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**PRACTICE DATA SHEET
SPECIAL EMERGENCY MEASURES COVID-19
N°5**

Approval of the annual accounts

Subject: Corporate law

Theme: Approval of the annual accounts

Date: 4/6/2020

*The approval of the annual accounts of legal persons and entities without legal personality governed by private law must take place **within six months after the date of closure of the accounts.***

It is necessary to convene the governing bodies and to hold a general meeting of shareholders to approve the annual accounts.

Emergency measure(s) put in place

➤ **Extension of the deadline for approval of the accounts**

The time limits imposed by the legal, regulatory and statutory provisions to approve the accounts and the attached documents or to convene the general meeting are extended by three months.

This extension shall not apply to legal persons and entities without legal personality governed by private law that have appointed an auditor when the auditor has issued his report before 12 March 2020.

➤ **Extension of the deadline for preparing the forecast documentation**

The deadlines imposed on companies for drawing up a statement of realisable and available assets, excluding operating values, and current liabilities, a forecast profit and loss account, a cash flow statement at the same time as the annual balance sheet and a forecast financing plan are extended by **two months**.

Action plan for the company

- Identify the usual deadlines and timetable for approving the annual accounts.
- Apply the new deadlines.
- If necessary, prepare the consultation of the ESC and other deliberating bodies (Board of Directors, Steering Committee, Management Committee) according to the terms and conditions provided for in Order 2020-321 of 25 March 2020 adapting the rules for meetings and deliberations of the general meetings and governing bodies of legal entities and legal documents.
- Hold meetings and general assemblies.

Applicable texts (automatic translation of the extracts):

➤ Initial provision: Article L 232-2 of the Commercial Code :

"In commercial companies that meet one of the criteria defined by decree of the Conseil d'Etat and based on the number of employees or turnover, taking into account the nature of the business, the board of directors, the management board or the managers are required to draw up a statement of realisable and available assets, excluding operating values, and current liabilities, a forecast income statement, a cash flow statement together with the annual balance sheet and a forecast financing plan".

➤ Initial provision: Article L 225-68 of the Commercial Code :

"The supervisory board exercises permanent control over the management of the company by the management board.

The articles of association may make the conclusion of the transactions listed therein subject to the prior authorization of the supervisory board. However, sureties, endorsements and guarantees, except in companies operating a banking or financial institution, shall be subject to authorization by the supervisory board, which shall limit the amount thereof, under conditions determined by decree of the Conseil d'Etat. This decree also determines the conditions under which the exceeding of this authorization may be enforced against third parties. The Board may, however, grant this authorisation globally and annually without limit on the amount to guarantee commitments made by controlled companies within the meaning of II of Article L. 233-16. It may also authorize the management board to grant, in aggregate and without limit on the amount, sureties, endorsements and guarantees to guarantee the commitments made by controlled companies within the meaning of II of Article L. 233-16, provided that the board reports thereon to the board at least once a year. The management board

may also be authorized to give, with respect to the tax and customs authorities, sureties, endorsements or guarantees in the name of the company, without limit of amount. At any time of the year, the supervisory board carries out the verifications and controls that it deems appropriate and may request any documents that it deems necessary for the performance of its mission.

At least once every quarter, the management board shall present a report to the supervisory board.

After the close of each fiscal year and within the time limit set by decree of the Conseil d'Etat, the Management Board shall submit the documents referred to in the second paragraph of Article L. 225-100 to the Supervisory Board for verification and control purposes.

The Supervisory Board shall present to the shareholders' meeting provided for in Article L. 225-100 a report on corporate governance attached to the management report mentioned in the same article. This report shall include the information, where applicable adapted to companies with a supervisory board, mentioned in Articles L. 225-37-3 to L. 225-37-5, as well as the observations of the supervisory board on the management board's report and on the financial statements for the financial year".

LAW No. 2020-290 of 23 March 2020 as an emergency measure to deal with the covid epidemic¹⁹ :

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Article 11

I. - Under the conditions provided for in Article 38 of the Constitution, the Government is authorised to take, by ordinance, within three months of the publication of this law, any measure, which may come into force, if necessary, as from 12 March 2020, falling within the scope of the law and, where appropriate, to extend and adapt them to the communities mentioned in Article 72-3 of the Constitution:

1° In order to deal with the economic, financial and social consequences of the spread of the covid-19 epidemic and the consequences of the measures taken to limit this spread, and in particular to prevent and limit the cessation of activity of natural and legal persons engaged in economic activity and associations as well as its impact on employment, by taking any measure :

[.]

