

MEMORANDUM

From: Bruce Horowitz, Paz Horowitz, Abogados, Quito, Ecuador

14.4.2020

Country: Ecuador

1. THE MOST CRITICAL PHASE OF THE CRISIS

As long as measures to prevent the spread of Covid-19 restrict freedom of movement: What are the effects of the Covid-19 crisis on civil justice?

The most significant effect is the delay in Civil Court proceedings, under Emergency Court regulations that have suspended all judicial activity until the end of the health emergency declared in Ecuador by the Ministry of Public Health --so far, until the beginning May 2020.

- **Is there special legislation on the effects of the crisis on civil justice?**

The Ministry of Public Health, through Ministerial Agreement No. 126-2020 of March 11, 2020, declared a state of health emergency throughout Ecuadorian territory in order to prevent the spread of COVID-19.

The President of Ecuador (Executive Decree 1017 of 3/16/2020, declared a state of emergency throughout the national, temporarily suspending the right to freedom of physical transit, association and assembly.

Based on the aforementioned provisions, the Plenary Session of the National Court of Justice, with Resolution No. 04-2020 of 16 March 2020, suspended the terms and conditions set forth in the law for all judicial proceedings, with the exception of in flagranti criminal violations.

The Full Judiciary Council issued Resolution 031-2020 on 17 March 2020, which suspended the working day for all Judicial Branch professionals, with the exception of judicial units with jurisdiction in cases of in flagranti criminal violations

The special legislation has been issued by the highest bodies that regulate the judicial system in Ecuador, who have joined in the effort to control the level of contagion of Covid-19 in the country, suspending jurisdictional activity in all matters except those involving in flagranti criminal violations.

- **Does the crisis have an effect on court hearings?**

Yes, hearings have either been postponed or suspended. The Ecuadorian judicial system's court calendar, was about to collapse since there are judicial processes in which preliminary hearings had already been set for six months to a year. Other trial hearings that have similarly been delayed in execution for several months are now suspended, until such time as the measures dictated by the National Court of Justice and the Judiciary Council are left without effect, which will lead the judges to set new dates and times to execute the suspended hearings.

- **Do court hearings take place during the crisis?**

No, only hearings dealing with criminal and flagrante delicto issues take place.

- **Do court hearings take place in the form of video conferences?**

Yes, but during the health crisis only the hearings dealing with criminal and flagrante delicto issues are being held.

- **Does the crisis have an effect on deadlines (of procedural and substantive law)?**

Yes, the deadlines have been suspended, since the National Court of Justice of Ecuador suspended the deadlines and terms provided in the law for all judicial processes.

- **Are deadlines of ongoing proceedings affected?**

No, the National Court of Justice of Ecuador, suspended the deadlines and terms provided in the law for all judicial processes.

- **Are deadlines for bringing actions affected (limitation periods)?**

No, the National Court of Justice of Ecuador suspended the deadlines and terms provided in the law for all judicial processes.

- **Does the crisis have an effect on enforcement?**

Currently all legal proceedings are suspended; jurisdictional activity will be resumed after the crisis is over. If enforcement includes punishment, the judicial system is freeing a significant, but relatively small number of non-violent low-level convict from the prison setting in order to avoid as much suffering as possible within the prison system.

Are enforcement orders issued?

No, because of the suspension of jurisdictional activity.

- **Are there any effects on deadlines?**

Deadlines are suspended, until the suspension ordered by the National Court of Justice is removed.

- **Can enforcement acts be postponed due to the crisis?**

Yes, currently based on the provisions of the Plenary of the Judiciary Council and the Plenary of the National Court of Justice.

- **How do courts work during the crisis?**

The courts are not working because of the suspension.

- **Are courts closed?**

Yes, temporarily and indefinitely, working hours throughout the judicial system are suspended until the COVID-19 crisis is resolved.

- **Can courts / judges be contacted?**

No, because of the ordered suspension.

- **Are documents served?**

In cases of flagrante delicto and criminal cases, notifications are made by electronic means.

- **How are particularly urgent matters handled, in particular requests for interim measures such as injunctions and freeze orders?**

The judicial units are working only on criminal and flagrante delicto matters.

