filing for the debtor's insolvency is also suspended.

Having said this, no amendments to the Portuguese Insolvency and Recovery Code ("CIRE"), which regulates insolvency law within our jurisdiction, have been published so far.

II. FORECAST AFTER THE CRISES 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?

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

In principle, the majority of the emergency measures, especially those related to the suspension of the procedural deadlines, will be lifted as soon as the pandemic crisis ends. However, given that the legislation approved does not foresee the specific moment in which the measures under consideration will effectively cease and a new act will have to be adopted to address this matter, there remains a certain degree of uncertainty in this regard.

- **Which measures will remain in place?**

At this stage, it is not possible to anticipate which measures will remain in force. It can be admitted that some of the measures concerning social distancing (e.g. suspension of acts to be held in person) will stay in place for some additional time, but the question shall ultimately depend on the development of the epidemic.

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

Despite some possible short-term constraints and delays in this area (due to the crisis criminal investigations and proceedings are currently subject to a number of limitations), the weakening of the enforcement of economic crime does not seem a likely scenario neither in the medium nor in the long term.

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

This could be the case in Portugal. The current crisis may be being seen as a chance to take advantage of the health emergency by committing several acts with the purpose of illegal and abusive private earning, particularly in a period marked by low cash flows and medical supply shortages. The urgent and imperative demand for personal protective equipment, swabs, ventilators and potential therapeutic medicines could

give rise to conducts of private and public corruption, fraud, embezzlement and extortion.

- **Will the ratio of third party funded matter rise?**

The arrangement for third party funding is not a common practice in Portugal, neither a well-known figure among us. Therefore, and even though Portugal have recently been pointed out by several experts as an emerging market for third party funders, it is difficult to predict if the current crisis will lead to the increase of financial support for litigation.

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