

Update as of 9 April 2020

Impact of COVID-19 on Debt Collection, Litigation and Arbitration

The measures adopted by the federal Swiss authorities to mitigate the spread of the coronavirus (Covid-19) have an impact on ongoing legal proceedings. With Ordinances published on 13 March 2020 and 20 March 2020, the Federal Council ordered a temporary legal standstill in debt collection proceedings and an extended judicial court recess. On 9 April 2020, the Federal Council announced that it does not intend to extend the legal standstill beyond 19 April 2020, but that it will take other measures to prevent a wave of bankruptcies due to the corona pandemic.

Legal standstill in debt collection proceedings

On the basis of Art. 62 of the Debt Enforcement and Bankruptcy Act ("DEBA" / *SchKG*), the Federal Council has ordered a "legal standstill" (*Rechtsstillstand / suspension / sospensione*) of debt collection proceedings from 19 March to 4 April 2020. During such standstill, debt collection proceedings are stayed and measures by the enforcement authorities such as:

- the notification of summonses to pay (*Zahlungsbefehl / commandement de payer / precetto esecutivo*) and
- the opening of bankruptcy proceedings

are no longer permitted. The standstill does not, however, apply to measures that cannot be postponed such as actions for the preservation of assets and the issuance of freezing orders.

The same restrictions apply during the statutory debt collection holidays (*Betriebsferien / férias en matière de poursuite / ferie in materia d'esecuzione*)

which immediately follow the legal standstill enacted by the Federal Council and which last from 5 April until (and including) 19 April 2020. The Federal Council has announced its clear intention not to prolong this legal standstill any further.

Whereas the applicable time limits in debt enforcement proceedings are not suspended during these periods of time, deadlines ending during the legal standstill will be extended until the third day after the end thereof (Art. 63 DEBA).

Extended court recess during Easter holidays in civil and administrative proceedings

The Federal Council has also ordered an extension of the court recess for both the federal and cantonal courts over the Easter period. By virtue of the ordinance, the court recess started on 21 March 2020 and will last until (and including) 19 April 2020. To the extent that the applicable procedural law provides for the suspension of running deadlines during a court recess in administrative proceedings and civil matters,

these deadlines are therefore currently stayed and will only start to run again after 19 April 2020.

The extended Easter court recess does not apply:

- in civil matters conducted in summary proceedings and in conciliation proceedings (Art. 145 para. 2 Civil Procedure Code ["CPC"] / ZPO)
- in certain administrative matters where the court recess over Easter does not apply (e.g. proceedings regarding the granting of suspensive effect and other interim measures, public procurement proceedings etc.) and
- to statutory deadlines set out in the Criminal Procedure Code (e.g. deadline to object against a decision to discontinue proceedings).

Furthermore, statutory and other deadlines which were set with an expiration date after 19 April 2020 are also out of scope of the (extended) Easter court recess.

In administrative matters, where the applicable cantonal procedural code does not provide for court holidays, several cantons have nevertheless ordered a suspension of deadlines until 19 April 2020 (e.g. Canton Basel-Stadt).

Proceedings before the Swiss Federal Tribunal

The deadline for filing an appeal with the Swiss Federal Tribunal against decisions of the lower courts and awards rendered by arbitral tribunals is set out in the Swiss Federal Tribunal Act (*Bundesgerichtsgesetz*) and is suspended during the now extended Easter court recess (21 March 2020 until 19 April 2020) with the exception of the proceedings listed in Art. 46 para. 2 of the Swiss Federal Tribunal Act, including *inter alia*:

- proceedings regarding the granting of suspensive effect for appeals proceedings and for other interim measures and
- proceedings relating to international mutual legal assistance in both criminal and tax law matters.

Postponement of hearings before cantonal courts

Most cantons have ordered that non-urgent court hearings shall be postponed to a date after 19 April 2020 or an even later date. In certain cantons (such as the Canton of Zurich) this also applies to conciliation hearings. In case of doubt, it is advisable to liaise with the Court and ask for directions.

