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Industry Information

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

15 April 2020

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?**

The Grand Court of the Cayman Islands (the "Grand Court") has implemented a number of pro-active practical steps and practice directions that are aimed to ensure continuity of its operations in response to the Covid-19 crisis.

These are largely in response to the Cayman Islands Government putting into force the Public Health (Prevention, Control and Suppression of COVID-19) Regulations 2020, which set out various restrictions on movement and permitted activities for the public and businesses alike for the time being.

One of the main practice directions to take effect as a result of the Covid-19 crisis is Practice Direction No. 5 of 2020 concerning "The Use of E-mails for Filing and Electronic Signatures, Court Seals and Stamps" ("PD 5/20"), which was gazetted on 9 April 2020. The primary purpose of PD 5/20 is to provide a temporary means of receiving and processing certain court documents which must be authenticated by a signature, seal or stamp. This is achieved through the use of specialist software run on a dedicated on-site server at the Grand Court.

The Grand Court also confirmed in a press release dated 28 March 2020 that updated practice directions on video-link proceedings will be issued shortly.

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

All divisions of the Grand Court remain in full operation notwithstanding the Covid-19 crisis, albeit through telephone, email or utilising other technological means. Given the greater demand on the Grand Court's technological and administrative resources, it may be that matters proceed at a slightly slower rate than usual during this period.



All divisions of the Grand Court have established telephone and email helpdesks to allow court users to maintain contact on a daily basis. Parties also have the ability to make payments to the Grand Court online. New cases are able to be opened on the basis of electronic filings, with the undertaking that parties will provide the originals once the restrictions regarding the Covid-19 crisis have been lifted. Whilst physical court searches have been suspended until further notice, the Grand Court continues to upload and publish new originating actions onto its electronic platform daily pursuant to paragraph 10 of PD 5/20.

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

Procedural and substantive deadlines (including limitation periods) are not directly affected by the Covid-19 crisis, although parties remain at liberty to either agree extensions or tolling periods between themselves, or where necessary, apply to the Grand Court. Whilst it seems likely that the Grand Court will be receptive to applications for extensions to procedural deadlines, since claims remain capable of being filed and any pending limitation period will have been known for a number of years already, attempts to extend time solely on the basis of the Covid-19 crisis may well be challenging.

If parties are subject to an obligation to make a payment into court on a specified date, the Grand Court has advised to allow no less than 2 days for processing the payment online.

» **Does the crisis have an effect on enforcement?**

Since the Grand Court is operating, there should be no issue in obtaining orders for enforcement, or in aid of enforcement, especially if the enforcement measures in question entail certain administrative steps being taken. It remains to be seen how enforcement measures which involve physical steps, such as the appointment of a bailiff or physical possession of a property (which would in any event be unusual in the Cayman Islands), will be affected by the Covid-19 crisis due to the potential practical difficulties in putting those steps into effect.

» **How do courts work during the crisis?**

Whilst the physical office of the Grand Court is currently closed to the public, it has been designated as an essential service, which means that it remains staffed notwithstanding the general restrictions on movement and activity that are currently in place. As mentioned above, all judges and departments of the Grand Court can be contacted by email and telephone, and documents are being accepted for filing electronically pursuant to PD 5/20.

Although in person hearings have not been prohibited per se, civil hearings are currently proceeding exclusively by way of video-link. The Grand Court has indicated that it expects applications for urgent relief to be conducted in a similar manner. The practice of conducting hearings by way of video-link is particularly well established in the Financial Services Division (FSD) of the Grand Court where judges frequently preside over interlocutory proceedings from the UK and other places. In the present circumstances, the necessary permissions have also been given to permit judges to preside over trials and appeals by way of video-link.

As a result of the prevailing travel restrictions, the Court of Appeal will not be travelling to preside in the Cayman Islands for the upcoming April/May 2020 session. However, video-link arrangements are being made to allow the Court to be convened with the President and Justices presiding from the UK. The List of appeals to be taken will likely be reduced accordingly in order to accommodate this arrangement.

The Grand Court does not ordinarily take any direct role in the service of documents, which is a matter for the parties to litigation. However, the vast majority of businesses, including registered office providers, have been required to close their physical offices, which naturally poses challenges in effecting the personal service of documents. We anticipate that in the present circumstances, given the impossibility of physical service, the Grand Court will be amenable to making orders permitting substituted service of electronic copies by email. Pursuant to paragraph 6 of PD 5/20, proof of service of an authenticated copy of a pleading may be evidenced in the first instance in the form of an affidavit filed electronically.



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

Even where a case is urgent, it should still be possible for arrangements to be made for it to be conducted remotely. Any pressing issues to be determined will otherwise be dealt with by the Grand Court promptly in the usual way.

➤ **How do lawyers work during the crisis?**

Law firms in the Cayman Islands are not permitted to occupy their physical offices at the present time due to restrictions on movement and activity. However, all major firms continue to operate with attorneys working remotely. Litigators are also assisted by the various measures implemented by the Grand Court to facilitate the filing and processing of documents electronically, such as those set out in PD 5/20.

➤ **How do banks work during the crisis?**

Banks are permitted to continue to provide essential services during the Covid-19 crisis period and as such remain in operation.

➤ **Does the crisis have an effect on insolvency law?**

As matters stand, there has been no formal amendment to the insolvency regime in the Cayman Islands as a result of the Covid-19 crisis.

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

Subject to the directions of the judge in each case, the use of electronic bundles is especially encouraged at this time to reduce the need for photocopying and circumstances for the transmission of Covid-19.

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?

The current expectation is that as the restrictions on movement, business operation and international travel are removed in due course, the Cayman Islands legal system should be able to return to normal with relatively little difficulty. However, it is likely to be some time before the arrangements in relation to video-link hearings can be amended, given the international nature of the parties to many disputes and the difficulties that are likely to subsist in relation to travel to the Cayman Islands into the medium term.

The Cayman Islands has been financially stable over a significant period of time, and although it is likely that the domestic economy will have been substantially affected by the Covid-19 crisis, principally in the tourism sector, there is presently no reason to think that funding for core services, including law enforcement and the prosecution of economic crime or corruption based matters, will be adversely affected. Given the nature of Cayman Islands companies, it is likely to be global conditions rather than those prevalent within the Islands themselves which have the greatest impact.

In the event that there is an increase in claims against entities incorporated in the jurisdiction, there may be an increase in the proportion of cases seeking third party funding given the liberalisation of the Grand Court's approach in recent years in that regard.

Note: The latest media releases issued by the Grand Court relating to the continuity of its operations during the Covid-19 crisis are available at the following webpage: <https://www.judicial.ky/emergency-continuity-operations>

Practice Direction No. 5 of 2020 is available at the following webpage: <http://www.gov.ky/portal/pls/portal/docs/1/12944548.PDF>



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