

## Covid-19 – Summary update on measures taken by the French State

In response to the crisis, the French State first adopted various measures aiming at both tackling the health crisis (through some restrictions in relation to freedom of movement, such as the closure of all shops except those which are considered "essential", requisition of some products such as masks, etc.) and at supporting businesses.

The French Government moved first with ministerial orders and decrees. Then the French Parliament has voted for an amending Financial Law for 2020 (the **Financial Law for 2020 Amendment**) on 20 March 2020 and on 22 March 2020 a law c (the **Emergency Law**). The two laws were published on 24 March 2020. **Several ordinances** were adopted by the

French Government on 25 March 2020, and later on, in application of the Emergency Law. Most of the measures that were initially taken by ministerial orders and decrees are now integrated into the Emergency Law or in ordinances adopted in application of such law.

We have summarised below the different schemes which have been adopted in application of the Emergency Law and which aim at dealing with the emergency situation created by the Covid-19 pandemic. We will update this note as the days and weeks go by – this is of course a rapidly evolving situation. As always, we are happy to provide further information on any of these topics – please just reach out to your usual Allen & Overy Paris contact.

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## Declaration of health emergency

One of the key measures of the Emergency Law is to enable the Prime Minister to declare a "health emergency" (*état d'urgence sanitaire*). By way of derogation, the "health emergency" has been declared for a period of two months as from the entry into force of the law (i.e. until 24 May 2020). The extension of the state of health emergency beyond two months may only be authorised by law.

The declaration of a health emergency empowers the Prime Minister to take by decree "general measures limiting the freedom of movement, freedom of enterprise and freedom of assembly and allowing the requisitioning of any goods and services necessary to combat the health disaster". Such measures must be proportionate to the risks involved and appropriate to the circumstances of the time and place. Indemnification of the requisitioned goods and services will follow the indemnification procedure set out in the French Defense Code (Article L. 2234-1 of the French Defense Code). Such indemnification shall thus cover material, direct and certain loss but shall exclude compensation for loss of profit.

The main purpose of these provisions is to provide a robust legal basis for the restricting of freedom measures that have already been adopted by regulatory authorities (see below) since the beginning of the crisis and also for potential additional measures that would be taken.

In application of these provisions of the Emergency Law, a new decree no. 2020-293 was issued on 23 March 2020 to consolidate the restrictive measures that had been taken by ministerial orders in the past (see below).

## Restrictions to freedom and rights for individuals and companies

By various decrees and ministerial orders enacted before the Emergency Law, the French Government has implemented several exceptional measures with the aim of restricting the spread of the COVID-19 pandemic. These measures have been consolidated in a new decree no. 2020-293 issued on 23 March 2020 which entered into force on 24 March.

### Restrictions to the freedom of movement

Until 11 May 2020, staying at home is mandatory, save for the following purposes:

- Going to work (although the decree is unclear on this point, it seems that going to work is only possible when working from home is not possible), and professional trips that cannot be postponed;
- Purchasing supplies necessary for professional activity or essential products in shops that are still authorised to be open;
- Health reasons, save for consultations that may be provided at a distance (except for patients with a long-term illness) and those that can be postponed;
- Compelling family reasons, such as assistance of vulnerable persons or child care;
- Short journeys, which may not exceed one hour per day and must stay within a maximum radius of one km around the home. Such journeys may be related either to (i) individual physical activity (excluding any team sport and any proximity to other persons), (ii) walking along with only those

people staying together in the same home, or (iii) related to pets; On 7 April 2020, the

**Préfet** of Paris has issued an order to prohibit people from going outside for individual physical activity between 10 am and 7 pm. This measure entered into force on 8 April and will end on 15 April;

