

Interim French Measures to Adjust Company Law to the COVID-19 Crisis

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Following the entry into force of the French emergency bill aimed at tackling the COVID-19 epidemic dated March 23, 2020, the French government has adopted, on March 25, 2020, two ordinances (*ordonnances*) (n°2020-318 and 2020-321) to ensure, despite the current disruptions (in particular those resulting from the containment measures) the continuity of operation of the governance bodies of "legal persons and entities without legal personality".

The scope of these ordinances is very broad since it covers, inter alia, civil and commercial companies (French *sociétés anonyme* (SA), *sociétés par actions simplifiée* (SAS), *sociétés à responsabilité limitée* (SARL), *sociétés civiles immobilières* (SCI), etc.), bondholders (and other securities)' groups, economic interest groups (European or not), cooperatives, associations and foundations.

The purpose of these measures is threefold: firstly, to adjust certain obligations to which these legal persons are subject; secondly, to give legal entities whose Articles of Association do not provide for any alternative to "face-to-face" meetings the possibility of operating their corporate bodies in other ways, bearing in mind that company law, in particular the rules applicable to French *sociétés par actions simplifiée* (SAS), already offers many alternatives; finally, to allow the implementation of adjustments made necessary by the current situation, in particular containment measures, and to ensure their legal validity.

These measures are applicable as from March 12, 2020 and until July 31, 2020 (unless extended by decree until November 30, 2020 at the latest).

The derogating measures taken to date cover in particular the following subjects:

1. Postponement of the annual shareholders' meeting

- Legal entities whose accounts have been (or will be) closed between September 30, 2019 and one month after the date of cessation of the state of health emergency (such state of health emergency is in force until May 24, 2020 in France, but it may be renewed given the epidemic context) are granted a three-month extension for the submission of these accounts to their general meetings, except where the legal entity concerned has a statutory auditor and the latter has issued its reports on the accounts before March 12, 2020.

Based upon this interim measure, a company having closed its accounts on December 31, 2019, will be able to submit them to the approval of its shareholders by September 30, 2020 at the latest (as opposed to June 30, 2020 under standard applicable rules).

2. Holding of shareholders' meeting

- When a meeting is convened in a place affected by measures restricting or prohibiting collective gathering for health reasons - such as containment or prohibition of meetings above a determined threshold - the legal representative (or the body responsible for convening this meeting) of the entity concerned may decide that such meeting will be held without the "in-person" attendance of the shareholders (or other persons entitled to attend), or by way of conference or audiovisual conference.
- In the same spirit, when a meeting is held "in-person", the legal representative (or the body in charge of convening it) of the entity concerned may decide that the votes of the members participating remotely will be taken into account for the calculation of the quorum and majority for the approval of the resolutions put to vote.
- In addition to the provisions intended to facilitate the operation of meetings, the ordinances allow for written consultation of the

members of the legal entity concerned for any decision where such method of consultation is authorized by law, and notwithstanding the fact that said method is not provided for in the Articles of Association.

- Communication by electronic message is also deemed valid for the transmission to members of a meeting of documents due to be made available under applicable law.
- Finally, when a company listed on a regulated stock market is required to convene a shareholders' meeting by post, no risk of invalidity will arise from the fact that, due to circumstances beyond the company's control, such convening could not be made by post.

Conditions of implementation

- No amendment to the Articles of Association of the company is required for the implementation of these temporary provisions which, where applicable, shall prevail over any clause that would be in contradiction.
- These measures are applicable regardless of the agenda of the meeting. The decisions submitted to these meetings may therefore be part of the day-to-day business of the company (approval of the financial statements, renewal of offices, etc.) or be more exceptional (capital increase or reduction, mergers, issue of securities, etc.).
- The telecommunication systems used for remote participation must enable the identification of participants and guarantee their effective participation.
- The implementation of these exceptional measures must be notified to the members of the meeting at least three business days before the date of the meeting, by "any means ensuring their effective information" and, in the event of listed companies, by means of a statement issued by the company.
- The ordinances also eliminate any risk of invalidity of the conditions for convening the meeting by expressly stating that the change of the venue of the meeting or in the way the meeting will take place shall not be considered as a breach of the rules applicable to the convening of the meeting.

3. Provisions applicable to Governing Bodies

- The ordinances allow the use, without this having to be provided for in the company's Articles of Association or internal regulations, of telephone or audiovisual conferences to bring together the collegiate administrative, supervisory or management bodies of companies and other legal persons governed by private law ("Governing Bodies").
- In order to maintain the collegial nature of Governing Bodies, it is specified that the system selected should at the very least allow the identification of participants and their effective participation by the transmission of the participants' voices and ensure the continuous and simultaneous retransmission of the deliberations.
- As for the rules applicable to shareholders' meeting, the ordinance does not in any way limit the subjects for which these exceptional operating methods may be used by the Governing Bodies.
- In order to avoid any subsequent difficulty on this point and to demonstrate that these conditions have been complied with, it seems appropriate to record these meetings.

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