

1 Covid-19 impact on civil proceedings

1.1 Time limits in civil proceedings

As from 16 March 2020 all legal and judicial times, including prescription in civil matters and any peremptory time limits have been suspended until seven days after the Order for closure of the Courts is lifted.

Apart from this, all ex lege time limits imposed upon Notaries Public have also been suspended during the time when the Courts are closed. The suspension of time limits concerning Notaries shall last until twenty days after the Order for the closure of the courts is lifted.

The suspension of time limits for concluding a sale stipulated in a registered promise of sale agreement that was introduced on the 16th March 2020 was removed on 22 May 2020. A suspension of twenty days applicable from the 22nd May 2020 was introduced relative to promise of sale agreements following which the remaining part of the time period that was suspended will continue to run.

On 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. Thus, all legal and judicial times, including prescription in civil matters and any peremptory time limits will continue to run. In order to protect the rights of the court users, a short suspension came into force on the 5th June 2020: (i) a twenty day suspension of legal and judicial times for those Tribunals, boards, commissions, committees or entities which do not operate from a building of the Courts of Justice; and (ii) a seven day suspension of legal and judicial times relative to court or other tribunal, board, commission, committee or other entity which operates from the building of the Courts of Justice.

1.2 Judicial organization and Judiciary

With effect from the 16-03 the Courts of Justice and registries were closed - including the superior, inferior and appellate courts; any tribunal established by law operating from the building of the Courts of Justice; and any boards, commissions, committees or other entities, also operating from the same building of the Courts, and before which any proceedings are heard.

Despite this closure, the Courts have nevertheless been given the power to order the hearing of urgent cases or of cases where the Court deems that the public interest should prevail in having the case heard. This was of course, however subjected to any specific arrangements for the guarding against the spread of the virus as the court may determine.

With effect from the 4th May 2020, the registry of all the courts opened for the filing of all judicial acts (not only for urgent cases and cases which are in the public interest).

With effect from the 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. Thus, all Courts have been reopened, including the superior and the inferior courts, appellate courts irrespective of their competence or jurisdiction, any tribunal established by law, and any boards, commissions, committees or other entities before which any proceedings are heard or procedures undertaken which are subject to legal or administrative time limits for filing any claims, defences or other acts.

1.3 EU Judicial Cooperation

Cross-border judicial cooperation continued on a business as usual basis - of course as far as this is possible under the present circumstances particularly in the context of reduced activity in the Courts and reduced international travel.

2 Insolvency related measures adopted or planned for adoption in member states after the outbreak of the pandemic

2.1 Substantive insolvency measures and related contracts affecting measure

2.1.1 Insolvency suspension

2.1.1.1 Suspension of duty to file for insolvency (debtors)

Maltese Courts have been closed with effect from 16 March 2020 and only urgent cases where the Court rules that it would be in the public interest are to be allowed. This has temporarily provided for the imminent situation with regards to certain actions (wrongful trading) which could be filed against directors if they do not file for insolvency.

On 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. All Courts have been reopened.

Thus, all legal and judicial times, including prescription in civil matters and any peremptory time limits will continue to run. In order to protect the rights of the court users, a short suspension came into force on the 5th June 2020: (i) a twenty day suspension of legal and judicial times for those Tribunals, boards, commissions, committees or entities which do not operate from a building of the Courts of Justice; and (ii) a seven day suspension of legal and judicial times relative to court or other tribunal, board, commission, committee or other entity which operates from the building of the Courts of Justice.

Act XXXI of 2020 amended the Companies Act (Cap. 386 of the Laws of Malta) to give new powers to the relevant Minister to provide for a temporary suspension of directors' duty to file for insolvency, until such time as is considered necessary.

On 15 September 2020, Legal Notice 373 of 2020, entitled 'Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, was published. This LN provides for the suspension of filing for insolvency and a stay of procedures. Both measures are effective retrospectively from 16 March 2020. The suspension includes cases of wrongful trading against directors for failure to dissolve a company, or incurring debts in good faith at a time when the company is in a likelihood of insolvency. The suspension and stay will remain effective indefinitely and for a period of 40 days from the date the Minister responsible for the Economy orders that the suspension and stay are revoked.

Notwithstanding the suspension and stay the Court still has the power to allow a case to commence or proceed if there is *prima facie* proof that the insolvency occurred prior to the 16 March 2020.

The LN also provides a system for backdating the deemed date of dissolution of a company to the date when the debenture holder, creditor or creditors would have filed for dissolution but was prohibited to do so in view of the suspension. This will apply to those applications for winding up filed within 6 months following the lifting of the suspension.

2.1.1.2 Protection of debtors about insolvency filing from creditors

The closure of Courts provided an automatic suspension of creditors' rights to file for the insolvency of debtors.

On 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. All Courts have been reopened.

Act XXXI of 2020 amended the Companies Act (Cap. 386 of the Laws of Malta) to give new powers to the relevant Minister to provide for a temporary suspension of creditors' rights to file for debtor insolvency, until such time as is considered necessary.

On 15 September 2020, Legal Notice 373 of 2020, entitled 'Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, was published. This LN revokes the right granted to creditors to file for the dissolution of a debtor company in view of its insolvency. Furthermore, insolvency cases filed on or after the 16 March 2020 will be stayed. The Court is however empowered to allow a case to be heard if it is *prima facie* satisfied that the insolvency arose prior to the 16 March 2020.

