

ARTHUR COX

DATE: 15 April 2020

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

Country: IRELAND

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?

In Ireland, the Courts are available to hear urgent applications / hearings, however most matters are adjourned and the Courts are not hearing any non-urgent new matters. This is an evolving situation and the Courts Service is actively looking at holding virtual hearings in the near future (see further below).

In the High Court, certain categories of cases are considered urgent: (1) injunctions and their enforcement; (2) urgent judicial review applications; (3) Habeas Corpus; (4) extradition; (5) bail applications; and (6) wardship. Where a case does not fit into one of these categories, but is considered urgent by one of the parties and a good case can be made to this end, the Court may hear it. For example, the Court has agreed to hear applications for freezing orders. Where parties can agree matters, the Court can make consent orders without the parties having to attend court.

Court offices are closed to access by the public, but appointments can be made for essential business. "Essential business" is defined to include the six urgent categories listed above and proceedings where the statutory time limit is imminently due to expire. The Court offices remain operational, subject to some limitations, and papers may be lodged by post.

It is still possible to commence and issue proceedings, though practically it is more difficult to do so. As noted above, the courts are not hearing any new matters at present and any proceedings will progress more slowly than usual.

The courts are actively working to put in place technology to facilitate virtual hearings in certain circumstances. Arthur Cox are actively working with and supporting the Courts Service in this regard. A statement from the Courts Service published on 31 March indicates that a pilot facility may be in place at the start of the new legal term on 20 April. In the meantime, pending the introduction of virtual hearings, there are policies and procedures in place (including following

recommended social distancing guidelines) that facilitate the hearing of any urgent matters that may arise.

Separately, Ireland's five retail banks and other non-bank mortgage lenders and credit servicing firms have agreed to defer court proceedings for three months in an effort to support customers (both business and personal) affected by Covid-19. The scope of this deferral is unclear as it is not known whether the entities concerned will both refrain from issuing new proceedings and from progressing existing proceedings, and whether or not this measure will be limited to cases where the customer is impacted by Covid-19. In respect of business loans, it is not clear how receiver appointments will be managed where a loan default is triggered by the impact of Covid-19.

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?

We expect a slow and controlled de-escalation of the ongoing restrictions on public life.

The crisis may have a long-term effect on the practice of law with increased numbers of lawyers working from home on a regular basis and greater adoption by the Courts of virtual hearings and remote working technology.

It is likely that a global recession will emerge leading to increased fraud (such as online theft and asset misappropriation), corruption, cybercrime, insolvencies, investigations and regulatory investigations.

There may be an increase in anti-corruption prosecutions stemming from the way in which some business is being conducted in order to facilitate and maintain contractual relations during this time, such as entering into arrangements without proper vetting. Further, the entitlement of persons and companies to access and avail of Covid-19 specific government assistance schemes may give rise to the risk of some fraudulent activity, which is likely to be investigated retrospectively.

We also expect, and have already seen, an increase in cybercrime and fraudulent activity. This may arise from the opportunistic exploitation of weaknesses in the at-home security networks of employees working from home. Other forms of cybercrime specific to Covid-19 are also prevalent and increasing.

On 14 April 2020, the Irish media reported that the Garda Economic Crime Bureau (the anti-fraud and corruption division of the Irish police force) is working with Interpol in a joint investigation into a sophisticated Covid-19 fraud. The multimillion-euro scam has involved multiple jurisdictions and the freezing of funds. The fraud involved the cloning of the website (of a legitimate company based in Spain) for the purposes of misappropriating German health authority funds intended to purchase Personal Protective Equipment (PPE). An Irish middleman redirected the German health authority to a 'trusted' supplier, whose website was also cloned from the website of a legitimate company based in the Netherlands. It was agreed the 'trusted' supplier would deliver 1.5 million PPE masks to Germany in return for €1.5 million upfront payment. However, a further €880,000 was demanded (and paid) prior to the delivery date of the PPE as an 'emergency' transfer. That €880,000 has been tracked down by the Dutch Fiscal Information and Investigation Service, and €500,000 had already been sent to the UK. The UK bank recalled the full amount and those funds have now been returned to the Netherlands and frozen by the Dutch authorities. The €1.5 million transferred has been frozen by the Irish authorities. This investigation is a prime example of the opportunities that cybercriminals can exploit during this time.

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