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French Government Passes Ordinances to Adapt Its Legal Framework During the COVID-19 Epidemic

30 March 2020

As we reported in a recent Debrief,¹ the French Parliament gave the government permission to use ordinances to adapt specific aspects of the French legislative framework during the state of public health emergency in a law dated 23 March 2020. On 26 March 2020 and 28 March 2020, the government published a total of 29 ordinances covering a wide variety of subjects. This update provides a brief summary of some of the adopted measures.

Extending Time Limits.² Statutory time limits expiring during the period starting from 12 March 2020 and ending one month after the end of the state of public health emergency will be interrupted.³ After that period, time limits will start to run again from the beginning, but only for a maximum of two months.

This mechanism will apply to legal actions, appeals, publications, notifications and other court formalities imposed by statute. But time limits provided for by the criminal code and some other specific statutes are excluded, and time limits applying to financial statements and some other corporate reporting are covered by another specific ordinance (see below).

¹ See Debevoise Debrief “French Law in Response to the COVID-19 Epidemic” (25 March 2020) <https://www.debevoise.com/insights/publications/2020/03/french-law-in-response-to-the-covid19-epidemic>.

² Ordinance No. 2020-306 of 25 March 2020 on the extension of time limits during the period of public health emergency and the adaptation of procedures during the same period <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755644&dateTexte=&categorieLien=id>.

³ The state of public health emergency is currently set to last until 24 May 2020. As things stand, the government therefore targets time limits that are due to expire between 12 March 2020 and 23 June 2020.

Because the suspension applies only to “statutory” time limits, those provided for in contracts will not be covered. Parties to a contract governed by French law may, however, still invoke Article 2234 of the French Civil Code, providing that time does not run or is suspended where it is impossible to act as a result of a *force majeure* event. Parties may also rely on the French statutory *force majeure* and hardship provisions when confronted with performance difficulties.⁴

However, contractual clauses providing for penalty, termination and forfeiture, the object of which are to sanction nonperformance before a given time limit, cannot be triggered if that time limit expires between 12 March 2020 and one month after the end of the state of public health emergency. Where parties agreed that termination should occur during a specified time frame expiring between the same dates, such time frame is extended up to two months after the end of the above-mentioned period.

On 26 March 2020, the French Ministry of Justice issued a Circular providing examples and nonbinding guidance about the above-mentioned time limits extension mechanisms.⁵

Adapting the French Courts System.⁶ French courts are currently shut down, except for the most urgent matters. The new ordinances provide for a number of measures adapting the functioning of French courts during the period starting from 12 March 2020 and expiring one month after the end of the state of public health emergency.

- **Territorial jurisdiction.** Where a court is unable to operate, cases may be transferred to another court, even if the latter does not have territorial jurisdiction over the matter.
- **Time limits.** The above-mentioned interruption of time limits applies to civil courts but not criminal courts. However, time limits for prosecution and enforcement of

⁴ See Debevoise Update “French Law: COVID-19, MAE clauses, *Force Majeure* and Hardship” (23 March 2020) available at:

<https://www.debevoise.com/insights/publications/2020/03/french-law-covid19-mae-clauses-force-majeure-and>.

⁵ Circular No. JUSC 2008608C of 26 March 2020

<http://www.justice.gouv.fr/bo/2020/20200327/JUSC2008608C.pdf>.

⁶ Ordinance No. 2020-304 of 25 March 2020 adapting the rules applicable to courts ruling on civil matters

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755577&dateTexte=&categorieLien=id>.

Ordinance No. 2020-303 of 25 March 2020 adapting the rules applicable to courts ruling on criminal matters

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755529&dateTexte=&categorieLien=id>.

Ordinance No. 2020-305 of 25 March 2020 adapting the rules applicable to courts ruling in administrative matters

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755612&dateTexte=&categorieLien=id>.

criminal sentences are tolled, and time limits to file appeals before criminal courts are doubled and cannot be fewer than ten days.

