

March 27, 2020

## French Government Adopts Measures Regarding Shareholders' Meetings and Board Meetings in Response to COVID-19

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**The Ministry of Economy and Finance adopted measures to remove certain legal and administrative constraints which apply to French corporations and other entities and which cannot be complied with following COVID-19 outbreak**

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### SUMMARY

Following the COVID-19 outbreak and the adoption of containment measures by the French State restricting physical meetings, the French Ministry of Economy and Finance has adopted measures allowing listed and non-listed French companies to either:

- maintain their shareholders' meetings as currently scheduled, which may now be conducted online or through other non-physical arrangements; or
- postpone their annual shareholders' meetings until September 30, 2020.

Board decisions can also be made by conference call or video conference call, or through a written consultation of the directors, irrespective of the provisions of the company's bylaws.

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### ADOPTION OF EMERGENCY MEASURES FOLLOWING COVID-19 OUTBREAK

On March 23, 2020, the French Parliament enacted Emergency Law no. 2020-290, allowing the French government to take measures to deal with certain consequences of the COVID-19 outbreak. On March 25, 2020, pursuant to the Emergency Law, the Ministry of Economy and Finance adopted measures<sup>1</sup> to remove certain legal and administrative constraints which apply to French corporations and other entities and which cannot be complied with in the current circumstances due, in particular, to the prohibition of physical meetings.

Such measures apply to shareholders' meetings and board meetings held from March 12, 2020 to July 31, 2020, which period may be extended by decree through November 30, 2020.

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## SHAREHOLDERS' MEETINGS

### “Closed-door” Shareholders’ Meetings

Where a shareholders’ meeting is convened in a location where physical meetings are prohibited (or restricted), such meeting can now be held online or through other non-physical arrangements, with no shareholders or other persons (e.g., statutory auditors or representatives of the employee bodies) physically attending. Accordingly, where a meeting is held online or through other non-physical arrangements, certain shareholders’ rights (which ordinarily would require physical presence) are temporarily waived, e.g., the right to ask oral questions or to ask for an amendment to proposed resolutions during the meeting.

Other shareholders’ rights, such as the right to ask written questions, the right to request the addition of new resolutions or the amendment to proposed resolutions in advance of the meeting, and the right to vote, are maintained. The new measures also allow shareholders to attend and vote at shareholders’ meetings by conference call or video conference call (if the system allows the identification of attendees), irrespective of the provisions of the company’s bylaws. From a practical standpoint, this will not be used by listed companies, mainly for technical reasons. As a result, for “closed-door” meetings, shareholders will be able to vote either remotely (by post or electronic means) or by giving a proxy to the Chairman of the shareholders’ meeting or to another person or legal entity.

### Shareholders’ Information Rights

Where a shareholder is entitled to receive, upon request, documents or information in advance of a shareholders’ meeting, such documents or information can now be sent by e-mail, to the extent that the shareholder has included an e-mail address in its request or its e-mail address is already known to the company.

### Notices to Shareholders

A company must inform its shareholders of any decision made to (i) hold the shareholders’ meeting behind closed doors, (ii) allow attendance and vote by conference call or video conference call and/or (iii) make decisions through written consultation in the case of non-listed companies:

- where the company is not listed, shareholders must be informed at least three business days before the meeting, by any means ensuring effective information of the recipients; or
- where the company is listed, shareholders must be informed as soon as practicable through a company press release.

Where a decision is made to hold the shareholders’ meeting behind closed doors, shareholders and other persons entitled to attend must be informed of the date and time of the meeting, and the way they can exercise their voting and other rights.

Formalities completed before the date on which a company decides to modify the way its shareholders’ meeting will be held do not need to be renewed. On the other hand, formalities which remain to be completed (e.g., the issuance of a convening notice, which must be published at least 15 days before

the shareholders' meeting) need to specify whether the company has adopted any of the measures available under the Orders.

The new measures also provide that, for publicly listed companies, a failure to comply with the obligation to send convening notices by post (*i.e.*, to registered shareholders) will not result in the invalidity of the shareholders' meeting to the extent that such failure is the consequence of external circumstances (such as the fact that the company's employees or third-party service providers were not able to reach their offices or prepare the convening notices).

### **Postponement of Annual Shareholders' Meetings**

The period following the end of a financial year for shareholders to approve a company's financial statements (maximum of six-month legal period) is extended by an additional three-month period.

This extension applies to all companies whose financial year ends between September 30, 2019 and the expiry of a one-month period following the end of the COVID-19 health emergency, unless statutory auditors have been appointed and have delivered their report on the financial statements before March 12, 2020.

This means that issuers which have their financial year ending on December 31 will be able to postpone their annual shareholders' meeting until September 30, 2020 if their statutory auditors have not delivered their report before March 12, 2020.

An extension might raise issues for companies which need to apply urgently for a shareholders' approval with respect to, *inter alia*, the renewal of financial authorizations or the appointment of directors.

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## **BOARD MEETINGS**

The option to attend and vote at board meetings by conference call or video conference call (allowing identification of attendees and their effective participation) can be offered to all directors and for all decisions (including in connection with the approval of financial statements), irrespective of the provisions of the company's bylaws. Decisions of the board can also be made through a written consultation of the directors, irrespective of the provisions of the company's bylaws.

### **Three-Month Extension of the Period for Management Boards to Draw Up Financial Statements**

The three-month period following the end of a financial year for the management board to draw up financial statements and submit them to the supervisory board is extended by an additional three-month period.

This extension applies to all companies whose financial year ends between December 31, 2019 and the expiry of a one-month period following the end of the COVID-19 health emergency (as defined in Emergency Law no. 2020-290), unless statutory auditors have delivered their report on the financial statements before March 12, 2020.

**Two-Month Extension of the Periods for the Preparation of Provisional Management Documents**

The time periods for the preparation of provisional management documents (*documents de gestion prévisionnelle*) are extended by a two-month period.

This extension applies in connection with all financial statements and interim periods ended between November 30, 2019 and the expiry of a one-month period following the end of the COVID-19 health emergency.

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**ENDNOTE**

- <sup>1</sup> Order no. 2020-321 regarding meetings and decisions of shareholders and boards and Order no. 2020-318 regarding the preparation, approval and publication of financial statements and other documents and information that entities are required to file or publish (the “Orders”).

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