

1 Covid-19 impact on civil proceedings

1.1 Time limits in civil proceedings

According to the State of Emergency Decree No. 195/2020 and Decree for Prolongation of the State of Emergency No. 250/2020, **limitation and prescription time limits do not commence or they are suspended if they are running**, during the state of emergency.

Interruption of time limits for lodging appeals.

The state of emergency has ended on 15 May 2020.

1.2 Judicial organization and Judiciary

State of emergency was declared on 16/03, with specific measures regarding the organization of the justice system:

Judicial activity in civil matters is suspended, except for urgent cases, which are determined by decision No. 417/24.3.2020 of the Council of Magistracy; Decisions continue to be drafted, as well as the registrations of documents from the parties.

Use of videoconference is encouraged – including through letter rogatory, as well as hearings closed to the public, where the situation permits.

All the documents of the parties are sent to the courts by electronic means, exception being allowed where these persons have no such means.

Transfers of files from a court to another is made by electronic means; also the notification of judicial documents to the parties.

Where the panel of judges cannot be completed, delegation of judges from another division of the court is allowed.

After 15 May 2020 (end of state of emergency), in all civil cases, procedures will resume *ex officio*. Within 10 days after the state of emergency has ended, the courts will take the appropriate measures in order to reschedule the hearings and to summon the parties.

1.3 EU Judicial Cooperation

Part of the personnel of the Ministry of Justice is entitled to work from home. Judicial cooperation in civil matters will be affected for an unpredictable period of time. In order to minimise the delays, **electronic communication of requests of judicial cooperation** to the Central Authority is strongly encouraged.

Documents sent in hard copy will be processed with significant delays.

The Ministry of Justice acts on the basis of Article 3 c) of the **Service of Documents and Taking of Evidence Regulations** as transmitting/receiving authority in exceptional cases. All requests (service of documents, taking of evidence, maintenance cases, child abduction cases etc.) are currently dealt by the Ministry of Justice as usually, with no prioritisation.

The following e-mail addresses can be used: dreptinternational@just.ro, ddit@just.ro.

As of the end of the state of emergency (15 May 2020), in general terms, the Ministry of Justice, acting as Central Authority will carry out all its activities in the same manner as during the state of emergency.

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)

Insolvency proceedings during the state of emergency are subject to the general provisions regarding the suspension *ex officio* of all judicial activity in civil cases, except in extremely urgent cases, that cannot be postponed. The debtor's obligation to file for opening of the insolvency proceedings is suspended as a general moratorium applies during the state of emergency to all deadlines in civil matters, including to the 30 days period in which the debtor is obliged to petition for insolvency.

During the state of alert, the legal provisions regulating the debtor's obligation to file for insolvency do not apply. Until the state of alert ceases, the proceedings can open at the request of the debtor if the debtor chooses to file for insolvency.

This temporary rule applies to debtors that were insolvent or that became insolvent during the state of alert. Romania has been in the state of alert since mid-May after the state of emergency ended.

2.1.1.2 Protection of debtors about insolvency filing from creditors

A creditor still has the right to file for insolvency but an insolvency procedure could be open only after the state of emergency has ceased.

The insolvency proceedings may be open for a claim of 50,000 lei (approximately 10.200 EUR) as the threshold both for creditors and for debtors was increased from 40.000 lei.

Creditors can file insolvency applications against debtors who interrupted their activity totally or partially during the state of emergency or alert only after they made a reasonable attempt to conclude a payment agreement, proved by documents communicated between the parties by any means, including by electronic means.

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

Budgetary claims (fiscal and others except for claims arising from decisions in criminal matters) which become due during the state of emergency cannot be enforced during this time and 30 days after the state of emergency has ceased. Also, enforcement measures for budgetary claims were suspended or not applied for budgetary claims after the state of emergency was instituted, except for claims related to criminal proceedings.

The enforcement proceedings/ forced execution in civil matters continue only if it is possible to comply with the sanitary discipline rules.

Temporary measures relating to the enforcement of fiscal claims introduced during the state of emergency are still in force. The suspension of enforcement of fiscal claims is applicable until the 25th of December and a period of 30 days after.

2.1.2.2 Suspension of contract termination (general / specific contracts)

In order to preserve contractual relations of SMEs which were closed or temporarily suspended (by the authorities) during the state of emergency (for example, restaurants, hotels), there is a specific obligation to try a renegotiation of the contract before suspending/terminating it due a force majeure.