In general, whenever possible according to the applicable procedural rules, proceedings are currently conducted in writing.

Whereas pursuant to Art. 144 of the Criminal Procedure Code it is possible for courts and prosecutors to interrogate a witness via video conference, the Civil Procedure Code lacks an explicit legal basis. However, some courts have nevertheless already resorted to conducting hearings by videoconference.

No standstill of statute of limitation periods

The extraordinary measures that have been enacted to date in connection with the Covid-19 emergency do not affect the running of the statute of limitation set out in the applicable provisions of substantive law.

In civil matters, the statute of limitation shall therefore be interrupted in time by the filing of a debt enforcement request, an application for conciliation or a submission of a statement of claim or defence to a court or arbitral tribunal (Art. 135 Code of Obligations).

New measures being drafted by the Federal Department of Justice

The Federal Department of Justice has conducted a public consultation on further measures intended to prevent a wave of bankruptcies due to the coronavirus crisis. The measures that are being examined include the following:

- Amendment of the obligations of the board of directors under Art. 725 para. 2 CO. It is proposed to temporarily exempt the board from having to notify the court in case of over-indebtedness where an otherwise healthy company has come into financial distress solely due to the COVID-19 pandemic and where there is a prospect that the over-indebtedness can be overcome after the crisis. This amendment would likely also apply to limited liability companies, collectives and foundations.
- Minor amendments are planned to the debt restructuring procedure. The amendments that are being discussed are intended to make the debt restructuring procedure more accessible and efficient.
- Further, for enterprises that have come into financial distress due to the current crisis, it is intended to introduce a special COVID-19-moratorium. This would be a standardized and – in comparison to the existing regulations governing debt restructuring proceedings – substantially simplified proceeding tailored to smaller, unlisted enterprises. It would enable enterprises that were not over-indebted on 31 December 2019 to achieve a temporary moratorium of three months (extendable to a maximum of six months) in order to reorganize. Pursuant to currently available information there would be no requirement to submit a provisional restructuring plan and no assessment of the prospects of restructuring, in order to keep the process simple and cost-efficient.
- Finally, amendments are being examined to allow courts to conduct telephone and video-conferences in civil proceedings.

We will update this briefing as soon as information on the final measures becomes available.

International Arbitration

Various arbitration institutions have also reacted to the challenges of the coronavirus pandemic. To mention just a few of the measures taken so far:

- The Secretariat of the ICC International Court of Arbitration and ICC International Centre for ADR advise that all communications with the Secretariat should be conducted by email. Correspondence sent by courier or post should be notified ahead of its dispatch. Hearings and other meetings scheduled to take place at the ICC Hearing Centre in Paris in the period until 13 April 2020 have been postponed or cancelled.
- The Swiss Chambers Arbitration Institution requests that Applications for Emergency Relief, Notices of Arbitration, Answers to the Notice of Arbitration and Requests for Mediation should not only be filed by post/courier, but also by email.
- The LCIA advises to file Requests through their online filing system or by email. Their website gives further directions.
- The Camera Arbitrale di Milano has suspended all procedural deadlines, e.g. for submissions of filings and for rendering of the awards, from 16 March until 5 April 2020.

Parties are advised to check regularly on the websites of the relevant institutions or to liaise with the chairperson of the arbitration proceedings in case of questions, as the situation is extremely dynamic.

Conclusion

The Swiss Federal Council has reacted to the Covid-19 epidemic by extending the statutory legal standstill in debt collection and bankruptcy proceedings and by extending the statutory court recess during Easter holidays in civil and administrative matters, effectively suspending most debt collection and bankruptcy measures as well as time limits and court hearings in the time period between 21 March and 19 April 2020. These steps taken do not apply to urgent proceedings such as interim measures and freezing orders. Delays are to be expected in most court and arbitration proceedings due to the current unprecedented situation.

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