

Q&A: The current health emergency context offers opportunities in a changed environment for disputes. What tools are available in France?

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The health emergency has had a major impact on France's judicial activity. Unlike the courts in many other countries, French courts were almost at a standstill during the lockdown period that officially ended on May 11, 2020.

While judicial activity is gradually resuming, the current situation offers opportunities it is worth questioning the state of ongoing proceedings and the tools available to companies in managing their disputes and accelerating outcomes. Even though French proceedings are much less costly than in the U.S. or in the UK, the emergency will lead to strategic and financial decisions. Knowing the tools and making use of them will be critical.

1. What is the current situation in the French courts?

Following the French lockdown, established on 17 March 2020, due to the health emergency, judicial activity slowed down considerably.

During the lockdown period, activity in the courts was essentially restricted to proceedings related to insolvency matters. Very few hearings were held by videoconference, and most proceedings were postponed sine die.

A gradual resumption of judicial activity began on 11 May 2020, and, in practice, many courts took measures to enable the streamlining of case flow over the coming months.

Emergency hearings will gradually resume as normal, while hearings on the merits scheduled during lockdown will, in the absence of opposition, be judged without hearings. Opposition becomes an obligatory remedy against the procedure without hearings.

'Normal' court activity is not expected to resume for several months.

2. Have specific measures been implemented to overcome jurisdictions' paralysis during lockdown?

During this emergency period, courts were permitted to hold hearings by videoconference, or, if this was not possible, by conference call. This opportunity, available in all disputes, was rarely used.

Procedures without hearings are clearly favoured in proceedings where parties are assisted or represented by lawyers, and, for a period of up to one month after the end of the health emergency period, judges are permitted to order that procedures be conducted without a hearing. The parties may oppose this except in emergency proceedings.

In practice, more complex procedures will in most cases be postponed.

3. Will the health emergency have an impact on the handling of court cases?

It is expected that the processing time for procedures will be extended.

For defendants, this could be seen as an opportunity. They might see it as a chance to save time. However, dilatory and opportunistic attitudes will have to be avoided. Courts might judge such dilatory behaviour with some severity in the post-emergency period. A fine for abuse of rights is provided under the French Code of Civil Procedure and could be used for this purpose.

Nevertheless, in most cases, there is a risk that the lengthening of proceedings will not be subject to special monitoring of the parties' behaviour during that processing period.

For this reason, claimants must take the initiative by using all tools, including emergency tools, available under the French Code of Civil Procedure.

4. Is it possible to accelerate the processing of legal proceedings?

The short answer is a clear yes.

The longest part of a procedure is the period during which the parties exchange their written submissions presenting their arguments to ensure the case is 'ready' for judgment.

Since 2016, parties and their lawyers have been authorised to contractually agree on the length of this period and then to benefit from an early hearing.

Until now, this opportunity has rarely been used. However, given the current backlog of judicial activity, the use of this instrument could be a valuable tool to be promoted in order to reduce the duration of the litigation process. We can see a clear uptick on that front.

The downside is that the opposing party has to agree to such an accelerated calendar. However, if managed properly, the claimant will be able to count on the court's pressure on the defendant. In this regard, the determination of the claimant will be essential.

5. Can urgent measures be obtained?

Yes, urgent measures can be obtained, and their scope is much wider than in other jurisdictions.

First of all, the French Code of Civil Procedure allows the following measures to be taken before any trial in order to:

- Establish or preserve evidence (no discovery in France). Depending on the emergency and, in particular, on the risk of evidence loss, such measures can be ordered extremely quickly and through ex-parte proceedings. These measures are implemented through a bailiff who secures evidence on the premises of the defendant. These measures are quite rightly seen as tough as they are comparable to a civil dawnraid.
- Carry out protective seizures allowing the debtor's assets to be 'frozen' pending a contradictory decision. Here, too, the procedural tool is all the more effective as the legal test is low and everything is done ex-parte.

Furthermore, an emergency measure that is not seriously questionable can be obtained after an expedited (contradictory) proceeding. It is also possible to obtain urgently any measure necessary to prevent imminent damage or to stop a manifestly unlawful disorder.

Prior to the health emergency, the time frame for obtaining such decisions was a couple of weeks. For very urgent cases, this process did take only a few days. Courts should be able to work along similar timeframes after the health emergency.

Urgency can also conduct courts to agree to an expedited processing period on the merits, and to significantly reduce the time period for a hearing of the case.

Such measures, which are, compared to other judicial systems, easier to obtain in France, can be game changers.

They are often considered as aggressive, but the seizure of documents or the preventive seizure of the opposing party's assets is considered to constitute a 'marker' of the claimant's determination.

The effectiveness of these measures is high, as well as the range of possibilities they allow, with a direct impact on the market in which the opposing party operates. The measures can be used to incentivise a settlement.

6. How can a creditor ensure the conservation of its debtor's assets pending a decision on the merits?

This point is important and it applies where the debtor has assets in France, even though the main dispute may not take place in France.

Preventive seizure allows, according to a quick and ex-parte procedure, the provisional 'freezing' of the debtor's assets until a decision on the merits.

All types of assets can be seized: bank accounts, real estate, shares, etc. A preventive seizure may also be carried out by a third party, being itself the debtor's debtor.

Preventative seizure is a very valuable tool to ensure the debtor's solvency before initiating legal proceedings and/or for promoting negotiation. Such seizure can also have a disruptive effect on the debtor's operations.

7. Is it complex, especially for a foreign creditor, to carry out a protective seizure in France?

Not at all.

The procedure for obtaining authorisation to carry out a protective seizure is quick.

In practice, many courts carry out proceedings without a hearing, in order to authorise protective seizures within a few days. This was the practice in many jurisdictions before the health emergency, and it is likely to be largely extended.

As long as the debtor's assets are located in France, a foreign creditor can seize them there, even if the dispute is to take place in a foreign jurisdiction.

8. Are French court decisions easily enforceable in France?

Since reform on 1 January 2020, all judgments are now, in principle, enforceable. Therefore, regardless of whether the defendant has appealed the decision, it is now possible to enforce it as soon as it has been served.

In practice, a bailiff is called upon to carry out the enforcement. In close cooperation with the attorneys, the bailiff can rely on a variety of databases and tools in order to ensure the enforcement of court decisions. In particular, the bailiff has access to the national file of bank accounts and similar accounts (FICOBA) which enables access to a list of all bank accounts held by the convicted party.

9. Are foreign court decisions and arbitral awards easily enforceable in France?

Decisions that are enforceable in a Member State of the European Union are enforceable in France.

Foreign judgments and arbitral awards are subject to an exequatur procedure in order to be enforceable in France. This is a unilateral, fast and non-contradictory proceeding.

10. What are the alternatives to litigation?

Given the current circumstances, the use of alternative dispute resolution methods will clearly need to be contemplated, in conjunction with other tools.

Parties wishing to find an amicable solution may prefer mediation. Under the aegis of a mediator, appointed either by a judge or by the parties, the parties can attempt to find an amicable solution to their dispute.

The Paris Bar Association has set up an emergency mediation group for companies in order to enable the quick and amicable resolution of disputes during the Covid-19 period.

For several months now, the Paris Commercial Court has also promoted conciliation under the aegis of an experienced judge. Reserved for long proceedings, conciliation could be used voluntarily to 'push' cases.

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