

Country: ANTIGUA AND BARBUDA

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?

From March 20th 2020, the Government of Antigua and Barbuda passed a series of emergency measures and Regulations (including Central Board of Health Notices issued thereunder), 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.

Statutory Instrument No. 30 of 2020-Public Health Act (Dangerous Infectious Disease) (Amendment) (No. 4) Regulations.

Statutory Instrument No. 30 of 2020-Public Health Act (Dangerous Infectious Disease) (Amendment) (No. 5) Regulations.

Statutory Instrument No. 34 of 2020- Quarantine Act (Covid-19) 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 supplemented the Eastern Caribbean Supreme Court Civil Procedure Rules 2000 by regulating the practice and procedure of civil proceedings in the High Court during the lockdown period.

With respect to criminal proceedings, during the emergency period the Government put in place protocols and procedures to deal with criminal matters. These included the exemption of certain public servants carrying out essential services (such as the police force) from the restrictions on movement and made provisions for the Magistrates Court to continue to function as advised by the Chief Magistrate. Currently, jury trials continue to be suspended and sentencing hearings are now being scheduled for hearing.

Since that date, several amendments to the Regulations have been made. Mandatory curfew periods have now been revised and the mandatory curfew period is currently limited to between hours of 9pm to 5am the following day, up to June 12th 2020. Certain other restrictions have been lifted and the category of businesses that are currently allowed to operate have been expanded, subject to maintaining social distancing protocols and the mandatory wearing of face masks in public places.

Restrictions on the churches and places of worship have been lifted and certain secondary and tertiary educational institutions have been allowed to re-open for limited purposes subject to maintaining social distancing protocols and the mandatory wearing of face masks. Dates for the re-opening of other educational institutions are to be determined by the Ministry of Education.

Commercial Registries such as the Land Registry and the Companies Registry have re-opened for business subject to social distancing protocols.

Borders have been opened to persons arriving in Antigua and Barbuda by ship or aircraft subject to health screenings and quarantine measures carried out under the Quarantine Act (Covid 19) Regulations.

- Does the crisis have an effect on court hearings?
 - Do court hearings take place during the crisis?

The Eastern Caribbean Supreme Court Practice Direction made provisions for hearings to be conducted remotely while face to face hearings were not possible. Court hearings have re-commenced and generally continue to be conducted remotely for the time being.
 - Do court hearings take place in form of video conferences?

Court hearings have been taking place using video or teleconference and measures 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?

During the lockdown and closure of the Court Registry, time for the compliance with any rule, practice direction or procedural court order including time for the service of filed documents for matters where service other than service by electronic means is required or available ceased to run. The relevant period for the purposes of computing time for the filing of any documents and time for the compliance with any rule, practice direction or procedural court order pursuant to paragraph 13.1 of Practice Direction No 3 of 2020.

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 were 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 and for the service of documents by email. The filing of hard copies of court documents at the Court Registry and the service of documents by physical delivery has now been reinstated.
 - Are deadlines for bringing actions affected (limitation periods)?

The effect on limitation periods /time bars for bringing actions was not addressed by the emergency legislation.

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

Currently, enforcement orders will continue to be ordered at scheduled hearings.
 - Are there any effects on deadlines?

Existing deadlines for enforcement will likely take into account the period of the mandatory lockdown.

- Can enforcement acts be postponed due to the crisis?

It was anticipated that enforcement acts would be postponed beyond the lockdown period given that there was a restriction on movement that would have affected the enforcement process.

- How do courts work during the crisis?

- Are courts closed?

During the lockdown the civil courts were closed although electronic filings could take place and urgent applications could be heard remotely. The Courts and the Court Registry have been opened to the public since May 25th 2020, subject to social distancing protocols although civil matters continue to be heard by video conference and attorneys are encouraged to conduct business with the Court Registry by telephone and email communication.

- Can courts / judges be contacted?

Contact can be made with the Registrar of the Court by telephone and email communication and since the opening of the Court, in person, if necessary.

- Are documents served?

During the restriction on movement, Practice Direction No. 3 of 2020 provided for service on legal counsel by email (copied to the Court). Service on a limited company was effected by sending the document by email to the registered office or registered agent of the company. If service could not be effected electronically, the provisions providing for the suspension of time for service during the lockdown period, will apply. Service of documents by physical delivery has now been reinstated.

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

Arrangements were made during the lockdown period for filings to be made by email and for urgent applications to be heard remotely. These matters will continue to be dealt with on an urgent basis by teleconference.

- How do lawyers work during the crisis?

Most lawyers were working remotely from home using email or teleconferencing platforms to communicate with clients, counsel and the court. Most lawyers have returned to their offices, although to the extent possible, communications with clients are encouraged to be by email and telephone conferences.

- How do banks work during the crisis?

Banks were operating on the basis of limited hours, using social distancing protocols and customers were encouraged to use online banking services. Banks are now operating on the basis of their regular hours, subject to social distancing protocols, although the use of online banking services continues to be encouraged.

- Does the crisis have an effect on insolvency law?

Emergency legislation did not address potential insolvency issues. Given that the economy in this jurisdiction is largely tourism driven, it is predicted that this crisis will continue to have a devastating effect on the survival of most businesses and economic activity.

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 were put in place by the emergency regulations were intended to deal with the emergency period only. As indicated many of the restrictions have been lifted, although it is expected that emergency powers will be retained to reinstate restrictions should it become necessary.

Some of the emergency measures that were put in place with respect to the practice and procedure in the civil court are already being withdrawn where no longer necessary. The electronic filing of documents in the High Court using the E- Litigation Portal and some limited teleconferencing services were already in place in our civil courts and it is anticipated that the continued 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 although we have already seen that fraud and corruption are on the rise globally, since the pandemic.

- 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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