Cases of wrongful trading (not fraudulent trading) against director for failure to dissolve a company are also suspended. The suspension and stay will remain effective indefinitely and for a period of 40 days from the date the Minister responsible for the Economy orders that the suspension and stay are revoked.

2.1.2 Claim enforcement suspension and contract termination suspension

2.1.2.1 General / specific moratoria on claims enforcement / certain types of claims enforcement

Likewise, the closure of Courts provided an automatic suspension of enforcement actions by creditors. Furthermore, the government has ordered the suspension for a period of 6 months of credit facilities issued by licensed credit or financial institutions, which include the lending of a sum of money by way of an advance, overdraft, or loan, or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed *pour aval*, but excluding credit cards.

2.1.2.2 Suspension of contract termination (general / specific contracts)

As a consequence of the closure of Courts, and therefore the right of debtors to enforce contracts, the government has ordered the temporary suspension until further notice, of any legal and judicial time established in any agreement, including any time period for the performance of any obligation set out in such agreement. This *inter alia* includes the running of all the legal periods imposed on a notary public by law to register any deed, will, act or private writing; the running of any period within which a notary public, in terms of any applicable law, must pay taxes collected by him in the exercise of his profession; the running of any time period related to fiscal benefits, incentives or exemptions; the running of any time period within which a notary public is to submit any information or documentation to any authority or regulator pursuant to relevant notarial activity; and the running of time with respect to the performance of any obligation contained in any deed or private writing, including a registered promise of sale agreement; and the running of time with respect to the expiration of any registered promise of sale agreement.

On 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. All Courts have been reopened.

Thus, all legal and judicial times, including prescription in civil matters and any peremptory time limits will continue to run. In order to protect the rights of the court users, a short suspension came into force on the 5th June 2020: (i) a twenty day suspension of legal and judicial times for those Tribunals, boards, commissions, committees or entities which do not operate from a building of the Courts of Justice; and (ii) a seven day suspension of legal and judicial times relative to court or other tribunal, board, commission, committee or other entity which operates from the building of the Courts of Justice.

2.2 Civil, including insolvency courts suspension and procedural suspensions

With effect from 16 March 2020, the Courts of Justice along with the respective registries have been closed. Nevertheless, the Courts have been given the power to order the hearing of urgent cases or of cases where the Court deems that the public interest should prevail in having the case heard. As a consequential measure, all legal and judicial times, including prescriptive periods and any peremptory time limits have been suspended until seven days after the Order for closure of the Courts is lifted. Such measures act in themselves as an automatic moratorium, or a stay of enforcement actions and for the insolvency of companies, as well as the immediate duty to file for insolvency by directors.

On 5 June 2020, the Closure of the Courts of Justice Order 2020 was repealed. All Courts have been reopened and court proceedings are taking place normally.

Act XXXI of 2020 amended the Companies Act (Cap. 386 of the Laws of Malta) to give new powers to the relevant Minister to suspend the right to make winding-up applications and to suspend any periods for the holding of general meetings, whether ordinary or extraordinary, and to the holding of virtual annual general meetings and other meetings.

On 15 September 2020, Legal Notice 373 of 2020, entitled 'Companies Act (Suspension of Filing for Dissolution and Winding Up) Regulations, was published. This LN provides for the suspension of filing for insolvency and a stay of procedures effective retrospectively from 16 March 2020. The suspension includes cases of wrongful trading against director for failure to dissolve a company. The suspension and stay will remain effective indefinitely and for a period of 40 days from the date the Minister responsible for the Economy orders that the suspension and stay are revoked.

Notwithstanding the suspension and stay the Court still has the power to allow a case to commence or proceed if there is *prima facie* proof that the insolvency occurred prior to the 16 March 2020.

2.3 Other insolvency measures (those relating to avoidance actions, reorganization plans, informal agreements, and others if appropriate)

Regarding the Insolvency Directive, Government is still examining the situation and its impact on companies.

Legal Notice 192 of 2020, entitled the Companies Act (Company Reconstructions Fund) Regulations 2020, was published on 12 May 2020 to supplement the company recovery procedure as provided under Article 329B of the Companies Act (Cap. 386 of the Laws of Malta). This LN sets up and regulates the administration and operation of a fund (the Company Recovery Fund) which is intended to facilitate the company recovery procedure.

2.4 Related non-insolvency measures (payment deferrals, bank loans, social security, health insurance, business subsidies)

The government already launched three financial-aid packages costed - on a month-by-month basis, intended to maintain liquidity within the businesses as well as financially assist a number of sectors. The Government has not only implemented tax deferments but has also pledged State guarantees on soft loans and directly injected cash within businesses in order to maintain our businesses alive, healthy and ready to bounce back when the economy re-starts once again. Apart from this, a number of social measures including wage supplements have also been installed. All of this is being done in order to avoid insolvencies, save viable businesses, safeguard jobs and contain as much as possible non-performing loans.

Specifically the government has ordered the suspension for a period of 6 months of credit facilities issued by licensed credit or financial institutions, which include the lending of a sum of money by way of an advance, overdraft, or loan, or any other line of credit including discounting of bills of exchange and promissory notes, guarantees, indemnities, acceptances and bills of exchange endorsed *pour aval*, but excluding credit cards.

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