

## MEMORANDUM

From: MIGUEL CASES (CASES & LACAMBRA).

Ref: FraudNet questionnaire in relation to Covid-19 Coronavirus (Principality of Andorra).

Date: 14 April 2020.

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### SCOPE:

CASES & LACAMBRA has issued this memorandum (hereinafter, the “**Memorandum**”) with the purpose of ascertaining the main measures adopted in the Principality of Andorra to deal with the Covid-19 coronavirus pandemic and draft a standardised guide between the various jurisdictions.

### 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?**

The SARS-CoV-2 pandemic, known as COVID-19, has caused a health emergency in the Principality of Andorra and exceptional measures of temporary nature have been adopted. In this sense, we will further develop the effects of the Covid-19 on civil justice in the following questions.

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

Yes. The General Council (“*Consell General*”) has adopted the Act of exceptional and urgent measures for the health situation caused by the pandemic SARS-CoV-2 (hereinafter, the

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“Omnibus Act”<sup>1</sup>) affecting, among others, civil justice. This piece of legislation has been subsequently developed by the Supreme Council of Justice (“*Consell Superior de la Justícia*”), which approved three (3) agreements with direct effect on civil justice<sup>2</sup> (hereinafter, the “*Agreements*”).

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

Yes, the abovementioned regulations have established the suspension of all procedural deadlines provided in the Andorran procedural laws for all jurisdictional orders (including the Constitutional Court). The effects of this suspension apply from 14 March, 2020 (inclusive) until the day the Andorran Government decrees the end of the health crisis. All days included in this period will be considered as non-business days for procedural purposes.

This suspension does not affect: (i) *habeas corpus* proceedings; (ii) the preferential and urgent procedures for the protection of fundamental rights; (iii) proceedings with detainees or imprisoned persons; (iv) urgent prison surveillance proceedings; (v) resolutions of precautionary measures; (vi) adoption of measures at risk situation; and (vii) when the court agrees to take any procedural measure to avoid irreparable damage to the rights and interests of the parties.

All procedural actions taken during the suspension period will be valid and effective.

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

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<sup>1</sup> Law 3/2020, of 23 March, on exceptional and urgent measures for the health emergency situation caused by the SARS-CoV-2 pandemic (“*Llei 3/2020, del 23 de març, de mesures excepcionals i urgents per la situació d'emergència sanitària causada per la pandèmia de SARS-CoV-2*”).

<sup>2</sup> (i) Agreement dated March 15, 2020, by which the Supreme Council of Justice agrees on some complementary measures in order to develop the provision of article 1.d of the Government Decree dated March 14, 2020 for the establishment of exceptional measures for the situation of health emergency caused by the new coronavirus SARS-CoV-2 (“*Acord de data 15 de març de 2020 pel qual el Consell Superior de la Justícia acorda unes mesures complementàries per tal de desplegar la disposició de l'article 1.d del Decret de Govern de data 14 de març de 2020 d'establiment de mesures excepcionals per la situació d'emergència sanitària causada pel nou coronavirus SARS-CoV-2*”); (ii) Agreement dated March 18, 2020 by which the Supreme Council of Justice agrees on a number of measures to implement the provision of article 2 of the Government Decree dated March 17, 2020 (“*Acord de data 18 de març 2020 pel qual el Consell Superior de Justícia acorda unes mesures per tal de desplegar la disposició de l'article 2 del Decret de Govern de data 17 de març de 2020*”); and (iii) Agreement dated April 1, 2020 by which the Supreme Council of Justice adapts the measures in force according to the agreements dated 15 and 18 March, 2020 to the precepts established in the chapter seven of the law 3/2020, dated 23 March, 2020, of exceptional and urgent measures for the situation of sanitary emergency caused by the SARS-CoV-2 pandemic (“*Acord de data 1 de abril de 2020 pel qual el Consell Superior de la Justícia adapta les mesures vigents segons acords de dates 15 i 18 de març de 2020 als preceptes establerts al capítol setè de la llei 3/2020, del 23 de març, de mesures excepcionals i urgents per la situació d'emergència sanitària causada per la pandèmia de SARS-CoV-2*”).

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Without prejudice to the suspension abovementioned, all procedural actions considered by the court to be undeferrable, or when the delay could lead to difficult or impossible repair damage to any party, may be carried out. Therefore, the judicial body only will take place the court hearings considered strictly essential.

Please, note that the proceeding before the duty courts shall be maintained in their usual conditions, where all the precautionary and hygienic measures recommended by the Andorran Government shall be implemented.

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

Yes, all the proceedings are permitted to be carried out by videoconference, complying with the requirements of two-way and simultaneousness and provided that the rights of defence and contradiction of the parties are ensured. In addition, the clerk of the court or the court itself must duly prove the identity of the parties by means of prior referral or direct exhibition of the relevant identity document.

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

Yes, the main effect is the total suspension of administrative and judicial deadlines from 14 March, 2020 (inclusive) until the day the Andorran Government decrees the end of the health emergency or after the expiry of two (2) months from the entry into force of the Omnibus Act (1 April, 2020). All days included in this period will be considered as non-business days for procedural and administrative purposes.

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

Yes, the deadlines of ongoing proceedings are suspended provided that these proceedings are not considered as undeferrable or when the delay of such proceedings could lead to difficult or impossible repair damage to any party.

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

The general suspension of deadlines implies the suspension of prescription and expiry terms of all kinds of actions, until the day when the Andorran Government decrees the end of the health crisis.