- **How do lawyers work during the crisis?**

The lawyers' work on the litigation is suspended. Therefore, their activities are focused on advising companies on public procurement issues, as well as on the handling of extrajudicial cases.

- **How do banks work during the crisis?**

Under Executive Decree 1017, the public and private financial systems have **not** been suspended, maintaining normal activities in compliance with the security measures that must be observed to prevent the spread of COVID-19.

- **Does the crisis have an effect on insolvency law?**

Only in terms of time delay in these processes. Since the deadlines and terms have been suspended, this right can be exercised the moment the suspension is lifted.

- **Are there any further effects not addressed in the questions above?**

The measures that the Government has implemented have progressively increased in rigor due to the increase in the number of people infected by COVID-19, which has caused that not only the jurisdictional activity is suspended, but also all the administrative processes in public entities. In other words, the effects of COVID-19 have led to an almost total cessation of work activities.

2. FORECAST: AFTER THE CRISIS AND LONG-TERM EFFECTS

What are the consequences of the Covid 19 pandemic once the pandemic has abated, in the gradual return to a new normality and what are the long-term effects?

Although no one has the sure answer, the consequences of the COVID on jurisdictional activity will definitely be quite strong and measurable in the long term, since, without prejudice to the suspension of deadlines and terms, the judicial system could enter into an operational collapse, taking into consideration that hearings will have to be convened, deadlines and terms enabled in judicial cases.

On the other hand, it is clear that the consequences will also be reflected in Ecuador's economy, since this standstill has led to a stagnation in production and in the provision of services by individuals and legal entities. For its part, the Government has tried to implement regulations with public and private banks that will favour these groups in order to provide financial relief, but this does not overcome the paralysis of the usual activities.

- **Which measures introduced during the crisis will be withdrawn immediately?**

Without a doubt the restrictions on mobility to start working activities again and the permission to open places of work other than the home, with the exceptions that the Government implements, among them, following the safety protocol as use of masks and gloves, physical distancing, hygiene, and perhaps the mobility prohibitions for the demographic and medical groups who are most endangered by COVID-19.

It is also expected that the working day will be reactivated, as it is currently developed through teleworking.

- **Which measures will remain in place?**

- Partial restriction of mobility and transit in the territory.

- Classes remain suspended throughout the year.

- The prohibition of mass events and public shows.

- Restrictions on public transport.

- **Will enforcement of economic crime, including corruption matters be weakened due to the lack of financial resources?**

No, currently in the country, on Tuesday, April 7, 2020, the Criminal Court of the National Court of Justice, issued a sentence in the case called “Bribes 2012-2016”, declaring the guilt of 8 defendants within the criminal case –among them, the former President of the Republic of Ecuador.

The Attorney General's Office, as the head of the criminal action, will continue with the investigations and prosecutorial instructions to continue with the criminal proceedings, since this activity has not been suspended, and even in the case of Bribes 2012-2016 in the media it has been stated that investigations of other crimes will be initiated.

- **Do you expect a rise of new anti-corruption prosecutions after the crisis?**

Very possibly, especially in matters of public procurement, for which the National Public Procurement Service has issued for all public institutions legal norms to implement Good

Practices in Emergencies, trying to regulate contracting in emergency situations, that public entities directly contract goods, works and services.

- **Will the ratio of third party funded matter rise?**

Yes, the ration of third party funded matters will rise, given the combined increase in the emergency-created economic losses, the increased knowledge about and acceptance of third-party litigation funding, and the expected increase in the number of massive fraud cases coming to light to defrauded investors.

Contact details:

Bruce Horowitz

Ecuador Member for ICC FraudNet

Partner, Paz Horowitz

bhorowitz@pazhorowitz.com

Mobile phone: +593-9-9839-3248

Site Center, Tower 1, 3rd Floor

Calle del Establo y Calle E, Cumbaya

Quito, Ecuador

David Garcia

Co-director of the Litigation and ADR Section

Paz Horowitz, Abogados

dgarcia@pazhorowitz.com

Office phone, main: +593-2-398-2900