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COVID-19 Pandemic Prompts Changes to Rules Applicable to Distressed Companies (FRANCE)

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Introduction

In Ordinance 2020-341 of March 27, 2020^[1], the government took a number of emergency measures on bankruptcy and insolvency proceedings as part of its response to the COVID-19 pandemic. These measures apply during the duration of the so-called “health emergency”, plus one or three months, depending on the case. At the time of writing, the health emergency is due to expire on May 24, 2020.^[2]

Ordinance 2020-341, which was supplemented by the circular of March 30, 2020,^[3] applies to ongoing proceedings.

This article also considers the provisions of Ordinance 2020-306 of March 25, 2020,^[4] which affects certain acts that are carried out if insolvency proceedings are opened.

Measures applicable during health emergency plus three months (i.e., until August 24, 2020, unless further extended)

Freezing cessation of payments as at March 12, 2020

Ordinance 2020-341's principal measure concerns the date on which the affairs of business are assessed in order to determine whether it is in cessation of payments.^[5] Given the economic difficulties caused by the pandemic, Ordinance 2020-341 aims to protect debtors against a deterioration of their situation from March 12, 2020 onwards.

Accordingly, as of March 12, 2020 and throughout the health emergency, plus a further three months, the situation of businesses with regard to the determination of the date on which they cease payments is frozen.

As this measure has been taken in the interests of debtors, a debtor alone will be able to apply for judicial reorganization (*redressement judiciaire*), and more specifically, safeguarding proceedings (*procédure de sauvegarde*) or court-administered liquidation (*liquidation judiciaire*), if it is in a state of cessation of payments after March 12, 2020. By the same reasoning, the director of the business will no longer be subject to personal sanctions for making a late declaration of cessation of payments.[6] However, these exceptional measures do not apply in cases of fraud, in that a court will be able to set the cessation of payments at a date later than March 12, 2020 if fraud on the part of a debtor can be proven. In addition, certain provisions protecting creditors remain applicable, namely, the ability of a court to set the date of cessation of payments up to 18 months prior to the date of the judgment that opens the insolvency proceedings. During this maximum period of 18 months (known as the “suspect period”), certain transactions of the debtor can be set aside.[7]

The same principle of freezing cessation of payments as at March 12, 2020 applies to agricultural businesses in an amicable settlement procedure under the Rural and Maritime Fisheries Code.

Adjustment of deadlines: extension of deadlines for a period equivalent to the health emergency, plus three months

Ordinance 2020-341 provides for an automatic extension of the deadlines for the observation period, plan, maintenance of activity and the duration of the simplified court-administered liquidation process.[8]

As for plans adopted as part of safeguarding or judicial reorganization proceedings, Ordinance 2020-341 provides for an extension which may be granted by the presiding judge of the court:[9]

- at the request of the court-appointed administrator for the plan for the period during the health emergency, plus three months, and
- when the request is made by the Public Prosecutor’s Office, the extension may be granted for a maximum period of one year as from the date of the decision.

Beyond the period of the health emergency, plus three months, only the court may grant a further extension of a maximum of one year as from its decision but it may do so only within six months after the end of the health emergency, plus three months.

The Circular of 30 March 2020 specifies that these plans may be extended with, if necessary, with a rescheduling of the terms of payment provided for in the plan and due after the date of the decision or after March 12, 2020.

In addition, the presiding judge may also extend the time limits by a period equal to the health emergency, plus three months, at the request of the administrator (*administrateur*), liquidator (*liquidateur*) or court-appointed receiver (*mandataire judiciaire*), or at the request of the court-appointed administrator for the plan (*commissaire à l’exécution du plan*), to the extent that such time limits apply to them. [10]. Such an extension may be granted in particular in the following cases:

- to dispose of assets under the simplified proc(Article L. 644-2 of the Commercial Code), and
- to accept creditors’ claims (Article L. 624-2 of the Commercial Code).

With regard to the conciliation procedure, Ordinance 2020-341 provides that:

- it may be opened even if the debtor’s situation has deteriorated after March 12, 2020, and,
- its duration, which as a general rule cannot exceed four months with a possible extension to five months,[11] is automatically extended by a period equal to the health emergency, plus three months.[12]

Notably, the rule that a new conciliation process cannot be launched within three months of a previous failed attempt at conciliation does not apply during the health emergency, plus three months.^[13] Therefore negotiations can be resumed without complying with the three-month rule.

Faster payment under the AGS scheme

As for payments due under employment contracts, Ordinance 2020-341 provides for an acceleration of payments by the Association for the Management of Employee Claims (AGS) during the health emergency, plus three months (i.e., until June 24, 2020), without having to wait for any action on the part of the employee representative or approval by the insolvency judge, provided that any such claims are filed without delay with the AGS by the court-appointed representative.

