

What does the Covid-19 crisis mean for bringing Kazakhstani proceedings to assist victims of fraud

1 THE MOST CRITICAL PHASE OF THE CRISIS

(a) Special Legislation

In accordance with the Presidential Decree dated 29 April 2020, the state of emergency was lifted on 11 May 2020. However, quarantine measures remain in force across many regions of the country based on the the Health Code and the Resolution of the Chief State Sanitary Doctor of the Republic of Kazakhstan dated 22 May 2020 No. 37.

Certain issues of judicial practice in connection with the introduction of a state of emergency were clarified by the Clarification of the Supreme Court dated May 6, 2020 No. 9 (the “**Clarification**”).

(b) Effect on Court Hearings

After the end of the state of emergency, consideration of all court cases in Kazakhstan continue to be carried out through remote participation of the parties using online video conferencing (via TrueConf application, WhatsApp, etc.). However, in exceptional circumstances criminal cases may be considered in person.

(c) Effect on Deadlines/Limitation Periods

Currently, courts do not make any further postponements in the consideration of cases and follow the usual procedural deadlines. However, all workflow is still being conducted only via Court Cabinet - the single electronic system for access to all judicial services.

There are specific rules on extension and/or postponement of various terms or deadlines that account for force majeure events in general. For example, a criminal investigation can be postponed due to an action of insuperable force by an act of court. Civil procedural deadlines missed during the state of emergency may be extended and reinstated by the court. These matters have been reconfirmed by the Clarification, as the fact that the state of emergency introduced by the President constituted an event of force majeure (recognized as a legal fact).

Also, at the final meeting of the State Commission on the State of Emergency, in order to prevent pressure from unscrupulous creditors, the President ordered the suspension of the initiation of bankruptcy proceedings against legal entities and individual entrepreneurs until 1 October 2020.

(d) Effect on Enforcement

Generally, the execution order of enforcement documents remains the same as provided by the current legislation. At the same time, in the presence of circumstances that make it difficult or impossible to carry out enforcement actions, the claimant or debtor or bailiff has the right to raise the question of changing the method and procedure of execution with the court that has reviewed the case or the court at the place of execution.

The issue of postponement of execution as well as indexation of awarded amounts, is decided by the court upon a request of the parties to enforcement proceedings.

(e) Effect on Court Functionality

Courts are working, but the visits are still strictly limited. Court employees and judges have begun working, as per usual. There is a hotline for each court by which the court can be contacted. Judges can be contacted through their court secretaries. Moreover, all of the documents are served through Court Cabinet.

(f) Urgent Matters

Urgent matters such as interim measures (e.g. requests for injunctions) are applied electronically as usual. Until 1 June 2020, arrests on bank accounts of individuals registered as individual entrepreneurs and private practitioners, with the exception of those classified as having a high risk (as determined by the Tax Code), are cancelled according to a press release of the State Revenue Committee (the "**Committee**").

(g) Functionality of Lawyers

The Ministry of Justice strongly recommended that notaries, lawyers, legal advisors, and private bailiffs suspend their activities for the period of state emergency and carry out legal assistance remotely. At the moment, all types of organizations (including legal firms) working from their offices are allowed to work only with the strict compliance of sanitary rules prescribed by the chief medical officer. The headcount in the offices cannot exceed 50% of the total staff.

(h) Functionality of Banks

At the moment, the work schedule of banks is from 9:00 to 18:00. The headcount in the offices cannot exceed 50% of the total staff. All the types of bank services, including services to individuals and legal entities are performed in the usual mode.

2 FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

(a) Effect on Economic Crimes

The authorities were instructed to revise the methods of work with a focus on prevention, eliminating any facts of pressure on entrepreneurs from the law enforcement bodies and fiscal authorities during the crisis. Moreover, the authorities were instructed to review the priorities in the work of the anti-corruption service for the period of emergency, focusing on prevention.

(b) Effect on Anti-Corruption Prosecutions

The pandemic might be seen by some as an opportunity to take advantage of the emergency to abuse their power for private gain. Moreover, mandatory stay-at-home orders have resulted in high unemployment and a risk to the sustainability of small and large businesses. Thus, corruption probably will rise in the time of crisis, especially in areas with high pre-crisis corruption, limited transparency, and weak anti-corruption measures. Considering, the change of anti-corruption policies in the course of prevention rather than prosecution, there is a high probability of a rise of anti-corruption prosecutions now that the state of emergency has ended. According to the press release of anti-corruption authorities, the Special Monitoring Group (public institution under the anti-corruption Agency) demonstrated tremendous results in the counteraction of corruption in different state and private fields during and after the state of emergency.

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