

What the Covid-19 crisis means for victims of fraud

COLOMBIA

15 April 2020

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?

As a unitary system of government, with decentralised territories and entities that have financial and administrative autonomy, Colombia has currently in force multiple laws, decrees and orders at national and local levels, depending on the competence of each territory and entity.

At the top of the legislative pyramid, the Colombian President issued Decree 417 of 17 March 2020, by means of which the State of Economic, Social, and Ecological Emergency was declared throughout the National Territory, broadening the scope of the President's powers. As a consequence, the different entities and local governments have progressively issued different decrees and orders, according to the advances of the sanitary measures implemented by the National Government.

In respect to civil justice, the Supreme Council of the Judiciary firstly declared the suspension of judicial terms and the cancellation of all public hearings as of 16 March 2020 until 20 March 2020, and has progressively extended said measure for additional periods. Currently, by means of Agreement PCSJA20-11532 of 11 April 2020, the Superior Council of the Judiciary suspended all judicial terms until 26 April 2020.

The abovementioned suspension measure has the following exceptions:





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- Constitutional Actions for the Protection of Fundamental Rights (*Tutela Actions*) and Habeas Corpus: those actions related to the right to life, health, and freedom have priority;
- Actions before the Constitutional Court related to Presidential Decrees issued during the emergency;
- Administrative Courts and the Council of State will continue to review the legality of the Presidential Decrees issued during the emergency;
- Criminal proceedings, specifically for supervisory judges (*juez de control de garantías*), which must decide the legality of detentions made by the Police, and for judges who already scheduled public hearings with prisoners and people deprived of liberty;
- Family proceedings, specifically for cases of intrafamily violence;

In the abovementioned cases, although the suspension of judicial terms is not applicable, the hearing may take place virtually in form of video conferences, and in limited cases, the hearings still may take place personally.

For the duration of the emergency, the rest of all Judicial Branch officials will preferentially use the technological means for all communications, notifications, servings, hearings and proceedings, and will allow the parties, lawyers, third parties and additional parties to act within the processes through the available technological means, avoiding demanding and fulfilling unnecessary physical formalities. The submissions and other communications may be sent or received by email, avoiding personal or additional presentations or authentications of any kind. To the extent possible, the PDF format will be used for written documents sent or received electronically.

The link below contains all the regulations developed by the Colombian National Government to deal with the outbreak, categorised by the competent entities:
<http://www.regiones.gov.co/Inicio/COVID-19.html#features11-3k>.



Asteri Abogados / Asteri Law Firm

Tel : (031) 716 22 68 • Calle 64a # 2-32

info@asterilaw.com • www.asterilaw.com

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

The National Government has not issued any legislation specifically regulating statute of limitations terms. However, as mentioned *supra*, the Supreme Council of the Judiciary has declared the suspension of all judicial terms up until 26 April 2020, which has effects on the statute of limitations terms (*prescripción y caducidad*). Therefore, in principle, those terms are currently interrupted and will resume on the abovementioned date, unless the Supreme Council of the Judiciary orders otherwise. In any case, we highly recommend seeking the advice of local counsels familiar with the current emergency legislation for any action or proceeding to be initiated in Colombia.

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

As any other proceedings, emergency requests such as interim measures may be filed virtually, as per the abovementioned measures and regulations. In general terms, hearings on such emergency proceedings, as in any other proceeding, will be conducted by video conferences or any other virtual means.

- How do lawyers work during the crisis?

In general terms, most law firm offices/independent lawyers are closed/working from home. In the particular case of Asteri Law Firm, only member of FraudNet in Colombia, we are available, continuing to work remotely, and ready to initiate any action in the best interest of our clients.

- How do banks work during the crisis?

Banking services are still functioning and being provided on an on-going basis without significant changes. Financial sector entities are also implementing financial aids for their customers in the midst of this difficult situation. Those financial measures include grace periods for the payment of debts, lines of credit to meet needs under special conditions, refinancing of credits and extending the terms for payment of credit cards for up to 48 months, among others.



- Does the crisis have an effect on insolvency law?

The insolvency regime in Colombia is mostly governed by Law 1116 of 2006 and in general terms the reorganisation proceedings are held before the Superintendency of Corporations, with few exceptions. However, the National Government recently issued the new Decree-Law 560 of 15 April 2020, by means of which transitional measures were adopted in relation to insolvency proceedings.

This new Decree-Law introduces several substantial and favorable changes to the insolvency regime in Colombia and is intended to mitigate the extent of the effects of the State of Emergency, and to recovery and preserve the company as a unit of economic exploitation and source of employment generation, through the mechanisms of rescue and recovery included therein. This Decree-Law is applicable to ongoing proceedings and is valid for up to 2 years.

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

We strongly believe the Covid pandemic will raise a deglobalisation pattern in the years to come, making the domestic markets the focus of the economies rather than the global market. In this sense, it is likely that Governments start using, for example, tariffs and quotas to preserve local industries and agriculture from being overrun by foreign products. The question whether deglobalisation will affect international law firms (by favoring local firms) is an interesting topic to be analysed.

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?

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

Most of the legislative measures mentioned *supra* have specific expiration terms and/or will cease their validity once the Covid emergency ceases, although the end of the outbreak



in Colombia is yet to be determined. Therefore, it is not possible to ascertain when the measures will be withdrawn.

- Which measures will remain in place?

We highly expect that this pandemic will have long-term effects on the judicial system, i.e. we strongly believe the emergency will inevitably impose modernisation and digitalisation of our Court system and we expect the measures taken so far on technological and virtual means will (hopefully) remain.

- Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources? Do you expect a rise of new anti-corruption prosecutions after the crisis?

In Colombia, the alarms on corruption matters are already on and some complaints have already been filed before the supervisory bodies, denouncing public officials profiting from the purchase of medical supplies and equipment, exaggerated down payments, discrepancies in quantities and qualities, lack of suitability of suppliers, among others. Therefore, we might expect a rise of new corruption cases during and after the crisis.

- Will the ratio of third party funded matter rise?

Indeed, as consequence of this emergency, it is likely that parties lacking of financial liquidity call upon third party funders for risk sharing options.

FraudNet Member in Colombia:

Luis Alfredo Barragán Arango
Founding Partner
Asteri Law Firm
Bogotá, Colombia
lbarragan@asterilaw.com

Other Contact details:

Laura Espinosa B.
Senior Associate
Asteri Law Firm
Bogotá, Colombia
lespinosa@asterilaw.com

