

WHAT THE COVID-19 CRISIS MEANS FOR VICTIMS OF FRAUD

France

15 April 2020

I. 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?

1. The exceptional measures adopted by the French Government to adapt civil justice in the context of the Covid-19 outbreak and ensuing nation-wide lockdown are for the major part enshrined in presidential orders No. 2020-304 and 2020-306, both dated 25 March 2020.

2. *Effect on the operation of courts.* Civil courts in France are closed and their operation is reduced to a bare minimum. In practice, except for emergency interim relief applications, all civil hearings have been postponed to as-of-yet unknown dates. Hearings can be held through video conferences or other technological means if the sitting judge orders so.

3. Except in those emergency matters which are allowed to be processed by the magistrate fielding the exceptional hearing sessions, no decision or orders are issued by the courts. It is up to the judge to decide whether a matter submitted to his/her review is urgent enough to warrant a hearing.

4. *Effect on deadlines.* Deadlines and time periods imposed by law or regulations to take any action which fell or will fall due between 12 March 2020 and a month from the end of the state of health emergency (24 June 2020 as of the date of writing) will be deemed to have been complied with if the necessary action is taken within the legally imposed time-limit or two months from the end of the state of health emergency plus one month (i.e. 24 August 2020 as of the date of writing) – whichever is shortest. This does not apply (i) to *contractual* deadlines or time periods (for instance a contractual deadline to accept an offer); nor (ii) to deadlines or time periods which fell due *before* 12 March 2020 or will fall due *after* one month from the end of the state of health emergency (24 June 2020 as of the date of writing).

5. In addition, court-ordered interim, investigative and evidentiary measures that should have expired between 12 March 2020 and one month from the end of the state of health emergency (24 June 2020 as of the date of writing) are *de jure* extended for a duration a two months from the end of the state of health emergency plus one month (i.e. until 24 August 2020 as of the date of writing). These measures can however be modified or terminated by a judge.

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6. *Effect on insolvency law.* Specific dispositions regarding insolvency law have been put in place through presidential order No. 2020-341 dated 27 March 2020. The main effect is that companies which were not insolvent on 12 March 2020 will not be considered as insolvent for a period of 3 months after the end of the state of health emergency (i.e. until 24 August 2020 as of the date of writing). Yet companies which run out of cash may nonetheless file a petition for the commencement of insolvency proceedings if need be.

7. The French government also set up a EUR 300 billion state-backed loan scheme available to all companies facing financial difficulties due to the health crisis, to the exclusion of those that were already engaged in insolvency proceedings as of 12 March 2020.

8. *Law professionals.* Lawyers, public notaries and bailiffs are all doing their best to continue their activity, notably by working remotely. Formal service of documents is more challenging but still possible.

9. *Banks.* Banks are still up and running, and are instrumental in the efforts of the government to mitigate the economic consequences of the health crisis – notably by granting loans in the context of the EUR 300 billion of government-backed loans scheme.

II. 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?

10. All of the measures adopted by the French government regarding the organization of courts and the computation of time periods have clear long-stop dates and will phase-out gradually in the months following the end of the state of health emergency.

11. The Covid-19 crisis will likely leave the judicial institution weaker than it found it, which will necessarily reflect on the quality and extent of the enforcement of economic crime for the coming years.

12. In this context, a surge of new anti-corruption prosecutions appears unlikely, as the shattered judiciary will be overwhelmed by other, more pressing matters. More than ever, recourse to civil remedies and enforcement will need to be favoured by victims of fraud wishing to recover.

13. Finally, given the cash constraints that the Covid-19 crisis puts on all the economic agents, it is to be expected that recourse to third-party funding will soar, as companies seek to pour what resources they have in the productive, operating parts of their businesses and preserve their cashflows.

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