

ASSISTING FRAUD VICTIMS IN SWITZERLAND IN TIMES OF COVID-19

Country: SWITZERLAND (Updated on 5th May 2020)

1. MOST CRITICAL PHASE OF THE CRISIS

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

On 16th March 2020, the Swiss government (i.e. the Federal Council) declared an extraordinary situation under the Epidemics Act and subsequently adopted four emergency ordinances to address the effects of the crisis on civil proceedings and debt enforcement proceedings (for details see further below). More or less simultaneously, the courts on all three levels of the judiciary (i.e. district, cantonal and federal level) adopted guidelines regarding the conduct of hearings (see the answer to the next question). Overall, the measures adopted by the government and the judiciary constitute a measured response to the crisis and were lifted in the most part at the end of April 2020. This, together with the predominantly written nature of civil proceedings and the continued functioning of postal services by which most documents are served, have prevented a severe disruption of the Swiss civil justice system.

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

- **Do court hearings take place during the crisis?** The power to direct the conduct of proceedings, including the convening of hearings, lies with each court. Most courts postponed all non-urgent hearings until around end of April or until further notice. Thus, in the Canton of Zurich, hearings – other than those which cannot suffer delay due to legal or factual reasons – were postponed for six weeks, i.e. until 26th April 2020. The courts of Geneva cancelled all hearings in civil matters, including urgent hearings, until 19th April 2020, and have resumed to hear urgent cases from 20th April 2020.
- **Do court hearings take place in form of video conferences?** Following an announcement made on 9th April 2020, the Federal Council adopted new (temporary) rules on telephone and/or video conferencing on 16th April 2020 (COVID-19 Ordinance Justice and Procedural Law). These rules have taken effect on 20th April 2020 and will remain in force until 30th September 2020. For ordinary audiences, physical attendance has been restricted to the parties (exclusion of the general public; special arrangements for the press) and attendees are required to strictly adhere to the advice on social distancing of the Federal Council.

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

- **Are deadlines of ongoing proceedings affected?** On 20th March 2020, the Federal Council ordered a suspension of deadlines in civil and administrative matters from 21st March until 19th April 2020. Already, on 17th March 2020, the administrative commission of the Swiss Federal Supreme Court suspended all court-imposed deadlines with effect from 19th March 2020. These suspensions have now ended. Some courts, for instance those of the Canton of Geneva, have however ordered an *ex officio* extension of all court set deadlines until 25th May 2020 (except for urgent proceedings).

- **Are deadlines for bringing actions affected (limitation periods)?** No.
- **Does the crisis have an effect on enforcement?**
- **Are enforcement orders issued?** By ordinance of 18th March 2020, the Federal Council froze most public enforcement acts against debtors (e.g. issuance of summons to pay, seizures, etc.) from 19th March until 4th April 2020, resulting in effect (due to Easter holidays) to a freezing of such acts until 19th April 2020. There is an important exception to this, as courts remained entitled to grant attachment orders in *ex parte* attachment proceedings throughout this period.
- **Are there any effects on deadlines?** The aforementioned freezing did not suspend deadlines, it only prevented public enforcement acts from being taken before the 20th April 2020. Deadlines imposed *on debtors* ending during the freezing period were extended *ex lege* by 3 days beyond the end of the freezing period, i.e. until 22nd April 2020. It is controversial whether creditors can also benefit from this extension.
- **How do courts work during the crisis?**
- **Are courts closed?** Despite the suspension of court deadlines and postponement of all but urgent hearings, courts are not closed, i.e. they accept new claims and hand down judgments.
- **Can courts / judges be contacted?** Yes, by regular mail and in some cases per telephone, albeit some judges work (partly) from home.
- **Are documents served?** Most service of documents is executed by registered mail and postal services continue to function.
- **How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?** Applications for attachment orders and interim measures more generally continued to be treated by courts throughout the whole period and attachment orders and interim measures were granted. This is also true for all summary proceedings in civil matters.
- **How do lawyers work during the crisis?** Many lawyers alternate between working from home and working in the office. To our knowledge, virtually all physical meetings with clients have been cancelled, and are held via telephone or video conference.
- **How do banks work during the crisis?** Banks have limited access to counters or safes, but are in principle qualified as essential business and permitted to stay open. Backoffice employees work from home or in a rotation modus.
- **Does the crisis have an effect on insolvency law?** On 16th April 2020, the Federal Council adopted measures to address the problem of bankruptcies caused by the crisis (COVID-19 Ordinance Insolvency). The ordinance provides measures in three areas. First companies will be dispensed from their duty to notify the judge in case of over-indebtedness, provided that their financial difficulties are solely due to the crisis (not pre-existing) and the company can establish a reasonable prospect of overcoming the difficulties by 31st December 2020. This will allow avoiding undue bankruptcies as a notification of the judge is in practice often tantamount to an application for bankruptcy. Second the ordinance makes the instrument of moratorium agreements (composition agreement with assignment of assets) more attractive for small businesses by dispensing them from having to present a restructuring plan and extending the debt moratorium from 4 to 6 months. Third a so-called “COVID-19-moratorium” was introduced for debts of small firms which were not overindebted on or before 31st December 2020. The moratorium will be granted

upon request for up to 3 months (with a possible extension), provided the firm was not already over-indebted by 31st December 2019. The granting of such a moratorium will be published in the commercial register and debtors are required to individually advise their creditors in writing.

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?** The suspension of court deadlines ended (for the most part) on 19th April 2020, and the same applies to the temporary freezing of enforcement acts. The permission to resort to videoconferencing is scheduled to last until 30th September 2020.
- **Which measures will remain in place?** All measures adopted in response to the crisis are of temporary nature. Those regarding the avoidance of unnecessary bankruptcies will remain in place for six months from the date of their adoption, i.e. until 16th October 2020.
- **Will prosecution and punishment of economic crime, including corruption matters, be weakened?** There are two main concerns in this regard. First, some public prosecution offices were already experiencing a considerable case backlog before the crisis, and this will now increase further, leading to delays in investigations and accusations. Second, statutory limitation periods continue to run and are only interrupted by a conviction in the court of first instance. This leads to a heightened risk that some criminal cases will end with a closure order. A first prominent case which fell prey to this is the FIFA “Summer Fairy Trial” heard by the Federal Criminal Court (accusation of fraud in relation to the selection process for the FIFA World Cup 2006 in Germany; matter SK.2019.45). The statutory limitation period to prosecute the offences ended on 27th April 2020, and the case will now have to be closed without a trial, let alone a possible conviction.
- **Do you expect a rise of new anti-corruption prosecutions after the crisis?** We do not expect an increase in cases of domestic corruption cases. It remains difficult to predict whether foreign corruption with ties to Switzerland will increase.
- **Will the ratio of third party funded matter rise?** Third party-funding has traditionally played only a minor role in Swiss proceedings. We do not expect this to change.
- **Other considerations?** We expect that some fraudsters/investment scammers will use the current crisis as part of their exit strategy as well as to set up new scams.

Contact details:

Baldi & Caratsch
Michele Caratsch
Zeltweg 44
8032 Zurich
SWITZERLAND
+41 44 250 2525
mcaratsch@bclaw.ch