

COVID-19: New extension of the rules governing meetings and deliberations of shareholders and governing bodies

Ordinance No. 2020-321 of March 25, 2020 (the “*Ordinance*”) adopted in furtherance of Law No. 2020-290 of March 23, 2020 has adapted the rules governing the holding and deliberations of meetings of shareholders and meetings of governing bodies of private law businesses and entities without legal personality to deal with the Covid19 pandemic.

Decree No. 2021-255 of March 9, 2021 extends until July 31, 2021 the application of the rules derived from said Ordinance and its Implementation Decree No. 2020-418 of April 10, 2020 (the “*Decree*”).

The entry into force of Decree No. 2021-255 is a good opportunity to review the various changes that have occurred since our last article on the subject published on our Blog on September 29, 2020[1].

Before detailing these changes, a reminder of the various extensions that have been decided since the adoption of these derogating provisions is necessary.

Reminder of the various extensions that have been decided since the adoption of the derogative provision

In its initial version, Article 11 of the Ordinance specified that the derogatory provisions resulting from this text were to cease to apply on July 31, 2020, unless extended until a date to be set by Decree, which could not,

however, be later than November 30, 2020.

On the basis of this Article, Decree No. 2020-925 of July 29, 2020 extended the application of these derogatory provisions until the ultimate authorized deadline, i.e., until November 30, 2020.

Since that date, this period has again been extended:

- first pursuant to Ordinance No. 2020-1497 of December 2, 2020, amending the above-mentioned Article 11 so that the derogatory provisions resulting from the Ordinance be applicable until April 1, 2021, unless extension of all or part of its provisions until a date to be set by Decree, which cannot, however, be later than July 31, 2021;
- secondly, by Article 1 of Decree No. 2021-255 of March 9, 2021, extending the period of application of the derogatory provisions resulting from the Ordinance until the ultimate authorized deadline, i.e., until July 31, 2021.

At the same time, Article 2 of the abovementioned Decree No. 2021-255 of March 9, 2021 extended the application of the Decree by the same period of time. It should be noted that the measures resulting from this text, which were initially due to cease to apply on July 31, 2020, had already been extended, first until November 30, 2020 pursuant to the aforementioned Decree No. 2020-925 of July 29, 2020, and then until April 1, 2021 pursuant to Decree No. 2020-1614 of December 18, 2020.

Outline of the latest changes

We had detailed the various derogatory provisions resulting from the Ordinance in our above-referenced article of September 29, 2020 published on our Blog after the entry into force of Decree No. 2020-925 of July 29, 2020 extending its application until November 30, 2020.

Since that date, the measures resulting from the Ordinance and the Decree have been adapted by the aforementioned Ordinance No. 2020-1497 of December 2, 2020 and Decree No. 2020-1614 of December 18, 2020.

Only the new provisions that have been introduced and those amended in accordance with these texts will be detailed below. For the rest, and in particular for the scope of application of the various measures^[2], please refer to our September 29, 2020 article.

Convening

Article 2 of the Ordinance limited to listed companies the application of the rule according to which the impossibility to convene a shareholder to the general meeting by mail due to circumstances external to the company did not entail the risk of nullity of the meeting. Article 1 of Ordinance No. 2020-1497 of December 2, 2020 extended this rule to all private law businesses and entities without legal personality falling within the scope of the Ordinance.

Meetings behind closed doors

Article 4 of the Ordinance authorized, on an exceptional and temporary basis, the holding of general meetings “behind closed doors”^[3]. Prior to the entry into force of Ordinance No. 2020-1497 of December 2, 2020, such meetings could be held “behind closed doors” if, on the day the meeting was convened or held, the place where the meeting was to be held was affected by an administrative measure restricting or prohibiting collective gatherings. From now on, taking into account the change introduced by Article 2 of Ordinance No. 2020-1497 of December 2, 2020, it will be necessary to demonstrate that these restrictive administrative measures effectively and concretely prevent the physical attendance of the shareholders.

In addition, Article 2 of Ordinance No. 2020-1497 of December 2, 2020 also amended Article 4 of the Ordinance so that the power of attorney given by the body which is competent to convene the meeting in order to decide whether it will be held “behind closed doors” may be given to any person, and not only to the legal representative of the relevant entity.

Finally, in order to strengthen the rights of shareholders of listed companies, Ordinance No. 2020-1497 of December 2, 2020 inserted a new Article 5-1 in the Ordinance, pursuant to which the general meeting of a listed company held behind closed doors must, subject to certain exceptions, be broadcast live. A replay of the meeting will also have to be provided for. Lastly, written questions asked by shareholders and the answers given to them must be published on the website of the listed company.

Written consultation

Article 6 of the Ordinance allowed for the use of written consultation of the meetings of shareholders for which this decision-making method was already provided for by law. Article 4 of Ordinance No. 2020-1497 of December 2, 2020 extended this option to all private law businesses, even those for which this possibility was not already provided for by law, with the exception of listed companies. The written consultation must take place under the terms and conditions provided for by applicable legal or regulatory provisions, the by-laws or the issuance contract applicable to the concerned entities. In the absence of any such specific terms and conditions, it may take place under the conditions determined by Article 4-1 of the Decree.

Postal ballot

Article 5 of Ordinance No. 2020-1497 of December 2, 2020 inserted a new Article 6-1 in the Ordinance in order to authorize, on an exceptional basis, postal ballot. This voting method is therefore now allowed, even when the rules governing the relevant entities do not provide for it, and even when the by-laws, the contract of issuance or the internal rules and regulations do not provide for it or preclude it. The decision to vote through postal ballot is taken by the body which is competent to convene the meeting or by the person to which/whom it has granted a power of attorney for this purpose, unless the possibility to use postal ballot is already provided for, in which case the decision of the competent body or the person to which/whom it has granted a power of attorney for this purpose will not be necessary.

Information of shareholders



Article 6 of Ordinance No. 2020-1497 of December 2, 2020 has extended to listed companies the simplified shareholder information procedures applicable in the event of a change from a “in-person” meeting to a meeting “behind closed doors”. Article 7 of the Ordinance has also been amended so that these simplified procedures for informing shareholders also apply in the event of a change from a meeting “behind closed doors” to a “in-person” meeting.

Companies may therefore apply the derogatory provisions governing the holding and deliberations of meetings of shareholders and meetings of governing bodies, as amended and adapted by Ordinance No. 2020-1497 of December 2, 2020 and Decree No. 2020-1614 of December 18, 2020, until July 31, 2021.

Our team of corporate lawyers is at your disposal to answer any questions you may have regarding the organization and procedures to be applied for your next general meetings and the holding of the meetings of your governing bodies between now and July 31, 2021.

[1] See our article entitled [Extension of the rules governing meetings of shareholders and meetings of governing bodies of private law businesses](#) published on our Blog in September 2020

[2] As specified by the report to the President of the Republic on Ordinance No. 2020-1497 of December 2, 2020, unless otherwise indicated, the adaptations made by said Ordinance No. 2020-1497 to the Ordinance have the same scope of application.

[3] For the record, a meeting “behind closed doors” is a meeting held without the members of the meeting being physically present.

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