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Temporary Rules to Facilitate Virtual Board Meetings - FRANCE

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April 20, 2020 - The COVID-19 pandemic has had a profound effect on business operations. French companies are having to adapt quickly to social distancing measures and travel restrictions and many are now dispensing with face-to-face board meetings in favour of virtual meetings or written procedures.

The French Parliament passed Emergency Law 2020-290 of 23 March 2020(1) to enable the French government to adopt measures by way of an ordinance to help businesses navigate these unprecedented times.

Thus, on 25 March 2020 Ordinance 2020-321(2) was adopted to relax the rules around virtual board and shareholder meetings. The ordinance applies from 12 March 2020 until 30 July 2020.

This article provides an overview of the general regime that applied to remotely held meetings and written decisions of the management organs of some of the most popular types of company, such as *sociétés anonymes* (SAs), *sociétés par actions simplifiées* (SASs) and *sociétés à responsabilité limitée* (SARLs), before turning to the special measures that have been introduced by the ordinance.

SAs

An SA can have either a board of directors (*conseil d'administration*) or a management board (*directoire*) coupled with a supervisory board (*conseil de surveillance*).

- **SAs with board of directors (*conseil d'administration*)**

The general regime allows an SA's board of directors to gather by means of video conference or conference call, provided that members can be identified and participate effectively, in accordance with the board's internal regulations. However, it is not possible to close the annual financial statements in this way. Further, a company's bylaws can restrict the type of business that can be transacted remotely.

Article 8 of the ordinance has temporarily adjusted these rules by allowing the use of video conferencing or conference calls for all meetings, whatever the business being transacted, including the closing of annual financial statements, and regardless of any restrictions in the bylaws or internal regulations. However, all participants in the meeting must be identifiable and able to participate effectively and at the same time.

The general law allows a company's bylaws to provide that certain decisions of the board of directors pertaining to certain items of business can be made in writing. These include the provisional appointment of a replacement board member in the event of the death or resignation of a sitting member and a decision to transfer the registered office within the same area.

Article 9 of the ordinance allows all decisions falling within the competence of the board of directors to be made by written resolution, whatever the business being transacted and regardless of the terms of the bylaws. However, the ordinance requires the written consultation to be carried out in a way that ensures the collegiality of deliberations. According to guidance from the Ministry of Finance, this involves granting participants sufficient time to respond to or submit observations or written questions.

- **SAs with management (*directoire*) and supervisory boards (*conseil de surveillance*)**

Supervisory boards

Under the general rules, a company's bylaws may allow a supervisory board to hold meetings by video conference or conference call, provided that participants can be identified and participate effectively, and may determine what business may or may not be transacted in this way. However, the law requires the physical presence of members for the closing of annual financial statements. Further, the bylaws may place restrictions on the business that can be transacted remotely, and any such meetings must comply with the board's internal regulations.

Article 8 of the ordinance permits video conferencing and conference calls for all supervisory board meetings, whatever the business being transacted, including the closing of annual financial statements, and regardless of the bylaws or internal regulations. However, the participating members must be identifiable and able to participate effectively and at the same time.

The general law sets out the type of business that a company's bylaws may allow to be decided in writing. Such matters include the provisional appointment of a board member in the event of the death or resignation of a sitting board member and a decision to transfer the registered office within the same area.

Article 9 of the ordinance allows written decisions for all matters falling within the competence of the supervisory board, whatever the business being transacted, and notwithstanding any restrictions in the bylaws or internal regulations. Again, the collegiality of deliberations must be guaranteed.

Management boards

The general rules provide that a company's bylaws set out how the management board (*directoire*) conducts its business. Accordingly, the bylaws freely determine the rules for holding meetings via video conference or conference call or for decisions to be made in writing.

Article 8 of the ordinance allows video conferences and conference calls for all management board meetings, whatever the business being transacted, including the closing of annual financial statements, or the terms of the bylaws, on the condition that participating members are identifiable and able to participate effectively and at the same time.

Article 9 of the ordinance allows all decisions within the management board's competence to be taken in writing, regardless of the business being transacted and any restrictions in the bylaws. However, any written consultation must be carried out in conditions that ensure the collegiality of deliberations.

SASs

An SAS is governed by a president (*président*), who may be accompanied by one or more general managers (*directeurs généraux*). The bylaws may also institute a collegiate management or supervisory organ, such as a supervisory board, a board of directors or a management board.

Under the general law, the bylaws are free to determine the rules on how decisions are reached by any collegiate organ – in particular, the conditions in which meetings can be held remotely, via video conference or conference call, or written decisions can be made. Internal regulations of the organ may set out rules on how such meetings operate in practice.

The ordinance enables all meetings to be held by video conference or conference call, provided that participants can be identified and take part effectively, and written decision-making, notwithstanding any provisions to the contrary in the bylaws. The collegiality of deliberations must be ensured.

SARLs

A SARL may have one or several managers (*gérants*). If there are several, the bylaws may set up a collegiate forum for decision making.

Under the general regime, the rules on such a collegiate body's decision making are a matter for the bylaws. Articles 8 and 9 of the ordinance facilitate virtual or written decision making by disapplying any restrictions on these matters in the bylaws, provided that participants can be identified and participate effectively. Written consultations must be carried out in conditions that ensure the collegiality of deliberations.

Comment

The ordinance introduces a temporary and exceptional regime for collegiate decision making. As such, it has a limited life and is due to expire on 31 July 2020. However, it may be extended by decree until 30 November 2020.

While conducting meetings via Skype or Zoom is not a substitute for debate and deliberation in a face-to-face setting, the special measures play a small part in facilitating governance and business decision making in the current crisis.

Once normality returns, attention will turn to the merits of putting the temporary regime on a more permanent footing.

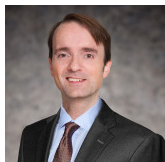
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Endnotes

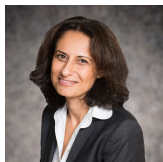
(1) [Emergency Law 2020-290](#) of 23 March 2020 dealing with the COVID-19 pandemic, published in the Official Journal of 24 March 2020.

(2) Ordinance 2020-321 of 25 March 2020 adapting the rules for general meetings and deliberations of the meetings and governing bodies of legal persons and entities without legal personality under private law as a result of the COVID-19 pandemic, published in the Official Journal of 26 March 2020.

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