

What does the Covid-19 crisis mean for victims of fraud?

Country: Argentina

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?

Yes, several successive measures have been adopted as the crisis evolved:

Executive Decree No. 297/2020 , issued on March 20 established preventive mandatory social distancing and the prohibition to circulate and remain in public places and mandatory isolation for certain risk groups. Personnel of designated Courts, including some civil courts were exempted (Sec. 2.6).

Supreme Court Order No. 04/2020 , issued on March 16, declared non-business day from 16 to 31 of March. It suspended public attention and established digital submission of filings. Court's intervention were restricted to exceptionally urgent matters.

Supreme Court Orders No. 6/2020 and 8/2020 , issued on March 20 and April 1st respectively, provided an extraordinary recess until March 31st, extended to April 12 pursuant Order 8/2020, that apply to all federal and national courts and other agencies that make up the National Judicial Branch. The judges have certain privative powers to carry out procedural acts that do not admit delay, and to take measures that if not practiced could cause irreparable damage.

Supreme Court Order No. 9/2020 , issued on April 3rd, allows Courts to order electronic payments in some labor cases -compensation for dismissal, work-related accidents- traffic accidents and professional fees of all processes, provided that the payments had been already granted by the Court.

Supreme Court Order No. 10/2020 : Issued on April 12, in line with Executive Decree No. 365/2020 -issued on April 11, by which the preventive mandatory social distancing is extended until April 26-, it extends the judicial recess until the same date.

Supreme Court Order No. 11/2020, issued on April 13th, allows the use of digital signature by the Ministers of the Supreme Court. It also provide that where it is not possible to conclude agreements with Ministers in person, they may be concluded by remote virtual means with the same validity. This arrangement may be used only in exceptional emergency situations.

Supreme Court Order No. 12/2020, issued on April 13th, allows the use of electronic signature for all Magistrates and officers acting in the National Justice. It also provide that where it is not possible to conclude agreements with Judges in person, they may be concluded by remote virtual means with the same validity. This arrangement may be used only in exceptional emergency situations. Furthermore, the Order approves the Claims Receipt Procedure, Filing of Direct Appeals and Complaint Appeal by electronic means –email-. At April 14th, no Chamber of Appeal Resolution regulating this Order has been issued.

Resolution 282/2020 of Civil National Chamber of Appeal , issued on March 17, provides that Courts will only deal with urgent matters upon requests grounded under Sec. 153 of Argentine Civil and Commercial Procedural Code, and only through electronic submissions (as provided for by the Supreme Court in Order 4/2020).

Resolution 332/2020 of Civil National Chamber of Appeal, issued on March 20, designated specific courts to act during the recess and order that the rest of the courts shall remain closed.

Does the crisis have an effect on court hearings?

- Do court hearings take place during the crisis?

Hearing are suspended during judicial recess. Notwithstanding, Courts may order urgent measures that may otherwise cause irreparable damage. (Point 3 of Supreme Court Order 06/2020).

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

There are only specific provisions for criminal matters. If the proceeding requires an adversary hearing, video-conference system is allowed to be used under Sec. 7, Supreme Court Order No. 06/2020).

Pursuant Supreme Court Order No. 11/2020 and 12/2020, for as long as public health reasons persist, the provisions of the first paragraph of Article 11 of Decree Law 1285/58 - ratified by Law 14.467 - regarding judges in lower courts, may be complied with by remote virtual means. Article 11 of Decree Law 1285/58 sets forth that judges must attend to the Court personally in business days.

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

Deadlines were suspended from March 13 to April 26 by Section 2 of Supreme Court Orders No. 06/2020, 08/2020 and 10/2020.

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

If a limitation period takes place during the judicial recess, the complaint shall be presented as an urgent request under the terms of Sec. 153 of the Argentine Civil and Commercial Procedural Code). This filing interrupts the limitation period.

- Does the crisis have an effect on enforcement?
 - Are enforcement orders issued?

Enforcement Orders are issued only in extremely urgent circumstances of irreparable damage (Supreme Court Order No. 9/2020)

- Are there any effects on deadlines?

In practice, established deadlines for compliance with enforcement orders have regularly extended under these extraordinary circumstances.

- Can enforcement acts be postponed due to the crisis?

Yes. Enforcement acts are postponed unless there is a grounded risk of dissipation or irreparable damage.