- Persons required to report periodically to the police station as a result of measures taken by the administrative or judicial authority; persons summoned by an administrative or judicial court; persons invited to participate in a project of general interest by the administrative authority.
- A national plan to organise the end of the "lockdown" post-11 May will be issued by the Government within the next two weeks.
- Any person outside his/her home must carry with him/her a document enabling him/her to justify that such excursion falls within the scope of one of the exceptions listed above. A template has been published on the Ministry's website.
- Breach of the obligation to stay at home referred to above or of the obligation to carry the document justifying authorised travel is punishable by a fine of EUR 135. This fine is increased to EUR 200 for a repeated offence within two weeks, and three violations within 30 days may be punishable by a fine of up to EUR 3,700 and a six-month imprisonment (new article L. 3136-1 of the French Public Health Code created by the Emergency Law).
- It should also be highlighted that the local representative of the State in each local area (the *préfet*) is entitled to decide on further restrictions if it appears necessary in the relevant area.
- Lastly, several local representatives of the State issued prefectural orders to prohibit access to public beaches (e.g. beaches in the Morbihan region, South and South West beaches) and mountain paths. In addition, locally, some mayors have also taken radical measures.

- In Drôme, Valence has been under curfew since Saturday evening, from 9 p.m. to 6 a.m., until 31 March. We understand that more than 30 cities are under curfew. Lastly, the prefect of Paris has prohibited access to certain open air and tourist attractions in Paris, e.g. Champ de Mars and Invalides, Seine banks (*Arrêté n° 2020-00246 portant mesures de restriction des déplacements et rassemblements dans certains lieux de la capitale*).

### Prohibition on certain commercial activities

Until 11 May 2020, the following activities cannot welcome any public anymore (article 8 of decree no. 2020-293):

- Rooms for hearings, conferences, meetings, performances or multiple use;
- Shopping centres;
- Restaurants, bars and pubs;
- Dance halls and games rooms;
- Libraries and documentation centres;
- Exhibition halls;
- Gym centres and indoor sports facilities;
- Museums;
- Retail stores (with the exception of certain types of stores listed in an appendix to the order: general food stores, hotels, bakeries, supermarkets, etc.).

### Restrictions of transportation

Public transportation services are still open for now. As for Paris public transportation services, the metro is still open for the moment but RATP has announced a reduction in traffic.

The Government has announced that, as of 27 March 2020, there will be a drastic reduction in the number of high-speed trains running in France (7% of usual traffic), in order to prevent people from moving out of town. We also understand from a recent press release that train inspectors no longer check tickets.

Special hygiene and social distancing rules have been laid down for the public transportation of

people and for cab transportation (article 6 of decree no. 2020-293).

Until 11 May 2020, cruise ships and non-scheduled passenger ships carrying more than 100 passengers are prohibited from calling at French continental ports in the Mediterranean, Atlantic, English Channel and North Sea, unless an exemption is granted by the representative of the competent State (article 4 of decree no. 2020-293).

As for bicycles, the French Minister in charge of Transportation indicated on 25 March that "*The use of the bicycle is authorised, provided that the user carries the duly completed certificate, for journeys between home and work, to make essential purchases, for health reasons, compelling family reasons, legal summons, purchase of supplies or participation in a mission of general interest.*"

Furthermore, until 11 May 2020, movements of persons by commercial air transport is prohibited, unless it falls under certain exceptions (e.g. health reasons, professional purposes), from French Métropole to Reunion Island, Mayotte, Guadeloupe, Martinique, French Guyana, Saint Martin and Saint Barthélemy, and from any one of these territories to the French territory (article 5 of decree no. 2020-293).

Lastly, measures have been taken to allow derogations from legal working hours for road transportation of goods (see ministerial [order](#) dated 19 March and ministerial [order](#) dated 20 March). For example, the French Government has increased the daily driving time, up to a maximum of 10 hours per day or 11 hours per day twice a week.

Ordinary mail is still operating within French cities despite the set-up of a new organisation which will allow the maintenance of such essential services as the distribution of mail, parcels and small goods. On this point, La Poste asks its customers to concentrate their orders and shipments on what is strictly necessary for them. La Poste has finally decided to reduce its mail delivery to "protect the health" of its staff.

The group adapted its organisation to the changing health situation. The working time of the postmen decreases to four days worked this week, then to three days from 30 March.

