

Simplifying French corporate law at the time of the health crisis



April 2020



The reasons for making things easier

The French Government strived, at this time of health crisis, to ease the legal formalism imposed on companies and other legal entities requiring to convene their various organs when their incorporation documents or the Law does not allow holding meetings remotely.

This is the rationale behind two Ordinances of a series issued on 25 March 2020 by the French Government to address the health crisis.

SUCH EXCEPTIONAL PROVISIONS WILL LAST AT LEAST UNTIL 31 JULY 2020.

The purpose of such Ordinances is first to avoid physical contacts between individuals, but also to make the life of business leaders simpler, so that they can focus on management during this very difficult period threatening many companies' survival.

A retroactivity mechanism also allows to hold valid meetings which otherwise would have been irregular.

=> This move is welcome in a formalistic area of French law.

HEREAFTER ARE THE KEY POINTS OF SUCH ORDINANCES.



THE TWO ORDINANCES AT STAKE :

❖ n° 2020-321 Ordinance

Purpose:

Simplifying shareholders' meetings and management boards' meeting and deliberation rules

❖ n° 2020-318 Ordinance

Purpose:

Simplifying the various steps related to the approval of the annual accounts

LEGAL ENTITES CONCERNED :

- Civil and commercial companies ;
- Economic Interest Groups (*GIE*) and the European Economic Interest Groups (*GIEE*);
- Cooperatives ;
- Mutual insurance companies;
- Group of financial securities holders (for example: bond holders);
- Associations and foundations (non-profit sector) ;
- and more generally: entities with no legal personality subject to private law.



1. « Non-physical » meetings of Management, Supervisory, and Executive Boards allowed without provisions authorizing them or despite provision prohibiting them

Ordinance 2020-321

These boards may meet through tele- or visio-conference or perform written consultations (i) **in the absence of a provision of the bylaws of the internal rules authorizing it**, (ii) **even if a clause expressly excludes such means**, irrespective of the board's agenda.

- **For a French SA:** the restrictions on the decisions which may be made by tele-conference or visio-conference or by way of written consultation are set aside.
- **For a French joint-stock company (SAS) or other groupings :** This simplification applies to all « *sui generis* » company boards having a management, supervisory or executive role.

Retroactive effect :

- N° 2020-321 Ordinance applies **retroactively** to meetings of Management, Supervisory and Executive Boards **held as from 12 March 2020**.
- This rule retroactively validates board meetings which may have been held between 12 March and 25 March 2020 by using tele- or visio- conference or written consultation without it being permitted, or with it being disallowed by the Law, the bylaws or internal rules of the relevant company or grouping.

Example : The management board of an SA is held, because of the lockdown, by tele-conference on 17 March 2020 while the internal rules of such SA do not provide for such a possibility. It will nevertheless be regarded as regularly held.



2. Convening and information of shareholders as well as of members of governing boards of companies and other groupings is simplified

Ordinance 2020-321

- **Publicly traded companies** => Shareholders meetings cannot be annulled simply because the notice letters have not been sent by post
- **Any other form of company or grouping** => such entities may satisfy their shareholders' requests for information and documents by email, provided that requesting shareholders provides the relevant email to which such information and documents can be sent.
- **Duration** of such provisions => until 31 July 2020, except if such duration is extended until a date set by Decree, and at the latest on 30 November 2020.




3. Simplification of general meetings rules also in order to prevent physical meetings

Ordinance 2020-321

- ❖ The organ meant to convene the meeting may decide **to hold it in an alternative way** :
 - Such as without the physical presence of the shareholders (so-called « closed-door meeting »),
 - Or by teleconference or visioconference,
 - Whether or not the bylaws, the internal rules or the Law provides for such alternative procedures, or even if such procedures are prohibited in respect of certain decisions

=> **N.B. this rule also applies for general meeting's attendees who are not shareholders or partners, such as the representatives of the Social and Economic Committee (Works Council)**
- ❖ When the meeting **has already been convened for a physical meeting, this may be changed** :
 - Shareholders, members of a grouping and other persons having the right to attend a general meeting (such as the statutory Auditor, the representatives of the Social and Economic Committee (i.e. Works Council)) need to be informed **at least 3 business days before the meeting date** by any means ensuring their effective information of the alternative consultation mode chosen as the case may be (for a public company, a press release is required)
- ❖ Case of the **consultation in writing**:
 - Ordinance 2020-321 does not extend to all companies or groupings the possibility to consult shareholders or members of a grouping **in writing** (indeed a preexisting legal provision specifically authorizing it for the company or grouping in question is required). However, such Ordinance sets aside any clause of the bylaws forbidding the consultation in writing or limiting it to certain decisions. It thus makes the consultation in writing possible even if not provided for the bylaws, and whatever the purpose of consultation in writing.
- ❖ **Retroactive effect** :
 - Ordinance 2020-321 dated 25 March 2020 is retroactively applicable to meetings held as from 12 March 2020.
 - **For Example** : the general meeting of a private limited company (SARL) is held only by tele-conference on 17 March 2020, despite the fact that the bylaws of such SARL do not provide for such a possibility and therefore in breach of the bylaws, will be retroactively regarded as regularly held because of Ordinance 2020-321.



4. General Meetings called to rule on the approval of the annual accounts and, if applicable, the consolidated accounts => extended deadline.

Ordinance 2020-318

The period set by law or by a company or a grouping's bylaws to submit its annual accounts and if applicable its consolidated accounts to the approval of its shareholders is extended :

- ❖ This mandatory period is generally 6 months after the close of the financial year, but for simplified joint-stock companies (SAS), it may be set by their bylaws.
- ❖ **The deadline is extended by 3 months** for any company or grouping with a financial year-close between 30 September 2019 and 24 June 2020.
- ❖ This extension does not apply however if (i) such companies or groupings have a statutory Auditor and (ii) the latter has (already) issued his report on the annual or consolidated account prior to 12 March 2020.



5. Close of the annual accounts and, if applicable, of the consolidated accounts by the Executive Board and the Supervisory Board of a French company “by shares” (“*Sociétés Anonymes*” or “*SAs*”)

Ordinance 2020-318

Regarding French companies “by shares” (“*Sociétés Anonymes*” or « SA ») having an Executive and a Supervisory Boards :

Extension of the legal period (Starting from the close of the financial year) during which the Executive Board (“*Directoire*” in French) must submit the Supervisory Body (“*Conseil de surveillance*” in French) the annual accounts, if applicable the consolidated accounts, the management report and, if applicable, the corporate governance report :

- ❖ For such companies, **the legal duration is extended from 3 to 6 months** except (i) for such companies having a statutory Auditor and (ii) if the latter has (already) issued its report on the annual or consolidated account before 12 March 2020.
- ❖ This time extension applies to SAs if they have closed their annual accounts between 31 December 2019 and 24 June 2020.



6. Preparation of the provisional management documents by the companies which are required to do so

Ordinance 2020-318

Extension of the legal period for preparing the provisional management documents :

- ❖ Such documents are normally prepared, depending on the legal form of company involved, by the management Board, the executive Board or the Manager ("*gérant*"), within 4 months of the opening of a financial year and within 4 months of the close of a semester
- ❖ This period **is extended by 2 months**
- ❖ For financial years or semesters **closed between 30 November 2019 and 24 June 2020**



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