

COVID-19

Adaptation of the rules of general meetings and governing bodies of companies

Adaptation of the rules relating to the approval and publication of the financial statements

In view of the current health circumstances, the general meetings to be held in the coming weeks in France, in particular for the approval of the financial statements, will be subject to new provisions.

To this end, please find hereafter an information note on this subject.

i. Emergency Act No. 2020-290 of March 23, 2020 to deal with the COVID-19 epidemic authorized the Government to take provisional measures to try to stem the country's economic and social crisis linked to the COVID-19 epidemic. Thus, as of 25 March 2020, twenty-five ordonnances have been issued by the Government.

ii. In this regard, two ordonnances were issued pursuant to Article 11 of the Emergency Health Act concerning the holding of meetings of company bodies and the approval of future financial statements.

I. Ordonnance No. 2020-321 of 25 March 2020 adapting the rules for meetings and deliberations of the meetings and governing bodies of private legal entities and entities without legal personality due to the Covid-19 epidemic

➤ On the scope of application of the Ordonnance

This ordonnance adapts the rules for convening, informing, participating in and deliberating at all meetings, in particular, General Meetings, and at meetings of Boards of Directors, Supervisory Boards and Management Boards, in order to enable companies to continue to carry out their missions and ensure the continuity of their operations despite the quarantine measures.

It is applicable to meetings held from March 12, 2020 until July 31, 2020, unless this period is extended until a later date set by decree, and no later than November 30, 2020.

➤ On the rules governing the information to be provided to shareholders' meetings

The Ordonnance extends and facilitates the electronic exercise of the right of communication enjoyed by members of meetings prior to meetings, which may validly be made in the form of an email. Subject to this amendment, the right of communication remains governed by the provisions specific to each meeting.

➤ On the rules of participation in and deliberation at meetings

i. Article 4 of the Ordonnance exceptionally and temporarily authorises the holding of meetings without their members and other persons entitled to attend, such as auditors and representatives of employee representative bodies, being present at the meeting or attend by means of videoconferencing or telecommunications.

This measure:

- is, however, subject to one condition: the meeting must be convened in a place affected, on the date of the convening, by an administrative measure limiting or prohibiting collective gatherings for health reasons;
- is the responsibility of the body competent to convene the meeting, which may delegate its competence to the legal representative of the company;
- entails an exceptional and temporary derogation from the right of members of the meetings to attend the meetings, as well as from other rights whose exercise implies attendance at the meeting (right to ask oral questions);

- shall not, however, affect the other rights of members, such as the right to vote, the right to ask written questions and the right to propose the inclusion of items or draft resolutions on the agenda.

If this measure is applied, members shall participate in and vote at the meeting in other ways, such as, for example, by sending a proxy, remote voting or, if the body competent to convene the meeting or its delegate so decides, by videoconference or other means of telecommunication. The members of the meeting and other persons entitled to attend must, however, be notified, by any means that ensures that they have been effectively informed, of the date and time of the meeting and of the conditions under which they will be able to exercise all their rights.

ii. In order to facilitate the participation of members in meetings held in private, the Ordonnance exceptionally extends and relaxes the conditions governing the use of videoconferencing and telecommunication facilities:

- for companies for which this means of participation is not already provided for by law, by exceptionally authorizing it;
- for companies for which this form of participation is already provided for by law, subject to certain conditions, by exceptionally neutralising these conditions (for example, the condition that there be a clause to this effect in the articles of association or the contract of issuance) and any other conflicting clause in the articles of association or the contract of issuance;
- provided, in each case, that the means of videoconferencing or telecommunications comply with the characteristics laid down by law and regulations to guarantee the integrity and quality of the discussions.

