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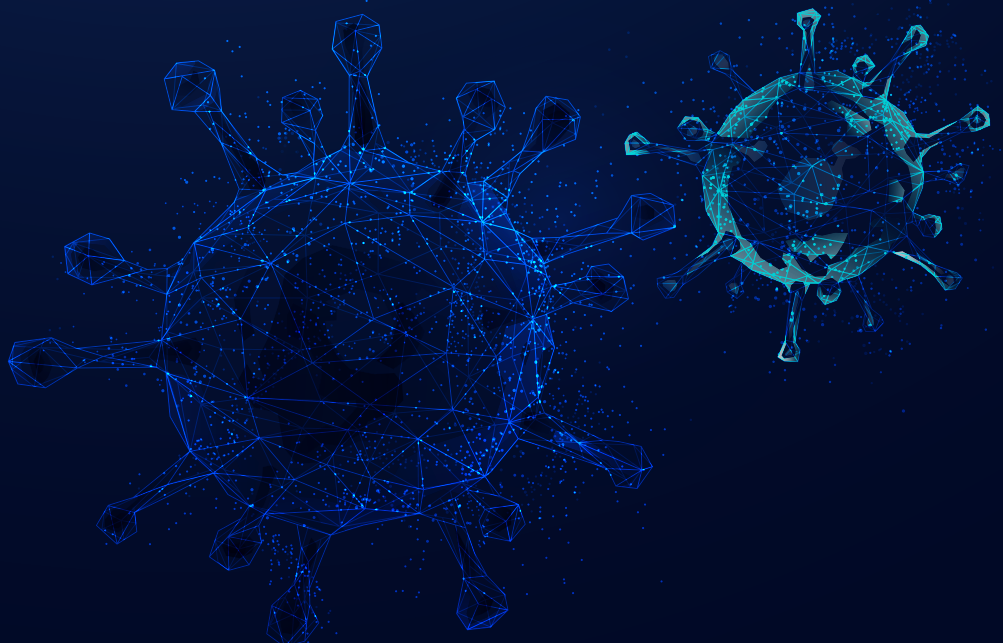
Covid-19 pandemic

Impact of COVID-19 on Court Operations & Litigation Practice

IBA Litigation Committee

20 May 2020

Disclaimer: Please be advised that the information set forth in this report is intended only as a general overview of the impact of COVID-19 on court operations and litigation practice. This report is not intended to constitute legal advice, and no conclusions should be inferred from or implied by the statements or discussions contained herein. Readers requiring legal advice should not rely on this report as an alternative to the engagement of local counsel in the relevant jurisdictions. Please note that this report refers to laws and regulations in force on or before 11 May 2020 and is subject to change.



Introduction

The spread of the coronavirus or COVID-19 has prompted governmental, judicial, and administrative bodies around the globe to adopt measures that respond not only to local safety directives, but to a generalized need for greater flexibility and remote connectivity.

In light of the magnitude of COVID-19, the IBA's Litigation Committee has prepared the enclosed Special Report that addresses the impact of the pandemic on the operation of courts and litigation practice in jurisdictions around the world. The contributors to this report were asked to address the following four questions:

1. What has been the impact of COVID-19 on the operation of courts and court hearings in your jurisdiction?
2. Has your government passed legislation or issued orders suspending the operation of substantive deadlines such as limitation periods? Have there been changes to procedural time limits which have either suspend or extended relevant time periods or otherwise permitted parties to agree to extensions of time without resort to the courts?
3. What has been the impact of COVID-19 in terms of the enforcement of judgments, including foreign judgments?
4. Outside of the court system, are litigators conducting their practices (examination of witnesses, mediations, etc.) virtually through video-conference platforms?

Please note that the information contained in this report is current to May 11, 2020.

The IBA Litigation Committee would like to extend a sincere thanks to the many contributors who have made this publication possible.

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Special thank you to Natalie Cammarasana and
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1. What has been the impact of COVID-19 on the operation of courts and court hearings in your jurisdiction?

Switzerland is a federal state that is composed of 26 Cantons (member states). While the competence to issue legislation in civil and criminal matters lies with the federal State, the organization of the judiciary falls within the powers of the Cantons, with the exception of the Swiss Federal Supreme Court which is independent. In the current crisis, based on its constitutional power to take all necessary measures in case of threats to the public order, public health or security, the Swiss government has issued several emergency ordinances to mitigate the effects of the COVID-19 pandemic and to ensure the functioning of the judicial system. In particular:

- **Partial suspension of judiciary activities and deadlines:** In mid-March 2020, several cantonal courts as well as the Swiss Federal Supreme Court started suspending the holding of court hearings of their own motion except for essential hearings (e.g. cases involving detainees or interim measures). Shortly thereafter, on 21 March 2020, the Swiss government issued an Ordinance on the suspension of procedural deadlines in civil and administrative proceedings.¹ This Ordinance provided for an extraordinary court recess which predated the regular court recess around Easter (i.e. from 5 April to 19 April 2020) by two weeks. During periods of court recess, no court hearings in civil proceedings are held except in urgent cases. All debt collection proceedings were also suspended from 19 March until 19 April 2020.²
- **Video-conference:** On 16 April 2020, the Swiss government adopted the *Ordinance on measures in the field of the judiciary and procedural law relating to COVID-19*.³ The Ordinance entered into force on 20 April 2020 and officially allows civil courts to use video-conferencing to conduct court hearings and the hearing of witnesses and expert witnesses, provided the parties consent to it or if good grounds justify it. To guarantee due process, the Ordinance requires that the transmission of sound and visuals between all persons involved takes place simultaneously. Moreover, in case of urgency the Ordinance also

¹ Ordinance on the suspension of procedural deadlines in civil and administrative proceedings is available here: <https://www.admin.ch/opc/de/classified-compilation/20200834/index.html>.