- Single-judge bench. A single-judge bench may rule on a matter even if the bench is ordinarily composed of multiple judges. This will apply to criminal and civil courts but not to commercial courts, where a single judge will report to a panel of judges, nor to labour courts, where a reduced panel of two judges is mandatory.
- Video and phone conferencing. Hearings before civil courts may take place by videoconference or, if that is impossible, by telephone, provided those technologies offer good quality and protect the confidentiality of the communications. The identity of the parties should also be verifiable. Enforcement authorities and criminal courts may also use such technologies to conduct interviews and trials, except for the most serious crimes. Similar rules will also apply before French regulators (e.g., the financial markets authority or the banking and insurance authority), including before their enforcement committees.⁷
- More flexible filing methods. Rules governing exchange of briefs and filings have been simplified. For instance, appeals in criminal matters may be filed by email.
- Civil trials without hearing. Before civil courts, where all parties are represented by counsel, the court may decide to rule based on the parties' written submissions only, without a hearing. Parties may refuse, except for the most urgent matters.
- Criminal trials behind closed doors. Trials that are usually open to the public may be conducted with reduced access or even behind closed doors.

On 26 March 2020, the French Ministry of Justice released nonbinding guidance about some practical aspects applying to civil courts.⁸

Meetings of Corporate Bodies.⁹ The following measures are applicable to general meetings of shareholders, the board, the management board and the supervisory board

⁷ Ordinance No.2020-347 of 27 March 2020 adapting the rules applicable to some administrative bodies <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041762557&dateTexte=&categorieLien=id>.

⁸ Circular No. JUSC2 2008609C of 26 March 2020 <http://www.justice.gouv.fr/bo/2020/20200327/JUSC2008609C.pdf>.

⁹ Ordinance No. 2020-321 of 25 March 2020 adapting the rules applicable to meetings and deliberation of corporate bodies of legal entities <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755899&dateTexte=&categorieLien=id>.

held from 12 March 2020 to 31 July 2020 (unless such delay is extended by decree up to 30 November 2020, at the latest) include the following:

- Possibility to hold general meetings without the presence of the shareholders. When a general meeting of shareholders cannot be held in person (or even by videoconference or conference call), because of administrative measures restricting gatherings, it can validly be held without the presence of the shareholders or other persons authorized to attend (even by videoconference or conference call). Shareholders could, however, still vote by mail or proxy and send written questions.¹⁰
- Simplification of the use of videoconference or conference call. The conditions under which any meeting of shareholders, boards of directors, management boards (*directoires*) or supervisory boards (*conseils de surveillance*) can be held by videoconference or conference call (even in the absence of a provision authorizing such process in the by-laws) have been simplified.
- Simplification of convening conditions. For such corporate bodies, especially for companies listed on a regulated market or a multilateral trading facility, the breach of a requirement to convene the shareholders by postal letter shall not nullify the shareholders' general meeting.
- Decisions to be taken by written consultation. The conditions under which decisions of shareholders can be taken by written consultation have been simplified (even in the absence of a provision authorizing such process in the by-laws) when authorized to do so by law.

Financial Statements.¹¹ The main measures relating to the establishment and approval of financial statements include the following:

- Extension of the mandatory period to approve financial statements. The ordinance has extended the mandatory period to approve financial statements and related

¹⁰ Some listed companies have organized their meetings remotely: for instance, Elior Group requested its shareholders to vote in advance by mail or proxy for the meeting that was to be held on 20 March 2020 and disclosed a webcast of the presentation by management and of the results of the vote (see press release dated 17 March 2020). As a result, no live discussion with managers was possible: the shareholders could only send written questions in advance.

¹¹ Ordinance No. 2020-318 of 25 March 2020 adapting the rules applicable to the preparation, audit, review, approval and publication of financial accounts and other documents and information to be filed by legal entities <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755864&dateTexte=&categorieLien=id>.

reports,¹² or to convene the general meeting to approve such documents, by three months (except, as the case may be, in the event that statutory auditors have already issued a report on such financial statements as of 12 March 2020). The delay to approve financial statements is usually six months from the end of the fiscal year.

