

Assisting fraud victims in Hong Kong in times of COVID-19

By Jeff Lane

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?

There has been no special legislation introduced to address the impact of the COVID-19 crisis on the civil justice system in Hong Kong. The Courts and court registries in Hong Kong have been closed since late January, 2020, and are presently not scheduled to reopen before 3rd May, 2020. The possibility of reopening the Courts will be reviewed at the end of this month.

Does the crisis have an effect on court hearings?

Yes. All Court hearings scheduled for the period of the Court closure have been adjourned with dates for the rehearing to be scheduled when the Courts reopen.

- Do court hearings take place during the crisis?

Yes, but the range of hearings is very limited. Urgent applications for injunctions and related relief can be made to the Duty Judge. Those accused of fraud may apply for bail.

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

There have been a limited number of cases heard on video, and by telephone, and some have been resolved through correspondence with the Court, but they are the exception rather than the rule. The general fallback position is that all hearings are adjourned, and only emergency applications will be considered.

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

- Are deadlines of ongoing proceedings affected?

Yes. As no documents can be filed at Court whilst the Court Registry remains closed, the deadlines for filing of pleadings has been extended until such time as the Court reopens. We are serving documents within the time proscribed for service, but are unable to file them until the Courts reopen. It follows that as the Court Registry cannot issue summonses, it is not possible to file applications for orders to compel the filing of pleadings, not indeed, for default judgments or other peremptory orders. This is inevitably causing a backlog of applications, and delaying the progress of litigation.

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

This issue has not yet been tested by the Hong Kong Court, but as the crisis has caused the closure of the Courts during the expiration of the limitation period, it is anticipated that in the event that a limitation period is scheduled to expire during the period of the Court closure, the courts will be sympathetic to applications to extend

the limitation period, either on an ex parte basis as a matter of urgency, or generally upon the reopening of the Courts in due course.

Does the crisis have an effect on enforcement?

- Are enforcement orders issued?

Yes. Whilst injunctions are still available in emergency situations and will continue to freeze assets, the Court Registries are dealing with very few applications for default judgment and garnishee proceedings. In consequence the number of enforcement orders been issued has reduced significantly with the result that enforcement proceedings are being significantly delayed.

- Are there any effects on deadlines?

See above.

- Can enforcement acts be postponed due to the crisis?

Enforcement acts are inevitably postponed as a consequence of the crisis as the court registries remain closed meaning that fresh applications cannot be filed until the Courts reopen.

How do courts work during the crisis?

- Are courts closed?

The courts and court registries are closed until at least 3 May 2020. Emergency applications are permitted.

- Can courts / judges be contacted?

The courts operate a duty Judge scheme whereby one member of the judiciary is allocated to hear emergency applications.

- Are documents served?

Documents can be served as between parties, but it is not possible to file the documents with the court registries until such time as the registries reopen.

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

Applications for injunctions and disclosure orders are considered to be emergency applications and as such will be heard by the duty Judge on an ex parte basis in the usual manner.

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

Hong Kong is not in a “lockdown” situation and lawyers are free to attend their offices as they see fit. Presently the practice appears to be that those lawyers wish to work from home do so, but others who need access to the courts are able to attend their offices. Most firms have abandoned the idea of meetings in preference to conference and video calls, and social distancing is practiced wherever possible. Some firms are also operating a team-based roster so as to ensure that in the event of infection one team may be quarantined whilst another may continue the operation of the firm.

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

The banks are working in a similar manner to the lawyers with the key team members attending the offices where needed, meetings are held by video or telephone, and officers are working from home where possible to ensure their isolation from potential infection. As a consequence of these measures the efficiency of the banks in responding to requests for disclosure has been considerably reduced.

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

Insolvency law like all other aspects of litigation relies upon the availability of the courts and court registries for the service of documents, management of hearings and conduct of litigation generally. As noted above the closure of the courts and court registries means that only applications of an urgent nature are being considered by the courts until such time as the reopen.

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

Whilst the courts and court registries are closed, the judiciary are wherever possible attending to pending applications on paper. Thus, where the return date on an injunction falls within the period of general closure, the court will contact the parties to seek to agree a continuation of the injunction until such time as the Courts reopen. Similarly, applications for garnishee order: absolute are being entertained on paper, particularly in circumstances where the defendant has not yet entered an appearance in the bank has no objection to the order requested. By these means some limited enforcement relief has been made available to plaintiffs.

2. THE MOST CRITICAL PHASE OF THE CRISIS

Once the COVID-19 pandemic has abated and the world returns to ‘the new normal’, what are the potential long-term effects?

Which measures introduced during the crisis will be withdrawn immediately?

The first stage of recovery will require that the courts and court registries be reopened, and those matters which were adjourned during the period of closure will be relisted for hearing according to court availability.

- Which measures will remain in place?

None.

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

The enforcement of economic crime, including corruption matters, will continue throughout the crisis and afterwards. Economic crime falls within the remit of the Hong Kong Police Force, whose efforts are continuing despite the closure of the courts. Their powers of arrest and investigation continue unabated, whilst the rights of those arrested to be considered for bail fall within the emergency measures for which access to the court system is allowed.

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

No. We do, however, anticipate an increase in insolvency work, particularly in the leisure industry sector where the restrictions upon restaurants and bars are expected to have significant adverse effects resulting in the closure and subsequent liquidation of many such businesses.

- Will the ratio of third party funded matter rise?

In Hong Kong third party funding is available for insolvency related work but not otherwise. As we anticipate an increase in insolvency work it follows that there will likely be a commensurate increase in third party funded matters.

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Jeff Lane specialises in corporate fraud and asset tracing, with particular expertise in carrying out complex multi-jurisdictional fraud and asset tracing investigations. He has significant experience of inquiries by Hong Kong's Securities and Future Commission (SFC), Independent Commission Against Corruption (ICAC) and Commercial Crime Bureau (CCB). He regularly deals with Insider Dealing Tribunal matters; fraud investigations; large scale multi-jurisdiction fraud and tracing actions and domestic fraud. He has served as a member of the Civil Justice Reform, Anti-Money Laundering, Civil Litigation and Employment Law committees for the Law Society of Hong Kong.