

COVID-19: RESPONSE TO BUSINESS AND LEGAL ISSUES IN FRANCE

In order to face up to Covid-19 epidemic, the French government implemented exceptional measures to limit, to the extent possible, the operational and financial consequences for businesses, the main of which are presented below:

- **Partial activity scheme** (*activité partielle*)

The purpose of partial activity is to prevent economic layoffs by temporarily relieving the company's financial burden of personnel costs. Businesses which activity is reduced or stopped due to the Covid-19 epidemic are eligible to the partial activity scheme.

This scheme fully applies to foreign companies, even with no place of business registered in France (*établissement*), with respect to their employees working from France, provided they are enrolled to the French social security and unemployment schemes.

During this reduction of activity, the employer pays each employee concerned an allowance equal to 70% of his/her gross remuneration and the State together with the French unemployment agency shall refund the sums paid, in most cases fully (up 4.5 times the minimum wage¹), within approximately 12 days as promised by French government².

Businesses shall apply for authorization to the French labor administration (DIRECCTE) through a dedicated electronic platform within 30 days with retroactive effect. Partial activity can be authorized for a 12-month maximum period.

- **Possibility to force the employees to take vacations and/or rest days**

As an exception to the legal provisions and until December 31, 2020 at the latest, a collective bargaining agreement can allow the employer to force an employee to take up to six working days paid vacations or to modify the dates thereof.

Employees who are entitled to additional rest days (*JRTT*)³ may in addition be forced to take their accrued rights.

- **Main other economic measures**

- Extension of payment deadlines for profit-sharing: the deadline for payment of mandatory (*participation*) or optional profit-sharing (*intéressement*) amounts relating to 2019 to beneficiaries (or allocation to an employee savings plan) is extended to December 31, 2020.
- Suspension of payment deadlines for direct taxes⁴ and social security contributions.
- Mobilization of the State and the French state investment bank ("BPIfrance"): Companies, except for non-trading property companies, credit institutions or finance companies, will be able to apply to their usual bank for a State-guaranteed loan to support their cash flow. French branches of foreign banks or foreign banks may also benefit from this State guarantee.

¹ €45.67 per hour.

² Timeframe indicated on the French Labor Ministry's website.

³ For instance, employees whose working time exceeds the legal working time of 35 hours per week or who are subject to a lump-sum working time arrangement.

⁴ Corporate income tax, payroll tax (*Taxe sur les salaires*) and local taxes (*CFE* and *Taxe foncière*).

- Aid of €1,500 for small-sized companies⁵, which were forced to close temporarily in March 2020⁶ or which face a decrease of their turnover of at least 50% in comparison to March 2019.

- **Corporate law measures**

The French government issued specific adjustment measures with regard to corporate law⁷.

Extended statutory deadlines

Specific measures relating to financial statements: Statutory deadlines for the preparation, closing, audit, review, approval and publication of financial statements are extended.

A three-month extension is given to all legal entities⁸ with financial year ending between September 30, 2019 and one month following the end of the public health emergency period to:

- approve financial statements and other related documents;
- convene the shareholder's meetings for this purpose.⁹

Other extended deadlines:

- Commercial companies with 300 or more employees or a net turnover equal to or greater than 18 million euros that are required to draw-up a number of forecast management documents (*documents prévisionnels de gestion*)¹⁰, are given a two-month extension for preparing such documents. This measure applies to documents relating to accounts or semesters ending between November 30, 2019 and one month following the end of the public health emergency period.
- Management boards of joint-stock companies with management and supervisory boards (*sociétés anonymes à directoire et conseil de surveillance*) are given a three-month extension to submit to the supervisory boards the annual financial statements, the management report and the report relating to the company's governance¹¹. This extension applies to companies with financial year ending between December 31, 2019 and one month following the end of the public health emergency period.
- Companies under liquidation are given a two-month extension for the preparation of the inventory of the company's assets and liabilities and of a written report on the liquidation operations provided that their financial year ends between December 31, 2019 and one month following the end of the public health emergency.

⁵ i.e. businesses with less than 10 employees, a turnover of less than €1 million euros and taxable income of less than €60,000.

⁶ Pursuant to Article 2 of Decree 2020-371 dated March 30, 2020, amended by a Decree 2020-394 dated April 2, 2020.

⁷ Ordinance no. 2020-318 dated March 25, 2020 enacting adjustment measures with regard to the preparation, closing, audit, review, approval and publication of financial statements and related documents and Ordinance no. 2020-321 dated March 25, 2020 enacting adjustment measures with regard to shareholders and boards' meetings.

⁸ Other than state owned or state controlled entities.

⁹ However, if the statutory auditors (*commissaires aux comptes*) of such legal entities have issued their report relating to the financial statements before March 12, 2020, said legal entities will not be entitled to benefit from this extension.

¹⁰ As per the provisions of article L.232-2 of the French commercial code.

¹¹ The extension does not apply if the statutory auditor of the relevant company has issued the report regarding the company's financial statements before March 12, 2020.

❖ Specific measures relating to board and shareholders' meetings

These exceptional measures apply to all types of legal entities¹² and are applicable as of March 12, 2020 until July 31, 2020 (subject to any potential extension by the government up to November 30, 2020).

Measures applicable to shareholders meetings in general:

- The use of video or audio conferences is permitted to all entities whether or not provided for by their articles of association.
- During prohibition measures on mass gatherings, the competent body or the legal representative of the concerned company can decide to hold the meeting without anyone being physically present or even participating via video or audio conference. In such a case, the shareholders' vote will take place in accordance with the other means of participation provided for in the company's articles of association (for instance proxy voting via proxy ballots), or otherwise, by ordinance n° 2020-321 dated March 25, 2020 (for instance written consultation subject to the indications listed below).
- Written consultations are permitted (to the extent that they are permitted by the law) whether or not they are provided for by the articles of association of the concerned companies.

Specific measures applicable to shareholders meetings of listed companies:

Listed companies that are required to convene their shareholders by post mail will not face the risk of having the resolutions of their shareholders' meetings annulled if they are sent through another mean (e.g. by email) provided that such way to proceed is due to circumstances that are not attributable to the company.

Applicable measures to board of directors (*conseils d'administration*), management boards (*directoires*) and supervisory boards (*conseils de surveillance*) meetings:

- Written consultations are allowed whether or not provided for by the articles of association of the concerned company.
- The use of video or audio conference is permitted to all entities whether or not provided for by the articles of association of the concerned company.

For further information, please contact one of the authors of this note or any other partners of our firm.

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¹² With the exception of state owned or state controlled entities.