

Warsaw, April 9, 2020

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

From: KW Kruk and Partners Law Firm, Warsaw, Poland

Country: **POLAND**

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?
On March 31, 2020 Poland introduced a law on special arrangements related to the prevention and control of COVID-19, other infectious diseases and the resulting crisis situations. Among others it regulates the matter of civil justice.
- Does the crisis have an effect on court hearings?
 - Do court hearings take place during the crisis?
 - Do court hearings take place in form of video conferences?

As of March 13, 2020 an access restriction has been introduced in court for persons other than court employees and most of the hearing has been postponed, except for hearings and public hearings on urgent cases. Urgent cases of civil procedure are the following:

- 1. the removal of a person who is under parental authority or under custody,*
- 2. cases concerning the protection of mental health,*
- 3. concerning the placement or extension of a minor in a juvenile shelter;*
- 4. applications for the appointment of a guardian to represent the interests of minors in the proceedings before a court or other authority in urgent cases;*
- 5. cases concerning proceedings against persons with disorders endangering the lives, health or sexual freedom of others;*
- 6. hearing by the court of a person in the mode of securing evidence or with regard to whom there is concern, that he/she won't be allowed to be questioned at the trial.*

However, the head of the competent court may order that any case be dealt with as a matter of urgency if it failure to recognize could result in danger to human life or health or animals, serious harm to the public interest, or to an animal, or to a threatened irreparable material damage, and where the interests of justice so require.

Polish laws, also under the new circumstances, do not allow to have a hearings by means of distance communication.

- Does the crisis have an effect on deadlines (of procedural and substantive law)?
 - Are deadlines of ongoing proceedings affected?
 - Are deadlines for bringing actions affected (limitation periods)?

During an emergency or epidemic state any procedural deadlines, except in cases of urgency (as above), are suspended or suspended is their start.

The special regulation do not change the rules of counting terms of substantive law, which is widely criticized, however, as at the date of the report, no changes were made in this respect.

- Does the crisis have an effect on enforcement?
 - Are enforcement orders issued?
 - Are there any effects on deadlines?
 - Can enforcement acts be postponed due to the crisis?

Suspension of the course of procedural deadlines, as well as suspension of its commencement, also applies to enforcement proceedings. During a state of emergency or an epidemic declared due to COVID-19, no enforcement order ordering the emptying of the dwelling are executed.

- How do courts work during the crisis?
 - Are courts closed?
 - Can courts / judges be contacted?
 - Are documents served?

The courts are generally closed for other than employees and judges. Advocates may only attend the court hearing in selected urgent cases.

The courts are still working and it is possible to contact the court by phone, however due to staff shortages, this may be difficult.

The courthouse application offices are not operate, so all servings need to be done via post. Some of courts, for example in Warsaw, allow for the delivery of letters by e-mail, in the form of signed scans.

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

Each time the head of a given court determines which cases will be dealt with during an epidemic. In most courts interim measures such as injunctions are still recognized on the regular basis, besides of the hearings.
- How do lawyers work during the crisis?

Most of law offices are still working although mostly remotely. However scope of cases changed, obviously such cases as M&A or real estate's transactions are suspended. Lawyers are now mostly concentrated on supporting the clients for example by renegotiating the agreements or considering plans of restructuring.
- How do banks work during the crisis?

Banks are working on regular basis, some of smaller bank branches have been closed.
- Does the crisis have an effect on insolvency law?

As for now, no special rules concerning the bankruptcy or restructuring were introduced.
- Are there any further effects not addressed in the questions above?

NA

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?

- Which measures will remain in place?
- Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?
- Do you expect a rise of new anti-corruption prosecutions after the crisis?
- Will the ratio of third party funded matter rise?

As for now the discussion on the restriction that would be withdrawn or maintain is not pending. We assume that the restrictions on the recognizing by the courts only urgent and listed cases will be lifted. Most likely, hearings will be reintroduced gradually and only in the most urgent cases to avoid crowds in courts buildings.

In our opinion persistent staff shortages will lead to delays in handling economic crime cases and in consequence the prosecution would be less effective. The likely reduction in the budgets of prosecutors' offices may result in some of the evidence, requiring the largest funding, such as expert opinions, being implemented to a lesser extent. We believe that in new conditions the burden of taking evidence will be largely on the injured party, in order to accelerate the proceedings.

Financing of the proceedings by the third parties, mostly litigation funds, is still very rare in Poland. Also there are no much Polish litigation funds on the market. We expect however that in new circumstances the interest in external financing may strongly increase.

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