

## COVID-19 - DEADLINES FOR THE CLOSING AND APPROVAL OF THE ENTITIES' ACCOUNTS AND FOR THE FILING OF THE FORMALITIES ARE EXTENDED: NEW RULES AND PRACTICAL DIFFICULTIES

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In the continuation of our previous article, following the publication of the law n°2020-290 of 23 March 2020 of emergency to face the epidemic of Covid-19, two orders dated 25 March 2020 concerning the functioning of legal entities and other entities without legal personality were published: (i) order n°2020-321 *adapting the rules of meeting and deliberation of the shareholders and governing bodies of legal persons and entities without legal personality under private law due to the covid-19 epidemic* and (ii) order n°2020-318 *adapting the rules relating to establishment, closing, auditing, review, approval and publication of accounts and other documents and information that incorporated and unincorporated entities under private law are required to file or publish in the context of the covid-19 epidemic*.

In this context, a guide "holding the shareholders' meeting and respecting accounting deadlines in the context of the Covid-19 crisis" was published by the Ministry of the Economy on 26 March, to assist the entities in the implementation of these rules[1].

This article presents the rules provided by the second order n°2020-318[2]. This order, applicable to all legal persons and entities without legal personality under private law, extends the deadlines of closing and approval of the entities' accounts, which allow the entities that are not in a position, or do not wish, to approve their accounts in the current context (despite the measures relaxing the holding of meetings provided by the first above-mentioned order) to postpone their decisions of approval within the legal framework set out in the second order.

The measures set out in the second order are described below.

- Extension by three months, in public limited companies (*sociétés anonymes*), of the period of three months (from the end of the financial year), granted to the management board to present to the supervisory board the accounts and the management report; these provisions are applicable only to companies closing their accounts between 31 December 2019 and the expiry of a period of one month after the date of cessation of the state of health emergency declared by Article 4 of the Law of 23 March 2020 (i.e. subject to an extension of such date, between 31 December 2019 and 24 June 2020). Consequently, the management board of a public limited liability whose accounts close on 31 December 2019 shall present the accounts to the supervisory board by 30 June 2020 at the latest. However, this extension does not apply to companies that have appointed a statutory auditor when the latter has issued his report on the accounts before 12 March 2020.

- In all incorporated and unincorporated entities, extension by three months of the legal, regulatory and articles of association's deadlines for approving the accounts (and attached documents) and for convening the annual general meeting; these provisions are applicable only to incorporated and unincorporated entities under private law closing their accounts between 30 September 2019 and the expiry of a period of one month after the date of cessation of the state of health emergency declared by Article 4 of the Law of 23 March 2020.

Consequently, in the case of a company whose financial year coincides with the calendar year and which is required to have its accounts approved within 6 months from the end of the financial year, it shall approve its accounts by 30 September. However, this extension does not apply to legal entities and private law entities that have appointed a statutory auditor when the latter has issued his report on the accounts before 12 March 2020.

In addition, deadlines for approval of the accounts set out in the articles of association (for example, imposed by the articles of association of an SAS) are concerned by the extension. However, one may wonder about the possibility of automatically extending the time limit for approval of the accounts (provided they fall within the above-mentioned application period) which would already have been extended by a court decision before 25 March 2020. The extension of the "judicial" deadlines is indeed not expressly provided for.

- In commercial companies which, at the end of a financial year, have 300 or more employees or whose net turnover is equal or superior to 18 million euros, extension by two months of the four-month time limits imposed on the executive bodies or managers to draw up (biannually) a statement of realizable and available assets and current liabilities and (yearly) the annual accounts, a forecast profit and loss account, a cash flow statement, and a forecast financing plan; these provisions are applicable to documents relating to the accounts or half-years closed between 30 November 2019 and the expiry of a period of one month after the date of cessation of the state of health emergency declared by article 4 of the law of 23 March 2020. Consequently, a company whose financial year coincides with the calendar year and which is concerned by these regulations shall draw its annual accounts (and the required forecast documents) by 30 June 2020.

- In the event of the liquidation of a commercial company, extension by three months of the period of three months (from the end of the financial year) imposed to the liquidator for drawing up the accounts and the attached documents; these provisions are applicable only to companies closing their accounts between 31 December 2019 and the expiry of a period of one month after the date of cessation of the state of health emergency declared by Article 4 of the Law of 23 March 2020.

- Extension by three months of the deadline imposed on private law bodies receiving a public subsidy to produce the financial report provided for in the sixth paragraph of Article 10 of Law No. 2000-321 of 12 April 2000 on the rights of citizens in their relations with administrations; these provisions are applicable to financial reports relating to accounts closed between 30 September 2019 and the expiry of a period of one month after the date of cessation of the state of health emergency declared by Article 4 of the Law of 23 March 2020.

It should be noted that no extension of deadline is provided for the payment of dividends, which must be made in commercial companies within 9 months of the end of the financial year (unless an extension is granted by court order).

Furthermore, since the disclosure obligations to which listed companies are subject (annual and half-yearly financial reports) derive from European law, no extension is envisaged. According to the aforementioned guide published by the Ministry of the Economy, the European Securities and Markets Authority (ESMA) has invited the AMF to take account of exceptional circumstances and for companies to approach the AMF to examine the situation on a case-by-case basis.

Finally, the formalities of publication of the annual accounts (and related documents) which apply to commercial companies pursuant to articles L.232-21 and seq. of the French Commercial Code shall be complied with.<sup>[3]</sup> However, a third order of 25 March 2020 n°2020-306 has extended the deadlines for any "*act, recourse, legal claim, formality, registration, declaration, notification or publication*" if those acts are legally required and must be completed between 12 March 2020 and the expiry of a period of one month after the date of cessation of the state of health emergency (i.e. subject to an extension of such date, between 12 March 2020 and 24 June 2020). Those acts shall be deemed completed within the required time period provided that they are completed within the required time period after (and from) the end of the above-mentioned period (i.e. from 24 June 2020) and, in any case by no later than two months (from the end of such period). Consequently, the deadlines for filing the annual accounts should benefit from the general extension set out by this order, provided that they expire during the abovementioned period.

[1] <https://www.tresor.economie.gouv.fr/Articles/2020/03/27/covid-19-tenir-son-ag-et-respecter-les-delaix-comptables>

[2] Another article presents the rules set out by the first order.

[3] The deadline to file the annual accounts with the trade registry is one month from the date of approval of these accounts by the shareholders or two months from this date if the filing is made by electronically means.

