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Covid-19: Extension of deadlines for the approval of the accounts of private law businesses

Adopted in furtherance of the Emergency Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic, Ordinance No. 2020-318 dated March 25, 2020 *adapting the rules relating to the preparation, closing, audit, review, approval and publication of accounts and other documents and information that private law legal persons and entities without legal personality are required to file or publish in the context of the covid-19 epidemic* has introduced temporary exceptional derogations, particularly with regard to the approval of accounts.

First of all, it should be recalled that the scope of application of Ordinance No. 2020-318 (the “**Ordinance**”) is quite broad since it applies to all legal persons and groups without legal personality governed by private law (the “**Concerned Entities**”), in particular:

- civil and commercial companies (*sociétés anonymes*, i.e. joint stock companies, *sociétés par actions simplifiées*, i.e. simplified joint stock companies, *société à responsabilité limitée*, i.e. limited liability companies, *sociétés en nom collectif*, i.e. general partnerships, etc.),
- associations, foundations and endowment funds,
- economic interest groups and European economic interest groups,

- cooperatives,
- supplementary health insurance funds and groupings of supplementary health insurance funds, etc.

However, some provisions of Ordinance No. 2020-318, have a much narrower scope of application, such as Article 2 thereof which only applies to commercial companies in liquidation.

In our opinion, one of the key measures of the Ordinance is included in Article 3 which provides, in particular, that for Concerned Entities, the deadlines imposed by laws or regulations or by the by-laws for the approval of the accounts or the convening of the meeting of shareholders/members responsible for such approval, are extended by three (3) months.

The report to the President of the French Republic concerning the Ordinance specifies, with regard to Article 3 thereof, that *“the purpose of these provisions is to take into account the situation of companies and entities for which the preparation/audit of the accounts was in progress at the time the administrative measures came into force and which could not be completed within a period of time compatible with the holding of the general meeting, insofar as the accounting documents may no longer be accessible”*.

This automatic extension implies, however, that two (2) conditions be met. These provisions are indeed only applicable to Concerned Entities:

- that close their accounts between September 30, 2019 and the expiry of a period of one month following the end of the state of health emergency, i.e. 24 June 2020^[1] (unless the state of emergency is extended) on the one hand, and
- whose statutory auditor, wherever the Concerned Entity has one, has not already issued its report on the accounts prior to March 12, 2020 on the other hand.

As an example, a *société par actions simplifiée* (simplified joint stock company) closing its accounts on December 31 of each year, and whose by-laws provide that the approval of the accounts must take place within five (5) months from the closing of the accounts, i.e. by May 31, 2020 at the latest, therefore benefits from an additional period of three (3) months to approve its accounts.

As such, the company in question will thus have until August 31, 2020 to have its accounts approved by its shareholders(s).

In the event, however, that the simplified joint stock company has appointed a statutory auditor and that the latter has already issued its report on the accounts before March 12, 2020, the company will not be able to benefit from the three (3) month extension measure to approve its accounts.

If the conditions imposed by the Ordinance to benefit from the automatic three (3) month extension period are not met, or if it is necessary for the company to postpone the approval of its accounts beyond such three (3) month period, a time extension must be requested by the corporate officers under the conditions provided for under normally applicable rules, i.e. through a petition to the President of the Commercial Court.

The Ordinance also provides for the extension of other time limits with a more specific scope, including *inter alia*:

- within a *société anonyme* (joint stock company) closing its accounts between December 31, 2019 and June 14, 2020^[2], the deadline for the presentation by the management board to the supervisory board, for verification and control purposes, of the documents mentioned in Article L 225-100, I§2 of the French Commercial Code (annual accounts, management report and corporate governance report) is extended by three (3) months^[3],
- the deadline for the preparation, by the liquidator of a commercial company closing its accounts between December 31, 2019 and June 24, 2020^[4], of the annual accounts and the written report in which he/she provides an account of the liquidation proceedings during the past financial year is extended by two (2) months^[5],
- the deadline for the preparation of certain documents relating to the accounts or semesters closed between November 30, 2019 and June 24, 2020^[6] by the corporate officers of commercial companies employing at least 300 employees or having achieved net revenues of at least 18 million euros (situation of realizable and available assets and current liabilities, forecast profit and loss account, cash flow statement, annual balance sheet, forecast financing plan) is extended by two (2) months^[7], and
- the deadline for the submission of a financial report on the accounts closed between September 30, 2019 and June 24, 2020 by a private-law body which is the beneficiary of a grant for a specific expenditure exceeding an annual threshold of 153,000 euros, is extended by three (3) months^[8].

Finally, it should be noted that another special piece of legislation has been adapted as a matter of urgency to adapt the rules relating to the holding of meetings of companies and other groupings under private law in order to deal with the exceptional situation resulting from the strict lockdown imposed by the Covid-19 epidemic, i.e. Ordinance No. 2020-321 of March 25, 2020 *adapting the rules governing the meetings and deliberations of meetings and governing bodies of legal persons and entities without legal personality governed by private law as a result of the Covid-19 epidemic*.

[1] The end date of the state of health emergency, as set forth by Article 4 of the Emergency Law No. 2020-290 of March 23, 2020 to deal with the Covid-19 epidemic is currently scheduled on May 24, 2020.

[2] i.e. one month after the end of the state of health emergency currently scheduled on May 24, 2020 (unless the state of emergency is extended)

[3] Article 1 of the Ordinance

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[4] i.e. one month after the end of the state of health emergency currently scheduled on May 24, 2020 (unless the state of emergency is extended)

[5] Article 2 of the Ordinance

[6] i.e. one month after the end of the state of health emergency currently scheduled on May 24, 2020 (unless the state of emergency is extended)

[7] Article 4 of the Ordinance

[8] Article 5 of the Ordinance

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