### Prohibitions on gatherings

Until 11 May 2020, any gathering involving more than 100 people at the same time is prohibited (article 7 of decree no. 2020-293). Gatherings that are essential to the continuity of the life of the Nation may be maintained by way of derogation by the *préfet* of the department.

The *préfet* may also prohibit or restrict meetings, gatherings or activities if local circumstances so require, by collective or individual measures.

### Restrictions and other requirements on protective equipment or medicine (e.g. masks, hydro-alcoholic gel)

#### Restrictions on masks and other personal protective equipment (PPEs)

Until 31 May 2020, masks held by public or private entities/companies are being requisitioned by the French Government (article 12 of decree no. 2020-293).

Two types of masks are targeted by the decree: (i) Respiratory protection masks: FFP2, FFP3, N95, N99, N100, P95, P99, P100, R95, R99, R100; and (ii) "Anti-projection masks" complying with EU certification EN 14683 (it mostly refers to surgical masks, aiming at avoiding the projection of secretions that may contain transmissible infection agents by droplet transmission or by air).

Selling or exporting such masks is prohibited, save for some exceptions: Selling is still allowed only to health establishments ("*établissements de santé*", e.g. public and private hospitals, pharmacies), as specified by regulatory guidelines issued on 6 March 2020 by the French Ministry of Health. Considering the European Commission critics on national restrictions on the export of masks and other protective equipment, we understand that the

French Government decided to grant exemptions on a case by case basis.

Also, the requisition applies only to stocks of masks already present and produced on French territory. Stocks of imported masks may however give rise to total or partial requisition until 31 May 2020, by order of the Minister for Health, above a threshold of five million units per quarter per legal entity.

Pharmacies are allowed to distribute protection masks free of charge to certain health professionals (dentists, general practitioners, etc.) (ministerial order dated 16 March 2020).

Apart from these direct seizure orders, decree no. 2020-293 also empowers representatives of the State (*préfets*) in the department – France is divided into local areas called *départements* –, if the influx of patients or victims or the health situation justifies it, to order by general or individual measures the necessary requisition of the following goods, services or staff, as the case may be:

- Health or medico-social establishment, as well as any goods, services or persons necessary for the operation of such establishments, including health professionals;
- Raw materials necessary to manufacture the categories of masks that are the subject of the requisition.
- Any goods, services or persons necessary for the operation of the regional health agencies (ARS) as well as the agencies responsible, at the national level, for the protection of public health, in particular the National Agency for Medicines and Health Products and the National Public Health Agency (ANSM);
- Laboratories authorised to carry out Covid-19 test examination, equipment and staff necessary for their operation and more generally, "any goods" necessary to healthcare establishments;

Lastly, at EU level, a regulation was put in place on 14 March 2020 (and amended on 19 March) to impose a prior governmental export

authorisation in respect of all EU members to export protective equipment outside the boundaries of the EU (EU [regulation](#)). Export licences are granted by competent authorities in each Member State.

#### Measures facilitating the availability of masks and other PPEs

Against this background, French authorities have also taken measures aiming at facilitating the provision and the availability of masks and other PPEs.

The Government has issued on 31 March 2020 a circular aiming at facilitating the procedure to import surgical and FFP2 masks, by authorising the import and use in France until 31 May 2020 of surgical masks that comply with American and Chinese standards, as well as FFP2 masks that comply with American, Chinese, Australian, New Zealand, Korean and Japanese standards. A specific procedure must be followed. In particular, the conformity assessment procedures defined in EU recommendation no. 2020/403 of 13 March must have been initiated, and the appropriate level of health and safety of the products must be established by the market surveillance authority. This implies that the manufacturer or its authorised representative must make itself known to the notified body by any means in order to formulate an application for EU type examination before the first placing on the market by import of the equipment concerned, and then forward the complete file to it within 15 working days. When it comes to medical devices masks: An application for an authorisation to import masks without CE marking should be submitted to the Director General of the French national agency in charge of drugs safety (on the basis of Article R. 5211-19 of the French Public Health Code). Masks imported through this facilitated procedure may only be used for professional uses and not for consumers' uses.

