

What does the Covid-19 crisis mean for bringing Kazakhstani proceedings to assist victims of fraud

1 THE MOST CRITICAL PHASE OF THE CRISIS

(a) Special Legislation

A 2003 law and a recent presidential decree impose general restrictive measures to be followed across the country. Special rules on operation of the judicial system during the state of emergency were introduced by the Letter of the Kazakhstan Supreme Court dated 16 March 2020 No. 6001-20-3-1-7/75.

(b) Effect on Court Hearings

During the period of the state of emergency, consideration of all cases in Kazakhstan shall be carried out through remote participation of the parties using online video conferencing (via TrueConf application, etc.).

(c) Effect on Deadlines/Limitation Periods

The Supreme Court ordered to postpone the filling of claims, transferring of cases and materials to the courts, and consideration of cases till the end of the state of emergency in which procedural deadlines have not yet passed (by suspension, postponement, extension of terms, etc.). Nevertheless, urgent cases are still considered on schedule. However, the determination of the urgency of a case depends on the discretion of the judges involved.

There are specific rules on extension and/or postponement of various term or deadlines that account for force majeure events in general. For example, criminal investigation can be postponed due to action of insuperable force by an act of court. It is unlikely that, in the absence of a specific rule of law regarding a force majeure event this or that procedural term will be postponed/extended.

(d) Effect on Enforcement

Generally, the execution order of enforcement documents remains the same as provided by the current legislation. At the same time, in the presence of circumstances that make it difficult or impossible to carry out enforcement actions, the claimant or debtor or bailiff has the right to raise the question of changing the method and procedure of execution with the court that has reviewed the case or the court at the place of execution.

The issue of postponement of execution as well as indexation of the awarded amounts, is decided by the court upon the request of the parties to enforcement proceedings.

(e) Effect on Court Functionality

Courts are working, but at the moment visits are strictly limited. A limited number of court employees and judges still work inside the courts. However, work hours in the courts are reduced and many employees work by shifts. There is a hotline for each court by which the court can be contacted. Judges can be contacted through their court secretaries. Moreover, all of the documents are served through Court Cabinet - a single electronic system for access to all judicial services.

(f) Urgent Matters

Urgent matters such as interim measures (e.g. requests for injunctions) are applied as usual with one exception. For the period of the state of emergency, arrests on bank accounts of individuals registered as individual entrepreneurs and private practitioners, with the exception of those classified as having a high risk (as determined by the Tax Code), are cancelled according to a press release of the State Revenue Committee (the "**Committee**"). It is also stated that the Committee sent a letter to the Ministry of Justice and the Republic's Chamber of Private Court Enforcement Officers requesting temporary suspension of the effect of arrests on any accounts of citizens under previously awarded court orders and decisions, as well as already issued tax orders, and to suspend the imposition of arrests on pending tax orders to collect individuals' debts.

(g) Functionality of Lawyers

The Ministry of Justice strongly recommends that notaries, lawyers, legal advisors, and private bailiffs suspend their activities for the period of quarantine. Meanwhile, lawyers included in the "risk group" due to age and chronic diseases should completely suspend their participation in the system of providing legal assistance guaranteed by the state. We note that it is allowed to provide legal assistance to citizens and carry out actions remotely.

(h) Functionality of Banks

Only selected offices of commercial banks are open for servicing individuals who receive pensions, targeted social assistance, and social benefits due to loss of income during the state of emergency. The headcount in the offices cannot exceed 30% of the total staff. All other types of bank services are performed remotely, including services to individuals and legal entities.

2 FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

The measures described above shall be applied during the state of emergency which was prolonged by the order of the Kazakhstan President till the end of April 2020. All acts adopted in order to ensure the state of emergency, cease to be valid with the termination of the state of emergency without special notice.

(a) Effect on Economic Crimes

In accordance with Presidential Order dated 23 March 2020, it was ordered to prevent the growth of offenses, first of all, the facts of theft, robbery, looting, disobedience to the legitimate requirements of the authorities during the state of emergency. The authorities were instructed to revise the methods of work with a focus on prevention, eliminating any facts of pressure on entrepreneurs from the law enforcement bodies and fiscal authorities during the crisis. Moreover, the authorities were instructed to review the priorities in the work of the anti-corruption service for the period of emergency, focusing on prevention.

(b) Effect on Anti-Corruption Prosecutions

The pandemic might be seen by some as an opportunity to take advantage of the emergency to abuse their power for private gain. Moreover, mandatory stay-at-home orders have resulted in high unemployment and risk to the sustainability of small and large businesses. Thus, corruption probably will rise in the time of crisis, especially in areas with high pre-crisis corruption, limited transparency, and weak anti-corruption measures.

Considering, the change of anti-corruption policies in the course of prevention rather than prosecution, there is a high probability of a rise of anti-corruption prosecutions after the emergency.

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