



NEWSLETTER

From: COMMERCIAL Law Department

Subject: COVID19: the right moment to proceed?

Date: April 2nd, 2020

This pandemic and the measures taken to limit its spread lead to a slow down of all (economic) activities.

What about court proceedings? Can you still start proceeding and is it recommended to do so?

Courts have already taken measures to tackle some issues and although the Belgian government has not yet adopted legislative measures with regard to the court proceedings, this could change in the next few days.

This newsletter summarizes the current rules and the measures that are likely to be taken in a few days.

1. The general, but compulsory, guidelines from the College of courts & tribunals, and the measures taken by the courts

The College of courts & tribunals has published binding recommendations.

The latter are effective until 19th of April 2020.

Based on those recommendations, the following rules apply:

- Urgent cases should be handled;
- The physical presence of both the court staff and the parties must be minimised;
- Newly introduced cases should be minimised;
- Written procedures and, where possible, technological solutions as videoconferences, are encouraged;
- Buildings are accessible but under restrictions.

Besides, every court can adopt more detailed measures appropriate to its own context.



For example, the President of the Brussels' French commercial tribunal declared that it is of crucial importance to restrict as much as possible the presence at the tribunal. Consequently, hearings are suspended and only urgent cases are handled.

Besides, the President of the Brussels' French commercial tribunal indicates that the Director's Committee of the tribunal will arbitrate any conflict between the fundamental right to have his /her case handled within a reasonable time, and, the constitutional right to health safety.

Could the coronavirus be the reason for the judicial system to enter the digital era? To be followed...

2. *New proceedings ?*

New legal proceedings can be started, but the first hearings will be delayed until after 19 April 2020 (to our latest information, somewhere end of May, begin of June 2020)

(European) Orders for payment procedures are written procedures and can be introduced as usual. Nevertheless, court staff is reduced with a result that those requests will probably be handled with some delay.

By exception, summary proceedings to urgently obtain provisional measures can be introduced and pleadings will then be held; urgency and an appearance of right must be demonstrated.

3. *Pending proceedings ?*

Introductory hearings and hearings for pleadings are both suspended at least until 19th of April 2020.

Cases that were scheduled for introductory hearings until that date are referred to the dockets, which means that court will schedule them on a later date, when it will be clear that hearings can be held again.

Summary proceedings are held.

Also parties can ask the court, in writing, to determine a calendar for the exchange of written submissions.

Besides, parties can request the court to deal their case in writing. This means that no oral hearing will take place and, that



the judge will make his/her decision solely based on the written submissions of parties.

Written procedures (recovery of debts, order for payments,...) are handled as usual, but with potential delays.

4. Further measures to be taken by the Belgian Government

Taking into consideration the possible risk of paralysis, it seems that the Belgian government will (soon) adopt new measures on procedural rules.

Once of those could be the (nearly automatic) replacement of court hearings by written procedures: Courts & tribunals would make their decision based only on the written submissions, unless all the parties where to object it.

In the latter, the hearing will be postponed for pleadings.

If parties do not object this possibility, the judge will decide whether he deems it fit to render his/her decision based on the written submissions only.

Could parties appeal against such a decision of the Judge? This is an open question. However, if they could, this can increase sharply the number of pending cases (and, consequently, the backlog of court cases).

Also, discussions are pending regarding the extension or suspension of the statute of limitations and deadlines for appeals.

5. What can your lawyer do during this particular time?

Your business continues and your lawyer assists you herein:

- Summary proceedings can still be started to obtain urgent and provisional measures where needed.
- Procedural calendars may also be determined by court.



- Even if the majority of pleadings are provisionally suspended, deadlines are not. Consequently, parties still have to file written submissions.

In that respect, once parties are informed a hearing is postponed, they may agree on an extension of the procedural calendar, in the interest of their clients.

- Court registries are still open, however with limited staff. Submissions and other documents can be filed electronically.

We will monitor daily the measures taken by both, the government and the courts & tribunals to ensure a proactive management of all cases.

Any question?

You can reach us by mail @ hotline@mvvp.be

Wish to contact our legal experts?

Anne Laure Brocorens (annelaure.brocorens@mvvp.be)

Olivier Sasserath (olivier.sasserath@mvvp.be)