The Ministry of Labour has also authorised the use of expired FFP2 type masks as long as the expiry date does not exceed 6 months and strict

instructions are followed before use (link). Such instructions are the following:

- Masks must have been stored in accordance with the storage conditions laid down by the manufacturer or distributor; and
- Before use, masks must have undergone 4 successive tests:
  - check the integrity of the packaging by visual inspection;
  - check the appearance (original colour) of the mask by visual inspection;
  - check the solidity of the elastic bands and the nasal strip holding the mask in place; and
  - carry out a mask fit test on the face.

### Hydro-alcoholic gels

The French Government has taken measures to control the selling prices of any types of hydro-alcoholic gels (article 11 of decree no. 2020-293). These measures are due to last until 31 May 2020. New prices are set, depending on the volumes of the gels.

The French Government has also allowed pharmacies to prepare hydro-alcoholic solutions themselves, in the event of a disruption of supply of such solutions (ministerial order of 6 March 2020).

### Paracetamol

Until 31 May 2020, the dispensing by pharmacies of specialities composed exclusively of paracetamol is, in the absence of a prescription, limited to two boxes per patient declaring symptoms such as fever or pain and one box in other cases (ministerial order dated 17 March 2020).

Internet sales of specialties composed exclusively of paracetamol, ibuprofen and acetylsalicylic acid (aspirin) are suspended.

### School closures

All schools and universities are closed until 11 May 2020 (article 9 of decree no. 2020-293).

If parents of children aged 16 or less are employees and cannot work from home, they can be put on a specific leave for the duration of the school closure. They will receive allowances from the Social Security as if they were on sick leave, but without any waiting period.

Only one parent can benefit from this special leave and from allowances paid by the Social Security in this respect (Decree dated 31 January 2020, as amended on 9 March 2020).

Lastly, national public and private education tests (concours) and tests for the recruitment, promotion and advancement of civil servants and magistrates are suspended until 5 April 2020. They may be held at a distance when the nature of the tests and the conditions of their organisation so permit (ministerial order dated 17 March 2020).

## Employment / Labour law measures

### Restriction of movements between home and workplace

As per the latest instructions published by the Ministry of Labour and as indicated above, all employees who can work from home should do so until further notice.

If working from home is not possible, employees can go to work but the employer should provide employees with a specific certificate certifying that the employee's movements between home and the workplace cannot be postponed or are imperative to the business activity and cannot be carried out remotely. Employees should carry this certificate with them in order to justify that their movements fall within the scope of one of the exceptions to the restriction of movements. A template has been published on the Ministry of Interior's website and has been recently updated. Henceforth, one certificate established by the employer, bearing an expiration date, is sufficient

as opposed to daily certificates for each movement.

### Health and safety measures at the workplace

Employers should carefully assess the risks and take all appropriate measures to protect their employees' health and safety, and notably:

- Ensure compliance with hygiene measures;
- Reorganise the workplace in order to have at least one metre of distance between all workstations/employees;
- Avoid physical meetings to the extent possible;
- Limit employee gatherings;
- Cancel or postpone non-essential business trips;
- Modify the sharing of work (e.g. staff rotation);
- Update the Document pertaining to Occupational Hazards ("*Document Unique d'Evaluation des Risques*");
- Implement a specific cleaning protocol;
- Canteens may remain open but should be reorganised so that there is at least one metre of distance between each person. Meal times should be staggered.

### Use of annual leave and extra rest days

The French Labour Code currently provides that the employer cannot change the holiday dates that have already been approved with less than a month's notice, except under exceptional circumstances. Where holiday dates have not already been approved, employers cannot force their employees to take annual leave. As regards other rest days, such as RTT days for employees who work more than 35 hours per week or those subject to *forfait jours* arrangements and rest days transferred to a "time saving account" ("*compte-épargne temps*"), this depends on the provisions of the applicable collective bargaining agreement or company agreement.