(f) Simplifying and adapting the conditions under which meetings and collegiate governing bodies of legal persons governed by private law and other entities meet and deliberate, as well as the rules relating to general meetings ;

(g) Simplifying, specifying and adapting the rules relating to the preparation, approval, auditing, review, approval and publication of the accounts and other documents which private legal persons and other entities are required to file or publish, in particular those relating to time limits, and adapting the rules relating to the allocation of profits and the payment of dividends; [...]"

Order n°2020-318 of 25 March 2020:

Article 1

I. - The deadline set pursuant to the fifth paragraph of Article L. 225-68 of the French Commercial Code for the Management Board to submit to the Supervisory Board the documents mentioned in the second paragraph of Article L. 225-100 of the same Code is extended by three months. This extension does not apply to legal entities and entities without legal personality governed by private law that have appointed a statutory auditor when the latter has issued its report on the accounts before 12 March 2020.

II. - The provisions of I are applicable to legal persons and entities without legal personality under private law 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 above-mentioned Law of 23 March 2020.

Article 2

I. - The period of three months from the closing date, set by the first paragraph of Article L. 237-25 of the French Commercial Code for the liquidator to prepare the annual accounts and the written report mentioned in this article is extended by two months.

II. - The provisions of I shall apply under the conditions laid down in II of Article 1 of this Order.

Article 3

I. - The time limits imposed by laws or regulations or by the articles of association of a legal person or an entity without legal personality governed by private law for approving the accounts and the documents attached thereto, where applicable, or for convening the meeting responsible for such approval, shall be extended by three months. This extension shall not apply to legal persons and entities without legal personality governed by private law which have appointed an auditor where the auditor has issued his report on the accounts before 12 March 2020.

II. - The provisions of I shall apply to legal persons and entities without legal personality governed by 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 abovementioned Law of 23 March 2020.

Article 4

I. - The time limits imposed on the Board of Directors, the Management Board or the Managers pursuant to Article L. 232-2 of the French Commercial Code to prepare the documents mentioned in the first paragraph of this Article are extended by two months.

II. - The provisions of I 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 aforementioned Act of 23 March 2020.

Article 5

I. - The time limit imposed on private law bodies by the sixth paragraph of Article 10 of the aforementioned Law of 12 April 2000 to produce the financial report mentioned in the same paragraph is extended by three months.

II. II. - The provisions of I 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 aforementioned Law of 23 March 2020.

Do not hesitate to contact us if you need legal support to adapt your activity to the COVID-19 pandemic.

You can also find more information on our website and our LinkedIn page visible by following the links below:

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**PRACTICE DATA SHEET
SPECIAL EMERGENCY MEASURES COVID-19
N°6**

Adaptation of the rules for meetings and deliberations of general meetings and governing bodies

Subject: Corporate law

Theme: Rules for meetings of general meetings and governing bodies

Date: 04/06/2020

In order to enable legal persons and entities without legal personality under private law to continue to carry out their missions despite the containment measures and the continuity of the functioning of these groupings, the provisions relating to the rules for meetings and deliberations of general meetings and governing bodies have been adapted to avoid any risk of contestation of the latter.

Emergency measure(s) put in place

The measures concern:

- general meetings of shareholders, associates, members, members or delegates, special meetings, meetings of the masses.
- collegiate administrative, supervisory or management bodies.

➤ **General Meetings**

Convening of General Meetings

In listed companies, whose meetings may include a significant number of members, some of whom must be convened by post, **meetings are not null and void if a meeting that must be convened by post could not be convened due to circumstances beyond the company's control.**

Communication of documents or information to the members of a general assembly

The exercise of the right of communication which the members of the general meetings benefit from prior to the meetings of the latter may be validly carried out by electronic message, provided that the member indicates in his request the electronic address to which it can be made.