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Although an action may be filed as long as a prior request of an appointment has been made, the procedure will be suspended.

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

Although there is no specific provision regarding enforcements, the suspension of all judicial and administrative deadlines implies the suspension of any execution procedure, unless it is considered by the court as a difficult or impossible-to-repair damage or undeferrable.

- **Are enforcement orders issued?**

Please, see previous questions.

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

*Ut supra.*

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

*Ut supra.*

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

The courts will keep judicial activity to a minimum, maintaining essential services and duty services (both described above). The court only will take place the relevant actions considered strictly essential.

- **Are courts closed?**

No, from 14 March 2020 (inclusive) until the day the Government decrees the end of the health crisis, the facilities of the Administration of Justice will be open from 8 a.m. to 2 p.m. and will operate by prior appointment.

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

Contact with the courts will be maintained on their usual terms. However, if the matter is not strictly essential, no response time will apply to them until the end of the health emergency. For any on-site procedure, it will be necessary to make an appointment in advance.

- **Are documents served?**

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The submission of documents will be possible through the usual channels, complying with the prior appointment procedure.

Please, note that the notifications will be made through the usual means<sup>3</sup>.

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

As indicated above, judicial activity shall not be suspended if the courts consider that a matter is undeferrable, or if its delay could lead to difficult or impossible-to-repair damage to any party. Therefore, it may agree on any injunctions and/or freezing orders as it deems necessary.

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

As lawyers are considered to be a profession whose activity cannot be totally suspended, they are subject to on-call or stand-by shifts to meet the needs that arise during the health emergency period. They also have the duty to teleworking and carry out rotational shift measures as far as possible.

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

By express exemption from the Andorran Government, banks are allowed to remain open during the health emergency. However, these entities are implementing measures to prevent contagion, such as limiting on-site attendance in favour of telephone assistance.

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

Although there is no specific provision, the suspension of deadlines affects the obligation to file for bankruptcy, as well as for initiated proceedings or for the execution of such proceedings. Therefore, it will not be necessary to file for bankruptcy until the end of the health crisis is declared by government decree, while the insolvency proceedings already initiated will be suspended until judicial activity is resumed.

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<sup>3</sup> In accordance with article 86.2 of the Constitution ("*Constitució del Principat d'Andorra*") and article 59 of the Qualified Law of Justice of 3 September 1993 ("*Llei qualificada de la justícia, del 3 de setembre de 1993*").

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However, the suspension of deadlines to file for bankruptcy does not imply the suspension of the right. Therefore, in those situations where the delay to file for bankruptcy could lead to difficult or impossible repair damage to the company or any third party, the court may adopt those urgent measure that are strictly necessary to avoid such damages.

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

It is necessary to highlight the special incidence of the suspension of administrative deadlines, which implies the paralysis of particularly institutions in the Principality of Andorra, such as the Government Department of Foreign Investment. Besides that, public notaries must respond to requests made to them in urgent situations and are subject to the same legal regime (on call) as lawyers.

## 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?**

As indicated above, the measures taken in the context of the health crisis are of a temporary nature and will be withdrawn within two (2) months from 1 April, 2020 or at the time of the Government decree declaring the end of the emergency situation. Notwithstanding the foregoing, the Andorran Government is working on a protocol to develop the progressive withdrawal of these measures.

Moreover, the development of the crisis during the following days in the Principality of Andorra and the neighbouring countries will define the roadmap to be followed, therefore the short and long-term impact of the Covid-19 is still unknown.

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

The general suspension of deadlines and jurisdictional activity will end at the moment in which the Government decrees the end of the health emergency. However, to date no legal framework has been approved, thus further development shall be required.

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

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Among the measures adopted to deal with the Covid-19 pandemic, the Andorran Government has agreed with the Association of Andorran Banks (hereinafter, the “ABA”) to grant a line of credit to companies and the self-employed for a value of 180 million euros to cover situations of illiquidity that may arise during the health emergency. These loans will have a maximum duration of twelve (12) months<sup>4</sup>.

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

While the health emergency has led to a wave of cyber-attacks (most notably phishing and smishing) the Government has approved different measures, amending the 2020 Budget Act<sup>5</sup> with the intention of covering all costs incurred by public bodies during the crisis.

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

Due to the small size of the country and viewing the diligence with which both public and private bodies are facing this exceptional situation seems to indicate that there will not be an increase in anti-corruption prosecutions after the crisis. However the economic consequences of the crisis will probably make pre-existing fraud emerge. This will probably be a consequence to reporting obligations made by shareholders, partners etc under third party custody agreements that are typical in Andorra

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

Third party funding is residual in Andorra and we believe it will continue to be present in a small part. However third party funding could be present in more multijurisdictional cases with Andorran leg.

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*The foregoing, save for involuntary errors or omissions, constitutes our vision on the subject in question, on which we willingly defer to any other opinion better founded in law. This*

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<sup>4</sup> Decree dated 24 March, 2020 approving an extraordinary program of guarantees for companies and businesses for the emergency health situation caused by SARS-CoV-2 coronavirus (“Decret del 24 de Març de 2020 d’aprovació d’un programa extraordinari d’avals per a empreses i negocis per la situació d’emergència sanitària causada pel coronavirus SARS-CoV-2”).

<sup>5</sup> Law 2/2020 of 27 February on the budget for the year 2020 (“Llei 2/2020, del 27 de febrer, del pressupost per a l’exercici del 2020”).

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