In certain condition, SMEs which were closed or temporarily suspended by authorities during the state of emergency benefit in their contractual relation from a presumption of force majeure. The presumption is rebuttable by any means of proof.

2.2 Civil, including insolvency courts suspension and procedural suspensions

During the state of emergency, substantial and procedural deadlines do not run/are suspended. Judicial activity in pending cases shall continue only in extremely urgent cases, that cannot be postponed (the Courts of Appeal establish a list of such cases for all the courts in their jurisdiction). Courts can set short deadlines and if possible, hold the hearing through videoconference.

In insolvency proceedings pending on March 16th, judicial activity is suspended ex officio and only extremely urgent actions are resolved (temporary suspension of enforcement actions against the debtor until a decision on the opening of the insolvency procedure at the request of the debtor is taken as well as other actions that can be resolved in the absence of parties). In appeal proceedings against the decisions of the syndic judge, certain enforceable decisions can be suspended (decisions to open the insolvency procedure against the debtor or to enter in simplified bankruptcy/ bankruptcy procedures can still be suspended by the courts of appeal). The activity of judicial administrators/liquidators in pending procedures continue, if possible, under the sanitary requirements.

As with 15 May 2020, the state of emergency has ended. Therefore, in all civil cases, procedures will resume ex officio. In 10 days after the state of emergency has ended, the courts will take the appropriate measures in order to reschedule the hearings and to summon the parties.

As with the Ministry of Justice, acting as Central Authority, all activity will be carried out in general lines as within the state of emergency.

Law no. 120 of July 9, 2020 for the completion of Law no. 304/2004 regarding the judicial organization Article 111 provides that during the state of emergency the judicial activity may continue only in exceptional situations, of special urgency, duly justified, regarding the protection of family relations and the measures ordered by decree issued by the President of Romania.

The cases that will be judged for each category of courts will be established, exhaustively, only by the Superior Council of Magistracy, after consulting the management colleges of the courts of appeal, for the courts of appeal, tribunals and judges, respectively of the College of the High Court of Cassation and Justice. During the state of emergency the procedural terms and the limitation periods shall not begin to run and, if they have begun to run, shall be suspended.

A draft law recently adopted by the Government (19.11.2020), provides for the possibility of restricting the judicial activity of a court, partially or in its entirety, for reasons generated by the COVID-19 pandemic. While a restriction is in force, which could be for no more than 14 days, judicial activity continues for cases of utmost emergency and is postponed by law for the others. In the weeks to come, the draft law will be debated in Parliament and, if adopted, this measure will be applicable during the state of alert and 30 days after.

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

With the resumption of judicial activity after the state of emergency ended in mid-May, temporary measures, applicable for pending pre-insolvency and insolvency proceedings, were adopted – certain procedural steps and deadlines were extended by law (the period for drafting the preventive concordat offer and negotiating it with the creditors was extended by 60 days and the execution of the concordat by 2 months; the observation period and the deadline for submitting a reorganization plan were extended by 3 months; the judicial reorganization period was extended by two months), new rights in connection with the COVID pandemic were regulated (debtors had a 3 months deadline to submit a modified reorganization plan if, as a result of the COVID pandemic, the recovery perspectives changed).

Debtors benefited from a 2 months suspension of the reorganization plan in case their activity was totally interrupted as an effect of the COVID -19 pandemic. The maximum duration of the reorganization plan was extended from 3 to 4 years, with the possibility of extension by another year, without the execution of the plan exceeding 5 years.

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

Complementary measures were taken so far to reduce the pressure of financial liquidity such as the possibility to postpone certain payment obligations (credit instalments or fiscal obligations) which become due during the state of emergency and are expected to mitigate some of the negative effects of the pandemic on the solvability of entrepreneurs.

Other economic measures such as preferential loans for SMEs including loans 90% guaranteed by the state and other social protection measures were taken.

During the state of emergency, SMEs which were closed or temporarily suspended by authorities may postpone payment of their rent and utilities for their headquarters.

Temporary special provisions for holding the general meeting of shareholders/members of companies during the state of emergency will soon be in place. Starting with March 30, 2020, borrowers can request creditors to suspend their obligation to pay, for a period between 1 and 9 months but not more than 31.12.2020(GEO no.37/2020).

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