This measure:

- concerns all decisions falling within the jurisdiction of company meetings, including, where applicable, those relating to the approval of the financial statements;
- is the responsibility of the body competent to convene the meeting or, where appropriate, of the person to whom it is delegated;
- shall be taken provided that adequate technical means are available, in particular to ensure the identification of shareholders.

iii. The ordonnance also relaxes the conditions governing the use of written consultation of meetings for which this method of participation is already provided for by law, by making it possible without a clause in the articles of association or the contract of issue being necessary for this purpose or being able to oppose it.

This measure concerns all decisions falling within the jurisdiction of the meetings, including, where applicable, those relating to the approval of the financial statements.

➤ On the rules concerning Boards of Directors, Supervisory Boards and Management Boards

i. The Ordonnance exceptionally extends and relaxes the conditions governing the use of videoconferencing and telecommunications resource, whether or not this is already provided for by law or by regulations. The use of these resources is authorized for all meetings of these bodies, including those relating to the approval or examination of the annual financial statements.

Conflicting clauses in the articles of association are neutralized, while the existence of provisions to this effect in the internal rules of procedure is no longer a condition necessary to the use of these resources.

In order to guarantee the integrity and quality of the discussions, the technical resources used must enable the members of these bodies to be identified and guarantee their effective participation. To this end, they must transmit at least the voice of the participants and satisfy technical characteristics allowing the continuous and simultaneous retransmission of the deliberations.

ii. Finally, the ordonnance extends and relaxes conditions governing the use of written consultations, whether or not it is already provided for by law or by regulations. The use of this method of deliberation is authorised for all meetings of these bodies, including those relating to the approval or examination of the annual financial accounts.

Conflicting clauses in the articles of association are neutralized, while the existence of provisions to this effect in the internal rules of procedure is no longer a condition for the use of this method of deliberation.

The written consultation must be carried out under conditions that ensure that all of the shareholders have been able to vote (in particular the conditions governing deadlines).

II. Ordonnance No. 2020-318 of 25 March 2020 adopting the rules relating to the preparation, decree, audit, review, approval and publication of the financial statements and other documents and information that private legal entities and entities without legal personality are required to file or publish in the context of the Covid-19 epidemic

This ordonnance extends several time limits for the presentation of the annual financial statements or the approval of the annual financial statements.

➤ In public limited companies with an Executive Board and a Supervisory Board

The time limit set for the Management Board to present to the Supervisory Board the annual financial statements and, where applicable, the consolidated financial statements, together with the related management report, for verification and control purposes may be extended by three (3) months. This extension does not apply, however, to companies that have appointed a statutory auditor, where the latter has issued its report on the financial statements before March 12, 2020.

These provisions are applicable to companies closing their accounts between 31 December 2019 and the expiry of a period of one (1) month after the date of cessation of the state of health emergency.

➤ In companies with a minimum of 300 employees or with net sales equal to 18 million euros

The deadlines imposed on the Boards of Directors, Management Boards or managers of companies presenting one of the two criteria for preparing a statement of current and available assets and liabilities, a provisional profit and loss account, a cash flow statement and a provisional financing plan may be extended by two (2) months.

These provisions are applicable to documents relating to the financial statements or to the semi-annual periods closed between 30 November 2019 and the expiry of a period of one (1) month after the date of cessation of the state of health emergency.

➤ In all other companies

The deadlines for approving the financial statements or for convening the meeting responsible for such approval, if the financial statements have not yet been approved on 12 March 2020, may be extended by three (3) months. However, this extension does not apply to companies that have appointed a statutory auditor, where the auditor has issued his report on the financial statements before 12 March 2020.

These provisions are applicable to companies closing their accounts between 30 September 2019 and the expiry of a period of one (1) month after the date of cessation of the state of health emergency.

➤ Concerning commercial companies in liquidation

The time limit for the preparation of the financial statements and the attached documents to be drawn up by the liquidator on the basis of the inventory of the various assets and liabilities may be extended by three (3) months.

These provisions are applicable to companies closing their accounts between 31 December 2019 and the expiry of a period of one (1) month after the date of cessation of the state of health emergency.

The ordonnance contains more details and other provisions about listed companies.