

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

Country: ANTIGUA AND BARBUDA

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?

Between March 20th 2020 to date, the Government of Antigua and Barbuda passed a series of emergency measures and Regulations including measures restricting movement and the operation of businesses and services other than those specifically identified as providing essential services, as follows:

Statutory Instrument No. 15 of 2020-Public Health Act(Declaration of Dangerous Infectious Disease) Order 2020

Statutory Instrument No. 16 of 2020 Public Health Act (Dangerous Infectious Disease) Regulations;

Statutory Instrument No. 17 of 2020- Quarantine Act (Coronavirus (COVID-19) Disease Order 2020.

Statutory Instrument No. 27 of 2020-Public Health Act (Dangerous Infectious Disease) (Amendment) (No. 2) Regulations.

In addition, on March 30 2020 the Eastern Caribbean Supreme Court re-issued its earlier Practice Directions in the form of Practice Direction No 3 of 2020 – COVID-19 Emergency Measures (2nd Reissue), (“Practice Direction”). This Practice Direction supplements the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 by regulating the practice and procedure of civil proceedings in the High Court given the emergency measures that have been taken in Antigua and Barbuda in response to the COVID-19 crisis.

With respect to criminal proceedings the Government has put in place protocols and procedures to deal with criminal matters during the emergency period including the exemption of certain public servants carrying out essential services (such as the police force), from the restrictions on movement and provisions for the Magistrates Court to continue to function as advised by the Chief Magistrate.

- Does the crisis have an effect on court hearings?

- Do court hearings take place during the crisis?

The Practice Direction provides for hearings to be conducted remotely as face to face hearings are no longer possible given the current restriction on movement. Hearings are to be treated in accordance with the Rules of Court and will be conducted on the date and in the manner specified by the Judge. Given the Court vacation over the Easter week, it is still too early to assess how many scheduled or urgent hearings the court will be in a position to manage in the coming weeks.

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

Provision has been made for court hearings to utilize such video or teleconference as the Judge deems appropriate and measures will be put in place by the Court office for the recording of hearings by such recording equipment as is approved by the Chief Justice.

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

- Are deadlines of ongoing proceedings affected?

Upon the issue of the notice of lockdown by the Government, time under the civil Procedure Rules for the filing of any documents shall cease to run for the period stipulated in the notice; and time for compliance with any Rule, Practice Direction or procedural court order shall cease to run until such time as the Registrar or Chief Registrar gives notice that the period of suspension of time has ended. This includes time for service of filed documents for matters where service other than by electronic means is required or available.

Since January 1st 2020 any new proceedings and all related court documents (including affidavits and hearing bundles) filed in the Court are filed electronically using the Court's E-Litigation Portal. Filing in these matters via the E-Litigation Portal will continue unaffected.

With respect to existing proceedings that were filed before January 1st 2020 and are not yet on the E-Litigation Portal, emergency measures have been put in place by the Practice Direction, for electronic filing by email (including the electronic filing of hearing bundles) in accordance with the procedure set out in the Practice Direction. Attorneys filing documents by email are required to provide an undertaking to pay all filing fees at such time that the Registrar determines that it is practicable to do so. Provision is also made for the electronic service of documents by email.

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

The effect on limitation periods /time bars for bringing actions is yet to be addressed in any emergency legislation although it is reasonable to expect that courts will treat matters that have potential time barred issues, as urgent.

- Does the crisis have an effect on enforcement?

- Are enforcement orders issued?

Currently enforcement orders will only be issued in respect of urgent applications that can be heard remotely.

- Are there any effects on deadlines?

Existing deadlines for enforcement are likely to be extended beyond the emergency period.

- Can enforcement acts be postponed due to the crisis?

It is expected that enforcement acts will be postponed beyond the emergency period given that the current restriction on movement will affect the enforcement process.

- How do courts work during the crisis?

- Are courts closed?

During the lockdown the civil courts are closed although electronic filings can still take place and urgent applications can be heard remotely.

- Can courts / judges be contacted?

Contact can be made with the Registrar of the Court using a dedicated email address.

- Are documents served?

The Practice Direction provides for service on legal counsel by email (copied to the Court). Service on a limited company is effected by sending the document by email to the registered office or registered agent of the company. If service cannot be effected

electronically, the provisions providing for the suspension of time for service during the lockdown period, will apply.

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

Filings can be made electronically and only urgent applications will be heard remotely during the lockdown period.

- How do lawyers work during the crisis?

Most lawyers are working remotely from home using email or teleconferencing platforms to communicate with clients, counsel and the court.

- How do banks work during the crisis?

Banks have been operating on the basis of limited hours, using social distancing protocols. Generally customers are encouraged to use online banking services.

- Does the crisis have an effect on insolvency law?

Emergency legislation is yet to address potential insolvency issues. Given that the economy in this jurisdiction is largely tourism driven, it is predicted that this crisis will have a devastating effect on the survival of most businesses and economic activity.

1. 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 measures that have been put in place by the emergency regulations are intended to deal with the current emergency and there is every expectation that they will be withdrawn once the crisis has abated. However, it is uncertain when the lifting or expiration of the emergency measures will take effect and which measures are likely to be lifted in order of priority.

The emergency measures that have been put in place with respect to the practice and procedure in the civil court are likely to be withdrawn once the pandemic has been abated and they are no longer necessary. The electronic filing of documents in the High Court using the E- Litigation Portal and some limited teleconferencing services are already in place in our civil courts. However, it is not inconceivable that the extended use of teleconferencing services will play a much larger part in the way that court hearings will be conducted in the future.

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

It is hoped that the enforcement of economic crime post COVID-19 will remain a priority given the damage that fraud and corruption will have on overall recovery efforts and future economic growth and development

- Do you expect a rise of new anti-corruption prosecutions after the crisis?
Insolvencies and bankruptcy are the areas that we expect to see increase significantly post crisis.
- Will the ratio of third party funded matter rise?
With limited access to financial resources, it is to be expected that third party funding will present an alternative strategy for pursuing asset recoveries after the crisis.

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Contact details:

*Nicolette M. Doherty
Attorney at Law and Notary Public
PO Box W1661,
Island House, Newgate Street
St John's, Antigua, West Indies.
1 (268) 462 4468/9
dohertyn@antiguacommerciallaw.com*