- Extension of the mandatory period to provide documents to the supervisory board. For corporations with a management board (*directoire*) and a supervisory board (*conseil de surveillance*),¹³ there is a three-month extension of the mandatory period for the management board to provide the supervisory board with financial statements and related reports (except again in the event that statutory auditors have already issued a report on such financial statements as of 12 March 2020). Such period usually expires three months after the end of the fiscal year.

Other Measures. The ordinances also cover a number of other subjects, including the following.

- Labour law. In order to address the fact that an unprecedented number of employees must stay home, the procedure to grant daily allowance for sick leave has been modified and the scope of employees who can benefit from it has been widened.

The government has broadened the procedure for the use of short-term work and the possibility of imposing paid holidays. Employers may also ask employees to work more hours than usual (maximum number of weekly working hours has been increased). Measures have also been taken to extend the duration of unemployment allowance for unemployed people.

- Insolvency law. Until the expiry of a three-month period after the end of the state of public health emergency, the state of “cessation of payments” of companies – which triggers insolvency recovery plans (*plans de redressement*) – will be assessed in view of the companies’ financial situation on 12 March 2020. Companies will therefore be able to benefit from pre-insolvency preventive measures (*conciliation* and *plan de sauvegarde*) even though their financial situation would have worsened since 12 March 2020. Other measures include the possibility for bankruptcy judges to extend the timelines of preventive and recovery plans, a faster procedure for the wage guarantee scheme applicable to insolvent companies, and more flexible rules applicable before bankruptcy courts.

¹² Such extension is applicable to private legal entities for which the fiscal year expires between 30 September 2019 and one month after the end of the state of public health emergency.

¹³ Such extension is applicable to corporations with a management board for which the fiscal year expires between 31 December 2019 and one month after the end of the state of public health emergency.

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- Solidarity fund. A solidarity fund has been set up for a duration of three months (which could be extended by decree) to provide financial support to natural persons and private legal entities conducting economic activity particularly affected by the economic, financial and social consequences of the spread of COVID-19. The solidarity fund shall be financed by the French State and, on a voluntary basis, by local authorities. A decree will provide further details on the scope, eligibility and attribution of the financial support, the amount of the support and the operating conditions and management of the fund.
 - Healthcare. The right to benefit from State health insurance is extended for people facing financial difficulties. Measures intended to ensure that French hospitals can function properly have also been adopted.
 - Utility bills. Suspension, interruption or reduction of the supply of electricity, gas and water to very small businesses is forbidden and penalties for late payment will not apply.
 - Travel agencies. Measures have been adopted to help protect the cash positions of travel agencies that are highly affected by the epidemic. For instance, in case of termination of a tourist travel contract, travel agencies may now offer their clients vouchers for identical service within 18 months rather than refunds.
 - Electronic communication plants. Procedures for the installation or modification of electronic communication plants have been eased in order to ensure the functioning of communication services and networks.
 - Miscellaneous. The ordinances also cover various other measures, including postponement of consular elections, extension of immigration visas' validity for an additional 90 days and extension of the winter truce for an additional two months.

The ordinances will have to be ratified by the Parliament. The government must now submit ratification bills to the Parliament within two months from the publication of each ordinance; failure to do so will render the ordinances null and void.

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Please do not hesitate to contact us with any questions.

PARIS



Pierre Clermontel
pclermontel@debevoise.com



Antoine F. Kirry
akirry@debevoise.com



Ina C. Popova
ipopova@debevoise.com



Alexandre Bisch
abisch@debevoise.com



Philippe Tengelmann
ptengelmann@debevoise.com



Ariane Fleuriot
afleuriot@debevoise.com



Fanny Gauthier
fgauthier@debevoise.com



Rosanne Lariven
rlariven@debevoise.com



Alice Stosskopf
astosskopf@debevoise.com