Procedures for convening general meetings

The members of the meeting and other persons entitled to attend the meeting shall be notified by any means capable of ensuring that they are effectively informed of the date and time of the meeting and of the conditions under which they will be able to exercise all the rights attached to their capacity as members or as persons entitled to attend the meeting.

Rules of participation and deliberation at general meetings

Where a general meeting is convened in a place affected on the date of the convocation or on the date of the meeting by an administrative measure restricting or prohibiting collective gatherings on health grounds, the body competent to convene it or the legal representative acting on delegation from that body **may decide that it shall be held :**

- without the members and other persons entitled to attend being present in person or by teleconference or audio-visual conference call.

The technical means used must allow the identification of partners and shareholders.

In this case, the members shall participate or vote at the meeting according to the other modalities provided for by the texts governing the meeting as amended and supplemented, where necessary, by this Order.

However, this derogation shall have no effect on the other rights of members (right to vote, the right to put written questions and the right to propose the inclusion of items or projects on the agenda) as well as on the rules of quorum and majority.

Written consultation of general meetings

It is possible to have recourse to the written consultation of the partners for companies where the law already provides for this mode of consultation, without a clause in the articles of association or in the contract of issue being necessary for this purpose or being able to oppose it.

➤ **Collegial administrative, supervisory and management bodies**

Holding of meetings via telecommunication

The governing bodies may use videoconferencing and telecommunication means without any clause in the articles of association or internal regulations being necessary for this purpose or being able to oppose it.

The technical means must allow the identification of the members of the governing bodies and the continuous and simultaneous retransmission of proceedings.

The provisions shall apply irrespective of the subject matter of the decision on which the body is called upon to take a decision.

Written Consultations

It is possible to have recourse to written consultation of the governing bodies under conditions ensuring collegial deliberation without any clause in the articles of association or internal rules being necessary for this purpose or being able to oppose it.

The provisions shall apply irrespective of the subject matter of the decision on which the body is called upon to take a decision.

Application over time

All of these provisions are applicable to General Meetings and meetings of the governing bodies as from 12 March 2020 and until 31 July 2020, unless extended.

Action plan for the company

- Identify the usual procedures for convening management bodies and general meetings.
- List all the contact details of the members who must participate in meetings and general assemblies and the technical means of holding them.
- Adopt the most appropriate means of holding meetings and general assemblies in order to bring all members together, ensure collegiality and respect the provisions relating to the adoption of decisions (quorum, majority, etc...).

Applicable texts (automatic translation of the extracts):

[LAW No. 2020-290 of 23 March 2020 as an emergency measure to deal with the covid epidemic19 :](#)

“

Article 11

I. - Under the conditions provided for in Article 38 of the Constitution, the Government is authorised to take, by ordinance, within three months of the publication of this law, any measure, which may come into force, if necessary, as from 12 March 2020, falling within the scope of the law and, where appropriate, to extend and adapt them to the communities mentioned in Article 72-3 of the Constitution:

1° In order to deal with the economic, financial and social consequences of the spread of the covid-19 epidemic and the consequences of the measures taken to limit this spread, and in particular to prevent and limit the cessation of activity of natural and legal persons engaged in economic activity and associations and its impact on employment, by taking any measure :

[.]

(f) Simplifying and adapting the conditions under which meetings and collegiate governing bodies of legal persons governed by private law and other entities meet and deliberate, as well as the rules relating to general meetings; [...]"

[Order n°2020-321 of 25 March 2020:](#)

TITLE I

SCOPE

Article 1

I. Notwithstanding any legislative or regulatory provision to the contrary, this Ordinance shall, during the period provided for in Article 11, be applicable to legal persons and entities without legal personality governed by private law, and in particular

- (1) Civil and commercial companies;
- (2) Masses of holders of transferable securities or financial securities;
- (3) Economic interest groups and European economic interest groupings;
- (4) Cooperatives;
- (5) Mutuals, unions of mutuals and federations of mutuals;
- (6) Mutual insurance companies and mutual insurance group companies;
- (7) provident societies and group companies providing social protection insurance;
- (8) Municipal credit unions and mutual agricultural credit unions;

(9) Endowment funds;

Do not hesitate to contact us if you need legal support to adapt your activity to the COVID-19 pandemic.

You can also find more information on our website and our LinkedIn page visible by following the links below:

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