Measures applicable during health emergency, plus one month (i.e., until June 24, 2020 unless further extended)

Procedural rules are relaxed during the health emergency, plus one month. Therefore:

- a debtor may apply to the court by any means and the hearing to launch insolvency proceedings may be held without the presence of the applicant who is authorized to make submissions in writing;^[14] and
- the various participants in the proceedings (ie, the court registrar, the court-appointed representative and the administrator) may communicate by any means; ^[15] and
- the hearing which is normally scheduled for two months after the judgment opening insolvency proceedings, at which the court may order the continuation of the observation period if the debtor has sufficient financial capacity, no longer takes place.^[16]

With regard to employment contracts, during the health emergency the court-appointed receiver (*mandataire judiciaire*) may not be able to terminate employment contracts within the time limits set out in the Labor Code, which is a condition for payments to be covered by the AGS. Ordinance 2020-341 extends the time period for terminating employment contracts, thereby allowing the AGS to make severance payments in respect of contracts terminated after the deadlines set by the Labor Code but before the end of the health emergency, plus one month.^[17]

Impact of Ordinance 2020-306

Certain provisions of Ordinance 2020-306 that affect actions carried out in the event of the opening of insolvency proceedings should also be highlighted. Effectively, Ordinance 2020-306 extends deadlines expiring between March 12, 2020 and the expiry of a period of one month as from the date of the end of the health emergency (i.e. until June 24, 2020, unless further extended). This extension covers any acts, judicial proceedings, legal actions and registrations that are required by law on pain of nullity, penalty or disqualification of rights. Pursuant to Ordinance 2020-306, these acts must be carried out from June 24, 2020 within the required deadline, but subject to a maximum limit of two months.^[18] As far as collective proceedings are concerned, Ordinance 2020-306 applies to:

- the declaration of claims;
- claims over movable assets under Article L. 624-9 of the Commercial Code; and
- claims made to the insolvency official (*juge-commissaire*) in respect of goods dispatched to the debtor.

For example, if the deadline for declaring a claim (which is normally two months after the publication of the opening of insolvency proceedings) expires between March 12, 2020 and June 24, 2020, the creditor will be able

to declare its claim within two months from June 24, 2020, i.e. until August 24, 2020 without having to apply for a waiver for the foreclosure.

A claim over movable assets, which must normally be made within three months following the publication of the opening of insolvency proceedings, must be made from June 24, 2020 but within two months after June 24, 2020.

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[1][Order No 2020-341 of March 27, 2020](#) adapting the rules on distressed companies and agricultural businesses to health emergencies and amending certain provisions of criminal procedure.

[2] The health emergency was declared in Article 4 of Law [2020-290 of March 23, 2020](#).

[3][Circular presenting Articles 1er, 2, 3 and 5 de of Order No 2020-341 of March 27, 2020](#) adapting the rules on distressed companies and agricultural businesses to health emergencies and amending certain provisions of criminal procedure.

[4][Order No 2020-306 of March 25, 2020](#) on the extension of time limits during the health emergency period and the adjustment of procedures during the same period.

[5] References in this article to "cessation of payments" should be read as references to the French concept of *cessation des paiements*.

[6] In principle, the director of the business must request the opening of a judicial reorganization at the latest 45 days after the cessation of payments, if the business has not requested the opening of conciliation proceedings within this period (Article L. 631-4 of the Commercial Code). Failing this, the director is liable to penalties such as declaration of personal bankruptcy or a disqualification from holding a directorship.

[7][Articles L. 632-1](#) for invalidity of rights in the event of payment made for debts not yet due, and [L. 632-2](#) of the French Commercial Code for actions where invalidity is optional.

[8] Article 2, II of Ordinance 2020-341.

[9] Article 1, III, 1° and 2° of Ordinance 2020-341.

[10] Article 1, IV of Ordinance 2020-341.

[11] Deadline provided for in [L 611-6](#) of the Commercial Code.

[12] Article 1, II of Ordinance 2020-341.

[13] Article 1, II of Ordinance 2020-341 temporarily eliminates the three-month waiting period provided for in Article L. 611-6 (2) of the Commercial Code, which is otherwise required before starting a new conciliation process after the failure of the previous one.

[14] Article 2, I, 2° of Ordinance 2020-341.

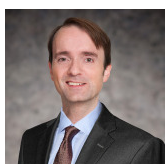
[15]. Article 2, I, 3° of Ordinance 2020-341.

[16]. Article 2, II, 1° of Ordinance 2020-341.

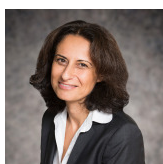
[17]. Article 2, II, 2° and 3° of Ordinance 2020-341.

[18]. Article 2 of Ordinance 2020-306.

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