

Country: The Netherlands

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, Dutch courts have issued special temporary regulations (the “Regulations”) that derogate from the standard rules of procedure of the courts and that will affect the way the courts will operate during the Covid-19 crisis. The Regulations will be in effect until at least 28 April 2020. In general, the Regulations introduce a distinction between three types of cases: (i) very urgent cases, (ii) other urgent cases and (iii) non-urgent cases. Depending on this classification, different procedural measures will apply (see below).
- In addition, a legislative proposal regarding temporary law during the COVID-19 crisis (*Tijdelijke wet COVID 19 Justitie en Veilighed*) has been submitted to parliament on 8 April 2020. Amongst other things, this proposal provides for a legal basis for Dutch courts to hold hearings through video or phone conferences.

Does the crisis have an effect on court hearings?

- o Do court hearings take place during the crisis?
 - As described above, whether or not a court hearing will take place in a specific case, will depend on how the court qualifies such case (very urgent / other urgent / non-urgent):
 - Court hearings in very urgent cases will take place during the crisis. However, this will, in principle, not take place through a physical session, but via video or phone conferences.
 - In other urgent cases, a court may decide a court hearing will take place, but only if: (i) a court hearing cannot be postponed until after 28 April 2020, (ii) the parties do not agree on settling the case in writing (thus without a court hearing) and (iii) the court has sufficient staffing capacity to

organize a court hearing. If a case meets the above criteria, the court hearing will – in general – be a remote session (e.g. through video or phone conferences). If a case does not meet the above criteria, the hearing will be postponed indefinitely.

- Court hearing in non-urgent cases (i.e. “regular” cases) will in principle be postponed indefinitely.
- Do court hearings take place in form of video conferences?
 - As discussed above, Dutch courts aim to have all court hearings take place remotely, if possible. This may indeed entail that court hearings take place in form of video conferences.

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

- Are deadlines of ongoing proceedings affected?
 - Deadlines in ongoing proceedings are in principle not affected, albeit that court hearings may be postponed (see above). However, we do expect that the courts will be more flexible regarding the granting of extension of procedural deadlines. As with respect to deadlines of substantive law, these are in principle not affected by the corona crisis.
- Are deadlines for bringing actions affected (limitation periods)?
 - No, parties remain fully able to bring cases before courts.

Does the crisis have an effect on enforcement?

- Are enforcement orders issued?
 - Yes, enforcement orders are still issued by Dutch bailiffs.
- Are there any effects on deadlines?
 - No.
- Can enforcement acts be postponed due to the crisis?
 - In principle not. However, the Royal Professional Organization of Bailiffs (*Koninklijke Beroepsorganisatie van Gerechtsdeurwaarders*) has recently issued general guidelines for bailiffs during the corona crisis, advising bailiffs to suspend (if possible) evictions, seizure of household contents and other activities where physical contact is inescapable.

How do courts work during the crisis?

- Are courts closed?
 - Yes, courts are in principle closed to the public. If, in exceptional cases, court hearings take place in the court building, then only the parties to the proceedings and a limited delegation may be present in the courtroom. Furthermore, a maximum of three journalists are allowed.
- Can courts / judges be contacted?
 - Yes, courts / judges can be contacted (by either post, telephone, fax and/or e-mail).
- Are documents served?
 - Yes, documents are in principle served normally.

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

- As described above, “very urgent” matters (possibly including requests for interim measures such as injunctions and freeze orders - this will be assessed by the relevant court) will be handled normally. This means that a court hearing will take place, in principle remotely, and a judge will decide on the case within a timeframe required by the urgency of the matter.

How do lawyers work during the crisis?

- Like all people in the Netherlands, lawyers are expected to work from home as much as possible. If certain tasks can only be performed in the office, lawyers are allowed to work on those tasks in the office.

How do banks work during the crisis?

- See previous answer - banks remain operational during the crisis.
- Does the crisis have an effect on insolvency law?
 - No, to our knowledge substantive insolvency law is not affected by the corona crisis. However, as set out above, insolvency proceedings are subject to the temporary procedural rules issued by the Dutch courts. The courts have indicated that they

consider some insolvency proceedings, such as the filing of bankruptcy, to be “very urgent”. Consequently, such insolvency proceedings will in principle be dealt similarly as usual (however without a physical hearing and without public).

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

- The administrative phase of legal proceedings remains unaltered: for instance, parties are and will be able to start new legal proceedings, summon a defendant and enter pleas, counter-pleas and closing arguments.

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?

- It is expected that the temporary deviations from the normal procedural regulations as set out above will all be withdrawn as soon as possible after the pandemic has abated.

Which measures will remain in place?

- As described above, we expect that none of the temporary measures will remain in place. However, it might be possible that the current temporary measures result, for example, in the introduction of the permanent option of having court hearings in form of video or telephone conferences.

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

- No, this is not very likely.

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

- No.

Will the ratio of third party funded matter rise?

- Given that financial restraints are likely to continue for some time, it is likely that the parties involved in international asset recovery cases will be more open to alternative funding of litigation cases.

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