² The Ordinance on the stay of all debt collection proceedings is available here: <https://www.admin.ch/opc/de/classified-compilation/20200804/index.html>.

³ The Ordinance on measures in the field of the judiciary and procedural law relating to COVID-19 proceedings is available here: <https://www.bj.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/vo-covid19-justiz-d.pdf>.

allows civil courts to skip hearings entirely and conduct the proceedings in writing if a video-conference is not feasible. The Ordinance is currently scheduled to remain in force until 30 September 2020. It is now for the Cantons to make use of it. In Zurich, the Zurich Commercial Court started encouraging the parties to agree to hearings by video conference already in March. In Geneva, the judiciary is willing to resort to video-conference hearings, but the issue is more logistical, as for many Cantons, who did not have the necessary equipment beforehand. In addition to lack of know-how, budgetary reasons may slow down the implementation of this emergency legislation.

- **Social distancing measures:** In the meantime, many cantonal courts have resumed the holding of physical hearings while other courts will do so only at a later date. To protect the health of parties, counsel, judges, interpreters, court staff and the public, any physical hearings must, however, be conducted in strict compliance with the hygiene and social distancing guidelines of the Swiss Federal Office of Public Health (FOPH). In practice, many court rooms are too small to comply with social distancing guidelines, thus reducing the number of rooms available and likely to create a backlog of cases.

2. Has your government passed legislation or issued orders suspending the operation of substantive deadlines such as limitation periods? Have there been changes to procedural time limits which have either suspended or extended relevant time periods or otherwise permitted parties to agree to extensions of time without resort to the courts?

No suspension of substantive limitation periods has been ordered by the Swiss government.

The ordinary regime already provided that if the debtor is domiciled in Switzerland, limitation periods in Swiss law can be interrupted by the creditor without resort to the courts by means of a simple request for payment summons to the competent Debt Collection Office. As a consequence of such a request, the limitation period starts running anew. Furthermore, the parties are in any event free to agree on a waiver of the statute of limitations.

Procedural time limits in civil proceedings were generally suspended until 19 April 2020 by the Swiss government. However, time limits in urgent matters such as requests for injunctions and freezing orders were not affected. Debt collection proceedings were also suspended within the same period. However, the suspension of procedural time limits did not apply to criminal proceedings.

3. What has been the impact of COVID-19 in terms of the enforcement of judgments, including foreign judgments?

As a result of COVID-19, as mentioned above, certain procedural deadlines have been suspended and courts are operating on a slower pace and reduced staff.

Already on 19 March 2020, the Swiss government issued a stay of all debt collection proceedings which meant that no enforcement measures could be carried out from 19 March until 19 April 2020. The suspension affected the service of payment summons, the seizure and realization of assets as well as orders in enforcement-related court proceedings, most notably also the opening of bankruptcy proceedings. On 16 April 2020, the Swiss government passed measures to relax the current general insolvency regime applying to companies.⁴ In particular, the relevant Ordinance provides for a suspension of the duty to notify the judge in case of over-indebtedness of a company, for a temporary COVID-19 moratorium for small and mid-size enterprises (SMEs) and for a softening of certain conditions that companies must fulfill in order to apply for a debt restructuring moratorium.

Enforcement proceedings will therefore likely progress at a slower pace and delays in the conduct of proceedings aiming at the enforcement judgments must be expected.

4. Outside of the court system, are litigators conducting their practices (examination of witnesses, mediations, etc.) virtually through video-conference platforms?

As a consequence of the COVID-19 pandemic, law firms across Switzerland have moved their operations away from the regular offices and instructed their employees to work from home. For litigators, since filings are still predominantly made in hardcopy, this poses challenges, in particular since the general suspension of procedural time limits ended on 19 April 2020.

Furthermore, meetings with clients and other parties are more often conducted by telephone or video conference instead of face-to-face. Popular video conferencing software options include Zoom, Microsoft Teams (formerly Skype for Business) and Lifesize. While the switch to virtual communication has raised concerns about data privacy and cyber security, there are also advantages such as software features allowing users to share documents more easily with other meeting participants.

⁴ The Ordinance instituting measures in case of insolvability to overcome the coronavirus crisis is available here: <https://www.ejpd.admin.ch/dam/data/bj/aktuell/news/2020/2020-04-16/vo-covid19-insolvenz-d.pdf>.