



15th April 2020

Response to FraudNet Questionnaire

Bangalore

5, 2nd Main Road, Vyalikaval, Bangalore – 560 003, India; T: +91 80 2356
6792, 2336 8494

Delhi

53, 2nd Floor, Sundar Nagar, New Delhi – 110 003, India; T: +91 11 4350
5878

Mumbai

No. 109, DBS Heritage, Prescott Road, Fort, Mumbai – 400 001; T: +91 22
40779109

Contact:

Mail@aarnalaw.com

COUNTRY: INDIA

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?**

No. There are no special legislations that have been enacted targeting functioning of judicial institutions including tribunals.

The Government of India (“GoI”) in exercise of powers under the Disaster Management Act, 2005 (“Act”) had imposed a complete lockdown on w.e.f. 25.03.2020 to 15.04.2020 upon any residents within the territory of India. The lockdown was extended till 03.05.2020 on 14.04.2020. Accordingly, it’s not possible for lawyers and litigants to appear in person before judicial institutions.

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

- Do court hearings take place during the crisis?

Yes. The courts are only taking up matters of extreme urgency through the medium of video conferencing facilities. E.g.

The Supreme Court of India (“SCI”) pursuant to notification dated 23.03.2020 issued instructions for the restricted functioning of the court limited to hearing only urgent matters. Further, several High Courts located in state capitals such as High Court of Delhi, High Court of

Bombay, High Court of Karnataka etc are following similar practice.

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

Yes. The court hearings are being conducted through video conference only for matters which are urgent in nature. The counsel for the parties must make a special application stating the grounds of urgency to the institution. The same is considered and if accepted, the matter is listed through video conference.

For example the Supreme Court of India allowed the listing of urgent matters based on the application in prescribed format to be submitted by the Party-in-Person/Advocate on Record to the designated e-mail IDs and further the hearing of such matters would be conducted strictly through video conferencing facilities using the app 'Vidyo', Skype, Facetime and WhatsApp. The aforesaid directions have been further replicated and implemented by the various High Courts and District Courts functioning in difference states in India as per notifications issued by the respective courts.

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

- Are deadlines of ongoing proceedings affected?

Yes. With the functioning of judicial institutions restricted to urgent cases and hearings only, the deadlines for ongoing proceedings including matters such as extensions of any interim stay orders have been extended till further orders by the concerned institutions.

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

Yes. The Supreme Court of India exercising its extraordinary powers under Article 142 of the Constitution of India has extended the limitation period of petitions/applications/suits/appeals and all other proceedings whether in courts/Tribunals. The limitation period of matters stands extended w.e.f. 15.03.2020 till further orders to be passed in the future by the court.

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

- Are enforcement orders issued?

Any enforcement orders that would constitute a matter of extreme urgency may be issued by the concerned judicial institution.

- Are there any effects on deadlines?

The deadlines in matters stand extended with the court only taking up urgent matters only.

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

- Are courts closed?

No. The functioning of courts has been restricted to urgent matters only which are being taken up through video conferencing facilities.

- Can courts / judges be contacted?

Yes. Further, the protocol to approach courts/judges has been issued through guidelines by various judicial institutions.

- Are documents served?

In India the service of documents is affected by counsels personally or through court process. Currently, no service of documents is being affected via physical mode. Certain counsels are being able serve documents over e-mail to opposite counsels.

Further, the judicial institutions have recognized service through alternative means such as WhatsApp, e-mail etc subject to appropriate permission from the concerned institution.

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

The Parties can approach the concerned judicial institution with a request for urgent hearing and seeking interim measures. Further, while there are no single set of guidelines for determining the urgency in the matter, the same are considered on case to case basis.

Accordingly, the counsels for the parties may file an application seeking listing of a matter and hearing citing the urgency. The concerned judicial institution may hear the matter if the urgency of the matter is accepted and grant requisite reliefs based on the facts of the matter.

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

In view of the lockdown imposed by the Government of India and the need for social distancing, lawyers have been working from home. Several law firms have extensively developed Information Technology infrastructure to allow its members to continue rendering legal services from home and ensure that the clients request is met seamlessly. Lawyers have been participating in court hearings through video conference

facilities and appearing before courts. Further, there's a thrust by the legal community to develop facilities for Online Dispute Resolution in Judicial Institutions to expand the functioning of the judicial institution beyond hearing of urgent matters.

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

The banking institutions continue to function as the same have been declared as essential service despite the lockdown. Further, the functioning of the banks is restricted, and the banks are usually operating with skeletal staff. Further, the banks have been encouraging citizen to utilize internet banking services which are fully functional.

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

Yes.

The National Company Law Tribunal have adjourned all hearings till 03.05.2020 except where urgency is requested by the parties/counsels.

Further, the Government of India has increased the minimum threshold of default debt for a creditor to approach the National Company Law Tribunal(s) seeking the initiation of Corporate Insolvency Resolution Process against any corporate Debtor. The minimum threshold has been increased from Rs 1,00,000 (equivalent to 1310 US\$ approx.) to Rs 1,00,00,000 (equivalent to 131,000US\$ approx.) w.e.f. 23.03.2020. Further, with the functioning of National Company Law Tribunal restricted to urgent

matters, the ongoing resolution process for corporate debtors has come to a halt.

The National Company Law Appellate Tribunal, New Delhi has also in exercise of its powers has excluded the period of lockdown due to covid-19 from the timelines prescribed under the Insolvency and Bankruptcy Code, 2016 for the resolution process of a Corporate Debtor.

2. 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 regular functioning of the judicial institutions shall resume, and the hearing of non-urgent matters shall be taken up. Further, it's expected that relaxation given for extension of limitation by the Supreme Court of India shall be withdraw immediately.

- **Which measures will remain in place?**

The information technology network being sought to be developed in judicial institutions may remain in place. The process of physical filing of documents may graduate to e-filing of documents.
