

AUSTRIA

COVID-19 legislation

Impact on deadlines

On Friday, 20 March 2020, the National Council passed the 2nd COVID-19 Act to address the COVID-19 (coronavirus) crisis; on Saturday, 21 March 2020, the Act was also passed by the Federal Council and announced on the same day. Most of the associated measures came into force on Sunday, 22 March 2020.

In addition, the 3rd, 4th and 5th COVID-19 Act was passed by the National Council on 3 April 2020 and by the Federal Council on 4 April 2020. The announcements were also made on 04 April 2020.

The COVID-19 Acts that have come into force up to now also have far-reaching effects on judicial, official and employment contract deadlines. Contractually agreed time limits have hardly been affected so far, but mainly legal, official and judicial time limits. New provisions on the service of official documents are also planned..

What applies to judicial time limits of the ordinary courts?

There is an interruption of time limits in legal proceedings before the ordinary courts (district courts, regional courts, Supreme Court).

All procedural time limits whose event triggering the time limit falls within the period after the 2nd COVID-19 Act has entered into force, as well as procedural time limits that have not yet expired by the time of entry into force, will be interrupted until the end of 30 April 2020. They shall begin to run again on 1 May 2020.

With the introduction of the 4th COVID-19 Act, it has now been additionally clarified that, when calculating a time limit determined in days, 1 May 2020 is considered to be the day in which the point in time or event to which the start of the time limit is to be directed falls. In the calculation of a period determined by weeks, months or years, 1 May 2020 shall be deemed to be the day on which the period began.

The interruption of the time limit does not cover proceedings under certain laws that involve deprivation of liberty.

Nor does it cover periods for performance (e.g. in judgments or decisions).

In civil law cases, all procedural time limits (both statutory and judicial time limits) are thus interrupted in civil proceedings, out-of-court proceedings, land register and company register proceedings and execution proceedings. However, under certain circumstances, the court may order that no interruption of time limits takes place and in this case must set a new reasonable time limit.

With the enactment of the 4th COVID-19 Act, it has now also been decided that time limits in insolvency proceedings are no longer covered by this general interruption of time limits. Periods in the insolvency proceedings already interrupted by this provision shall begin to run anew on 05.04.2020.

In addition, the court is authorized to extend statutory time limits by a reasonable amount of time, up to a maximum of 90 days, ex officio or upon application by a party involved or the insolvency administrator with a resolution.

Author:

MMag. Eva Havas

✉ eva.havas@benn-ibler.com

☎ +43 662 88 34 73

Benn-Ibler Rechtsanwälte GmbH
Franz-Josef-Kai 1, 5020 Salzburg

If you have any questions, please do not hesitate to contact your direct contact person or write to us at covid19@benn-ibler.com.

For notifications on further developments, please subscribe to our newsletter at www.benn-ibler.com/newsletter

What applies to statutory time limits within which proceedings must be brought before the ordinary courts?

The period from the date of entry into force until the end of 30 April 2020 shall not be included in the period during which an action or application is to be brought or a declaration made before a court.

This means that the statutory time limits for bringing an action before a court or, for example, the arbitration board under the Tenancy Act (Mietrechtsgesetz) (e.g. limitation periods, time limit for an action for disturbance of possession, proceedings under the Tenancy Act, periods for contesting termination, etc.) are suspended. This also applies to various declarations to be made to the court.

However, this does not apply to contractually agreed periods.

Are there provisions on time limits in employment contracts?

Yes, in the scope of application of the Employment Contract Law Amendment Act (Arbeitsvertragsrechts-Anpassungsgesetz) it is provided that the continuation of current statutory, collective bargaining and contractual limitation and expiry periods relating to claims arising from the employment relationship which run on 16 March 2020 or which begin to run after this date will be suspended until 30 April 2020.

What applies to contractually agreed deadlines?

The COVID-19 laws enacted to date contain no provisions on this, so that apparently only legal deadlines are covered, but not contractually agreed deadlines. This means that, in the absence of any provisions to the contrary, contractually agreed periods (e.g. for warranty, termination, challenge of errors, etc.) are not interrupted and continue to apply unchanged. Also for e.g. contractually agreed periods of limitation nothing changes by the COVID-19 laws.

Excluded from this are contractually agreed time limits according to the Employment Contract Law Adaptation Act (see above point 3) and the special

provisions listed below in tenancy law, credit agreement law and provisions for the limitation of interest on arrears as well as exclusion of collection costs and contractual penalties.

There are special provisions in the area of tenancy law for residential leases. For the time being, it is not possible to terminate a tenancy agreement due to rent arrears from the months of April, May and June 2020 as a result of the pandemic. Landlords cannot claim the arrears in payment in court until December 31, 2020 or cover them from a security deposit provided by the tenant. The arrears must be paid by mid 2022 at the latest. Then the landlord has the right to base a termination of the lease or an action for termination of the lease on this arrears. Special provisions have also been made for the extension of fixed-term residential leases.

With regard to the settlement of contractual obligations, the 4th COVID Act further stipulates that for contractual relationships concluded before April 1, 2020, the consequences of default or the default interest rate for pandemic reasons are to be limited until the end of June 2022. Furthermore, under certain pandemic-related circumstances, a contractual penalty no longer has to be paid. This regulation also comes into force (for the time being) until June 2022.

Are there provisions on administrative procedures?

