



## **COVID-19 EXCEPTIONAL MEASURES**

**Harlay Avocats | 14 April 2020**

### **Covid-19 and changes to the rules relating to business difficulties**

Order n° 2020-341 of March 27, 2020 adapts a number time limits in insolvency proceedings in order to help and support companies impacted by the Covid-19 health crisis.

- **Changes to the provisions relating to the determination of the date of insolvency**

The 1st point in paragraph I of Article 1 in the order freezes assessment of a companies' circumstances with regard to insolvency as at March 12, 2020.

So, for the period beginning March 12 until three months after the health state of emergency has come to an end (that is until August 25, 2020), a French company will not be deemed to be insolvent if that same company was not insolvent on March 12, 2020.

This measure will enable companies to benefit from preventive procedures, such as conciliation and safeguarding, throughout the health state of emergency and the three months that follow, even if their circumstances should take a turn for the worse after March 12, 2020.

This provision does not, however, exclude the possibility for the Commercial Court to move this date backwards to an earlier date, pursuant to Article L.631-8 of the Commercial Code, or to a later date in the event of fraud.

In addition, associated with Order n° 2020-306 relating to the extension of deadlines reaching expiry during the health emergency period and changes to procedures during this same period, protection is given to companies facing a potential breach of their obligation to declare insolvency within 45 days.

- **Accelerated handling of wage claims by the Wage Guarantee Insurance Association (the AGS)**

Point 2 of paragraph I, Article 1 allows the company's legal representative, throughout the period corresponding to the health state of emergency plus three months (or until August 25, 2020), to send the AGS statements of wage claims without waiting for the employees' representatives and the official receiver to act.

- **An automatic extension to the conciliation period**

Paragraph II of Article 1 provides for an extension to the conciliation period provided for in Article L.611-6 of the Commercial Code, corresponding to the health state of emergency plus three months (or until August 25, 2020).

- **Safeguard and recovery plans to be extended**

Under the terms of paragraph III of Article 1 of the order, the safeguard or recovery plan, provided for respectively by Articles L.626-12 and L.631-19 of the Commercial Code, can be deferred.

The order provides that President of the Commercial Court can order an extension either (i) at the request of the administrator appointed to oversee the plan, for a period corresponding to the duration of the health state of emergency plus three months, or (ii) at the request of the public prosecutor, for a maximum of one year.

The Commercial Court can order an additional extension to the plan, for a maximum one year after these first extension periods have expired, at the request of the administrator appointed to oversee the plan or the public prosecutor within a period of six months.

These extensions to the duration of the plan can be made without having to go through the restrictive procedure of making a substantial modification to the plan initially approved by the Commercial Court, which remains possible, incidentally, and complements the more general provisions concerning authorizations on deadlines.

- **An extension to the deadlines faced by court-appointed officers and administrators**

Paragraph IV of Article 1 of the order acknowledges that court-appointed officers and administrators will not be able to meet current deadlines. The President of the Commercial Court can therefore extend the deadlines faced by court-appointed officers and administrators until the end of the three-month period following the end of the health state of emergency (or until August 25, 2020).

This concerns in particular the deadline for a liquidator to sell a company's assets within the scope of a judicial liquidation procedure.

- **Suspension of judgments relating to the continuation of the observation period**

1° of paragraph I of Article 2 provides that until the end of a one-month period following the end of the health state of emergency (or until June 25, 2020), Article L.631-15 of the French Commercial Code will not be applicable.

This article of the Commercial Code provides in particular that the Commercial Court can decide, within two months of the date of issue of a commencement order, whether to continue the observation period.

A company will therefore be able to maintain its activity beyond the date on which the Commercial Court would otherwise have ruled on the continuation of the observation period or, on the contrary, on the conversion of the procedure.

- **Extension to certain deadlines set out in Book VI of the Commercial Code**

1° of paragraph II of Article 2 draws the necessary conclusions from the fact that certain deadlines provided for in Book VI of the Commercial Code have become impossible to meet and therefore automatically extends these deadlines, without it being necessary for a court hearing or a decision.

These include deadlines relating to the observation period and the duration of a plan.

- Relaxation of procedures for applying to and appearing before the Commercial Court

Article 2 of the order provides in particular that "***the acts by which a company applies to the Commercial Court are to be delivered to the office of the Commercial Court by any means***".

The same applies to communications between the bodies involved in insolvency proceedings and the court officer or the Commercial Court itself.

Electronic procedures are therefore to be preferred throughout the duration of the health state of emergency.



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