

March 15, 2021

French Government Renews Measures Regarding Shareholder and Board Meetings in the Context of the COVID-19 Pandemic

The French Government Has Renewed and Amended the Temporary Measures Initially Adopted in March 2020 to Alleviate Certain Legal and Administrative Constraints Applicable to French Listed Companies That Cannot Be Complied With During the COVID-19 Pandemic

SUMMARY

In light of the ongoing COVID-19 pandemic and related lockdown, curfew and travel restrictions, the French Government renewed and amended the temporary measures initially adopted in March 2020, in order to strengthen shareholders' rights while maintaining the possibility for listed French companies to:

- hold shareholders' meetings "behind closed doors" through online or other non-physical arrangements; and
 - hold board meetings through conference calls, video conference calls or written consultation, irrespective of the provisions of the company's articles of association or the board's internal rules.
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ADOPTION OF 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 French Government adopted measures¹ to remove certain legal and administrative constraints applicable to French listed companies that could not be complied with in the context of the COVID-19 pandemic.

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In December 2020 and March 2021, the measures regarding shareholder and board meetings were amended and renewed by the French Government through July 31, 2021.²

Temporary measures regarding the preparation, approval and publication of financial statements and related documents that were initially implemented by Order No. 2020-318 of March 25, 2020 have not been renewed, nor amended, for financial periods ending on or after August 11, 2020.

CURRENT MEASURES REGARDING SHAREHOLDERS' MEETINGS

“Closed-door” Shareholders’ Meetings

For French public companies, shareholders’ meetings may 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) attending the meeting physically, provided that the following conditions are met:

- on the date of (i) the convening of the meeting or (ii) the shareholders’ meeting, administrative measures restricting or prohibiting travel or collective gatherings for health purposes are in force;
- such administrative measures prevent shareholders and other attendees from physically attending the meeting; whether this condition is met depends on the specific characteristics of the meeting, such as, e.g., the number of persons usually attending the meeting and the company’s capacity to accommodate attendees in a location that complies with applicable health regulations; and
- the shareholders’ meeting is held on or before July 31, 2021.³

In addition, where a shareholders’ meeting was held “behind closed doors,” the minutes thereof must state this fact and specify the type of administrative measures that allowed for the meeting to be held in this manner.

Shareholders are also allowed to attend and vote at a “closed-door” shareholders’ meetings by conference call or video conference call, if the technical means allow for the identification of attendees and ensure at least a continuous voice transmission and simultaneous streaming of the discussions, irrespective of the provisions of the company’s articles of association. However, in 2020, video or audio conference calls were not yet used by most French listed companies. As a result, for “closed-door” meetings of listed companies, shareholders may also vote remotely (by mail or electronic means), irrespective of the provisions of the company’s articles of association, or by giving a proxy to the Chair of the meeting or to another person or legal entity. Where the shareholders are allowed to (i) attend and vote by conference call or video conference call, or (ii) vote remotely at the meeting, the minutes of such meeting must include a statement to that effect.

Where a meeting is held online or through other non-physical arrangements, certain shareholders’ rights (which ordinarily would require the shareholders’ physical presence) are temporarily waived, such as, e.g., the right to ask oral questions or to request that amendments be made to the resolutions submitted for approval during the meeting. However, other shareholders’ rights, such as those that may be exercised prior to the meeting (e.g., the right to ask written questions; to request that new resolutions

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be submitted to the shareholders' approval; or that amendments be made to the proposed resolutions prior to the meeting) or the right to vote are maintained.

In particular, the right to ask written questions prior to the meeting has been strengthened where a listed company⁴ holds its shareholders' meeting "behind closed doors" with no shareholder participation by conference call or video conference call allowed. In this case, shareholders may ask written questions until the end of the second business day prior to the date of the meeting, as opposed to the fourth business day, which would apply if the meeting were held "physically." Similarly, the company must publish on its website all written questions and answers (including those submitted during the meeting) as soon as possible after the meeting, and at the latest, before the end of the fifth business day following the date of the meeting.

Furthermore, where a shareholders' meeting is held "behind closed doors" with no shareholder participation by conference call or video conference call allowed, listed companies must ensure the live streaming of the meeting (in video or audio format), unless such a transmission is impossible or seriously disrupted for technical reasons. A replay of the meeting (in video or audio format) must also be provided by the company on its website, as soon as possible after the meeting and, at the latest, before the end of the fifth business day following the date of the meeting. This replay must remain available on the company's website for at least two years.

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 be sent via 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 (as well as other persons entitled to attend the meeting) of any decision made to:

- hold the shareholders' meeting "behind closed doors," and therefore indicate the date and time of the meeting, how they can exercise their voting and other rights and, in listed companies, how and where the live streaming of the meeting will be available;
- allow attendance and vote by conference call or video conference call; and/or
- allow vote by mail or electronic means.

This information must be published as soon as practicable, and at the latest three business days before the meeting, through a press release issued by the company and fully and effectively disseminated in accordance with French law.

In listed companies, if the Board of Directors (*Conseil d'administration*) or Management Board (*Directoire*) decides that the shareholders' meeting is to be held "behind closed doors," the minutes of this decision must specify the factual and legal reasoning on which that decision is based and, in

particular, the nature of the administrative measures preventing the meeting from being held “physically.” Where the attendees of the meeting are not offered the opportunity to participate by conference call or video conference call, the minutes of the Board of Directors or Management Board must also specify the reasons therefor and how the Board of Directors or Management Board has designated the scrutineers (*scrutateurs*) for the meeting. The shareholders and other persons entitled to attend the meeting must be informed of the abovementioned decisions and the reasons therefor as soon as possible.

Formalities completed before the date on which a company decides to modify how its shareholders’ meeting will be held do not need to be renewed. On the other hand, formalities which remain to be completed on that date (*e.g.*, the issuance of a convening notice, which must be published at least 15 days before the shareholders’ meeting) need to specify which measures available in the context of the COVID-19 pandemic will be applied by the company.

These temporary measures also provide that a failure to comply with the obligation to send convening notices by mail (*i.e.*, to registered shareholders) will not result in the invalidity of the shareholders’ meeting to the extent that such failure is due to external circumstances (such as the fact that the company’s employees or third-party service providers were not able to reach their offices and prepare the convening notices).

CURRENT MEASURES REGARDING BOARD MEETINGS

The option to attend and vote at board meetings by conference call or video conference call (allowing for the identification of attendees and their effective participation) can be offered to all Board members and for all decisions (including in connection with the approval of financial statements), irrespective of the provisions of the company’s articles of association or the board’s internal rules. Decisions of the board can also be taken through a written consultation of the Board members in a manner ensuring the collective adoption of such decisions (*e.g.*, sufficient response period; possibility to ask written questions before replying), irrespective of the provisions of the company’s articles of association or the board’s internal rules.

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ENDNOTES

- ¹ Order No. 2020-321 of March 25, 2020 regarding meetings and decisions of shareholders and boards, and Decree No. 2020-418 of April 10, 2020.
- ² Order No. 2020-1497 of December 2, 2020 amending Order No. 2020-321; Decree No. 2020-1614 of December 18, 2020 amending Decree No. 2020-418; and Decree No. 2021-255 of March 9, 2021.
- ³ “*Tenir son AG ou son CA dans le contexte de la crise sanitaire*” (“Holding a shareholders’ or board meeting in the context of the health crisis”), Q&A dated March 15, 2021, published by the French Ministry of Economy and Finance.
- ⁴ For purposes of this memorandum, French “listed companies” do not include French listed open-ended investment companies (also known as “SICAV”).

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