Yes, in pending administrative proceedings of the administrative authorities to which the Administrative Procedure Acts (Verwaltungsverfahrensgesetze) apply, all time limits whose triggering event falls within the period after entry into force and time limits which have not yet expired by the time of entry into force will be suspended until the end of 30 April 2020. They also begin to run anew on 1 May 2020. Here too, the authority may, under certain conditions, order the contrary and must also set an appropriate new deadline in this case.

This also applies to proceedings of the administrative courts if at least the General Administrative Procedure Act (Allgemeine Verwaltungsverfahrensgesetz, AVG) is also applicable

to the respective proceedings. The proceedings of the Administrative Court and the Constitutional Court are also affected by this.

The 4th COVID-19 Act corrects the originally introduced interruption of procedural deadlines in administrative proceedings and removes the interruption of the limitation period. This provision already comes into force retroactively as of 22 March 2020. It is supplemented that for the purpose of calculating the time limits pursuant to § 32 (2) of the General Administrative Procedure Act, 1 May 2020 shall be deemed to be the day on which the period commenced. Furthermore, certain periods are again excluded from the interruption of the period.

In addition, the suspension of certain time limits is provided for. For example, the period from 22 March 2020 to the end of 30 April 2020 is not included in the period in which an application initiating proceedings (§ 13 (8) AVG) is to be filed, in decision periods with the exception of maximum periods laid down in the Constitution and in limitation periods

New provisions on the time limits for the payment of a penalty are also provided for.

Special provisions have also been made for public procurement.

Are there provisions on time limits under the Federal Fiscal Code (Bundesabgabenordnung)?

Yes, in pending administrative proceedings of the tax authorities, all time limits provided for in the ordinary appeal procedure whose triggering event falls after 16 March 2020 and time limits which have not yet expired by 16 March 2020 will be suspended until the end of 30 April 2020. Here too, the tax authority may, under certain conditions, order the contrary and must also set a new reasonable deadline.

What changes in the Insolvency Code (Insolvenzordnung)?

If the requirements for opening insolvency proceedings are met, the debtor must file a petition to open insolvency proceedings no later than 60 days after the occurrence of illiquidity. It is now

clarified that both an epidemic and a pandemic are natural disasters and that in this case the deadline for filing an application is 120 days. However, this only applies if the inability to pay is a consequence of the epidemic or pandemic. A delay in the fulfillment of the reorganization plan is excluded until (for the time being) the end of April 2020 because a reminder cannot be sent effectively during this period.

The 4th COVID-19 Act brought some further innovations in the field of insolvency law. The debtor's obligation to file for insolvency was suspended in the event of over-indebtedness occurring in the period from 1 March 2020 to 30 June 2020, and liability linked to the over-indebtedness pursuant to § 84 (3) No. 6 of the Stock Corporation Act (Aktiengesetz) is no longer applicable. In addition, further regulations were created with regard to the suspension of special deliveries to creditors, the exclusion of rescission for unsecured bridging loans and the possibility of deferring payment plan installments for a maximum of nine months.

What applies to financial criminal proceedings?

With the 3rd COVID-19 Act, the periods under fiscal criminal law were revised once again.

§ 265a (1) of the Fiscal Penalties Act (Finanzstrafgesetz, FinStrG), which came into force on 5 April 2020, now provides for the interruption of the following periods:

- ❖ The period for objection (§ 145(1) FinStrG),
- ❖ The time limit for appeals (§ 150(2) FinStrG),
- ❖ The deadline for filing a complaint (§ 150(4) FinStrG),
- ❖ The deadline for filing an application for reopening the proceedings (§ 165(4) FinStrG),
- ❖ The deadline for filing an application for restitutio in integrum (§ 167 (2) FinStrG), and
- ❖ The period for filing objections for recording (§ 56b(3) FinStrG).

An interruption of the period is provided for if the period had not yet expired by the end of 16 March 2020 or if the beginning of the period falls within the period from 16 March 2020 to the end of 30 April 2020. The above-mentioned periods shall begin to run anew on 01 May 2020.

The Federal Minister of Finance remains authorized to extend the general interruption of deadlines already ordered or to provide for further general exceptions to the interruption by ordinance until 31 December 2020 at the latest, insofar as this is necessary to prevent and combat the spread of COVID-19.

What applies to industrial property rights?

In the field of industrial property rights, time limits are suspended in the period from 16 March 2020 to the end of 30 April 2020.

What does COVID-19 change in the delivery regulations?

As long as the time limits of the ordinary courts or the time limits in the above-mentioned administrative proceedings are interrupted, the service with proof of service (RSa and RSb letters) of documents to be transmitted by courts or administrative authorities and the service of documents by foreign authorities to be carried out by courts or administrative authorities shall be subject to amended service regulations.

For RSa and RSb items, it is now sufficient for the letter to be placed in the letterbox or left at the delivery point. A signature is no longer required for delivery. As far as this is possible without endangering the health of the deliverer, the addressee must be notified of the delivery by written, oral or telephone notification to himself or herself or to persons who can be assumed to be able to contact the addressee. The same applies to delivery to a substitute addressee.

Delivery shall not be effected if it appears that the addressee was unable to learn of the delivery in time due to his absence from the delivery point, but delivery shall take effect on the day following his return to the delivery point.

The deliverer shall certify the delivery and the form of notification of the delivery.

These provisions shall expire at the end of 31 December 2020.