

COVID-19

Extension of the rules governing meetings of shareholders and meetings of governing bodies of private law businesses

September 29, 2020

Decree No. 2020-925 of July 29, 2020 extends until November 30, 2020 the rules that eased the procedures governing the deliberations of shareholders' meetings.

This provides the opportunity to review the temporary and exceptional derogations set up on the basis of Law No. 2020-290 of March 25, 2020 to secure the internal operation of companies through the adaptation of the rules governing the holding and deliberations of shareholders' meetings to the health measures imposed by COVID-19.

The application of the measures initially provided for by Ordinance No. 2020-321 of March 25, 2020¹ (hereinafter "the Ordinance") and Decree No. 2020-418 of April 10, 2020, which clarified the conditions of application of the Ordinance, were to end on July 31, 2020.

Decree No. 2020-925 of July 29, 2020 extended the measures applicable to shareholders' meetings and meetings of boards of directors, supervisory boards or management collegiate boards held until November 30, 2020.

This extension does not concern the exceptional deadlines provided for by Ordinance No. 2020-318 of March 25, 2020 regarding the approval of the annual accounts. The applicable deadlines remain those provided for by said Ordinance².

1. Concerned entities

The Ordinance applies to all *"private law legal persons and entities without legal personality, and in particular:*

1° Civil and commercial companies;

2° Holders of securities or financial instruments;

3° Economic interest groups and European economic interest groups;

¹ Ordinance No. 2020-321 of March 25, 2020 adapting the rules governing meetings and deliberations of shareholders' meetings and governing bodies of private law legal persons and entities without legal personality in the context of the covid-19 epidemic

² See our article entitled [Covid-19: Extension of deadlines for the approval of the accounts of private law businesses](#) published on our Blog in April 2020

- 4° Cooperatives;
- 5° Mutual companies, unions of mutual companies and federations of mutual companies;
- 6° Mutual insurance companies and mutual insurance group companies;
- 7° Supplemental death and disability insurance institutions and companies belonging to social protection insurance groups;
- 8° Municipal credit banks and mutual agricultural credit banks;
- 9° Endowment funds;
- 10° Associations and foundations.”

2. Temporary measures put in place:

First series of measures concerning convening and information

For listed companies, Article 2 of the Ordinance stipulates that the impossibility to convene a shareholder to the general meeting by mail due to circumstances external to the company does not entail the risk of nullity of the meeting for this reason alone until November 30, 2020, provided that this impossibility results from circumstances external to the company due to the COVID-19 epidemic.

Concerning the exercise of the right to information and right to request documents by the shareholders of all entities mentioned in Article 1, communication may be made by electronic means. However, the applicant must previously have informed the company – in the body of his/her/its request – of the e-mail address at which he/she/it wishes to receive the information or document.

Second series of measures concerning the rules of participation and deliberation of general meetings and governing bodies

Article 4 provides for the possibility to hold a general meeting “behind closed doors” if the place where the meeting is convened or held, affected by an administrative measure restricting or prohibiting collective gatherings for health reasons and if the shareholders are notified of the date and time of the meeting, as well as the conditions under which they will be able to exercise the rights derived from their capacity as shareholders.

A meeting “behind closed doors” is a meeting held without the members of the meeting being physically present. In this case, the members of the meeting participate and vote in accordance with the other procedures provided for by law and, where applicable, the by-laws of the company or other forms of entities.

Specific rules are provided for the general meetings of *sociétés anonymes* (joint stock companies), *sociétés en commandite par actions* (partnership limited by shares) and Societas Europaea.

In addition, the persons normally convened to the meetings, such as employee representative bodies or the statutory auditors, must also be informed of the procedure that will apply to the meeting and the means of participating in it.

Article 5 extends the range of possibilities for participating in meetings. It allows the use of the following technical means: audioconference and telephone conference, and freezes the application of any clause in the by-laws that prohibits the use of these means. There is still a technical imperative to ensure the continuous and simultaneous retransmission of the deliberations. These technical characteristics are reinforced in *sociétés anonymes* (joint stock companies) and for meetings of bondholders where the nature of the technical means allowed to be used is determined by a decree of the French Council of State.

Article 7 exceptionally adjusts the formalities for convening meetings, the place and means of participation of which are modified as a result of the application of the Ordinance. This concerns in particular groupings that had started to carry out these formalities before the date of entry into force of the Ordinance with a view to a meeting to be held after that date.

Third series of measures concerning collegiate administrative, supervisory and management bodies

Articles 8 and 9 of the Ordinance lay down specific rules for legal entities with boards of directors, supervisory boards and other collegial management bodies.

These articles introduce an exemption that makes it possible to ignore clauses in the by-laws or in internal regulations in order to allow the members of these bodies to meet by means of *“a telephone or audiovisual conference allowing them to be identified and guaranteeing their effective participation”*.

In addition, the Ordinance specifies that this means of communication must at least retransmit the voice of the participants and guarantee, through sufficient technical characteristics, *“the continuous and simultaneous retransmission of the deliberations”*. The text, therefore, does not provide any clarification on the necessity to hold these deliberations by videoconference as the mere direct and simultaneous retransmission of the participants' voices is required.

This possibility of holding these meetings remotely via an audio-communication tool is broad since it applies *“whatever the subject of the decision on which the body is called upon to discuss”*.

Similarly, should these provisions be difficult to implement, Article 9 provides for the possibility of holding board meetings through written consultation under conditions which ensure the collegiality of the deliberations, even if the by-laws do not contain any provision in this respect.

Concerned timelines

Initially, Article 11 of the Ordinance provided that its application in time was limited to meetings of the collegiate administrative, supervisory and management bodies held from March 12, 2020 to July 31, 2020.

Decree No. 2020-925 of July 29, 2020 extended this period until November 30, 2020.

We are at your disposal to answer any questions relating to the organization, terms and conditions of your next general meetings and other meetings of your organizations by November 30, 2020.



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