- How do courts work during the crisis?
 - Are courts closed?

Urgent matters will only be dealt by designated Courts and only through electronic submissions as provided for in Point 11 of Supreme Court Order 4/2020. For property related matters, the designated Court is National District Civil Court No. 36.

- Can courts / judges be contacted?

Designated Courts and urgent matter can be addressed through the local electronic system IEJ (Court Electronic Identification, by its acronyms in Spanish). (Point 11, Supreme Court Order No. 04/2020).

- Are documents served?

Serving of documents are suspended during judicial recess. Only urgent matter approved by the Court can be served.

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

Strictly urgency matters, such as injunctions and freeze orders are electronically addressed by email to the designated Court, stating in the subject “*Authorization of Non-working Days and Hours in the terms of Supreme Court Order No. 4/2020*”. (Point 3, Resolution 332/2020 of the Civil National Chamber of Appeal). Some urgent matters examples were listed by the Supreme Court, including but not limited to urgent family matters, child protection, domestic violence, protecting actions-particularly those referring to health issues (Supreme Court Order 06/2020).

- How do lawyers work during the crisis?

Law firms immediately turned to remote working. Those with well-established IT systems quickly adapted. As a matter of social responsibility and prevention, Bruchou decided to switch to home

office and remote working a week before the mandatory social distancing was declared, except of course for exceptionally sensitive matters.

- How do banks work during the crisis?

As provided by Communication A5968 issued by the Central Bank on April 6, over-the-counter service is exclusively reserved for the payment of pensions and retirement benefits. Online banking, electronic transfers and payments work as usual. Banks are allowed to carry out some urgent operations which may not be conducted remotely from April 13 to 17 April.

- Does the crisis have an effect on insolvency law?

Insolvency matters are handled by Commercial Courts. Pursuant Resolution 25/2020 of the Nacional Chamber of Appeals in Commercial Matters, Courts will remain closed during the extraordinary judicial recess. Urgent requests by creditors, receivers, syndics and the debtor are allowed on extraordinary basis.

- Are there any further effects not addressed in the questions above?
- On April 7, the Chief of Staff issued Administrative Decision 467/2020, declaring notary public activities an essential service during the crisis, enabling notarial services required by “essential activities” listed in Executive Decree 297/2020, which includes health personnel, security forces, armed forces, migratory activity, national meteorological service, firefighters and air traffic control; higher authorities of the national, provincial and municipal governments; designated courts; foreign diplomatic and consular personnel; persons who must assist others with disabilities or attend to a situation of force majeure; funeral services; school’s food service; audiovisual, radio and graphic communication services; public works; supermarkets, pharmacies, hardware stores, veterinarians, food industries; agricultural and fishing production, distribution and marketing; telecommunications; activities linked to foreign trade that cannot be postponed; transport and waste treatment; maintenance of basic services; public transport; delivery; laundry service; mail service; minimum guards to ensure the operation and maintenance of Oil and Gas fields; Mint, ATM services, transport of flows. On April 11, the Chief of Staff issued Administrative Decision No. 490/2020, by which the activities listed are also extended to: The following activities are included in the scope of this report: the sale of goods and services for the circulation of persons with disabilities and those included in the group of persons with autism spectrum disorder; professional services at home for the same group; banking activity with attention to the public, exclusively with a shift system; workshops for the maintenance and repair of means of transport; sale of spare parts for means of transport; manufacture of tires; sale and repair of the same exclusively for public transport,

vehicles of the security forces and armed forces, vehicles affected by health services or personnel with authorization to circulate; sale of bookstore articles and computer supplies.

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 priority for the Argentine Government is to strengthen our health system in order to cope with the pandemic. Once the pandemic is abated, or even before, all measures will be removed.

- Which measures will remain in place?

It might be the case that electronic hearings and submissions increase after the crisis, if the system proves effective.

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

I do not expect the resources of prosecutorial agencies to be affected by the crisis.

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

The press has been very vigilant of all direct purchasing made so far by the Government during the emergency and a few corruption cases were initiated to investigate collusion and overpricing in the purchasing of food and medicines. I expect an increase in these type of prosecutions as well as in cartel administrative actions by the competition authority.

- Will the ratio of third party funded matter rise?

Third party funded matters are almost unknown in the Argentina legal practice and I do not foresee any change accelerated by the crisis.

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