An Ordinance dated 25 March 2020 amends the rules pertaining to annual leave and other rest days until 31 December 2020:

- **Annual leave:** A company collective agreement or a sector-wide collective bargaining agreement can allow the employer to derogate from the statutory rules for up to one week of annual leave, until 31 December 2020. Subject to this collective agreement, employers could thus unilaterally (i) change the dates of up to six working days of annual leave if the employee's holiday dates had already been approved or (ii) force their employees to take up to six working days (whether consecutive or not) of annual leave, until 31 December 2020 and with a minimum notice of one day.
- **RTT days and days transferred to a "time saving account":** Regardless of the provisions of the applicable company agreement or sector-wide collective bargaining agreement, up to 10 RTT days or days transferred to a "time saving account" ("*compte épargne temps*") can be freely imposed or moved to another date by the employer, subject to a minimum notice of one day, and only until 31 December 2020.

If the employer has recourse to one of these measures, it should inform the staff representatives (CSE) without delay by any means. The CSE should give its opinion within one month following this information, while the employer can already start implementing these measures.

### Working time

An Ordinance dated 25 March 2020 allows companies "in sectors of activity particularly necessary for the security of the Nation and the continuity of economic and social life", as determined by a Decree, to derogate from working time regulations, within certain limits to be specified by the Decree, on a temporary and exceptional basis and until 31 December 2020. This is subject to information of the staff representatives (CSE) and the Labour Authority. The related Decree should be published in the upcoming days.

If the employer has recourse to one of these measures, it should inform the staff

representatives (CSE) without delay by any means. The CSE should give its opinion within one month following this information, while the employer can already start implementing these measures.

### Consultation of staff representatives

Employers should bear in mind that any substantial adjustment to the employees' work conditions is subject to prior consultation with the Works Council (CSE).

As physical meetings should be avoided, videoconference should be preferred for CSE meetings. If not possible, the employer should at least ensure compliance with social distancing rules (i.e. at least one metre between each person). In this respect, an Ordinance dated 1 April 2020 authorises employers to hold CSE meetings through videoconference, audioconference or, if none of the previous options is possible, instant messaging, for the duration of the State of Health Emergency, and subject to prior information of the CSE members. A Decree should be published in the upcoming days in order to provide further details in this respect.

Furthermore, this Ordinance temporarily suspends the on-going CSE election processes for the duration of the State of Health Emergency and up to three months after the end of the State of Health Emergency. The duration of the current mandates and the protection against dismissal of staff representatives and candidates shall be extended accordingly. The employers should resume/initiate the CSE elections within the 3 months following the end of the State of Health Emergency.

### Vulnerable employees

The High Council of Public Health recommends all vulnerable individuals (because of their age, health status or pregnancy) to stay at home.

As a result of this recommendation, the Health Insurance Authority now enables employees who fall into one of the below categories to easily benefit from a period of sick leave:

- Pregnant employees in their **third trimester of pregnancy**;
- Employees with a **long-term illness** (full list of qualifying long-term illnesses available on the Health Insurance provider's website).

In order to be put on sick leave, employees who fall into one of these categories should fill out a form online on the Health Insurance provider's website (<https://declare.ameli.fr/>). The maximum initial duration of sick leave is 21 days, but it could be renewed, depending on the authorities' future recommendations.

The employee on sick leave will receive allowances from the Social Security, to be supplemented by the employer in accordance with the French Labour Code and the applicable collective bargaining agreement.

Other employees who may be considered as vulnerable according to the recommendations of the High Council of Public Health but who do not fall into the above categories should consult their General Practitioner, who may decide to put them on sick leave if appropriate.

### Indemnification of employees on sick leave

As from the publication of the Emergency Law, and for the whole duration of the health emergency, all employees (including civil servants) put on sick leave will receive allowances paid by the Social Security **as from the first day of sick leave** (i.e. without any waiting period), provided that they meet the other eligibility requirements.

Furthermore, an Ordinance dated 25 March 2020 amends the eligibility requirements for sick pay paid by employers in addition to the social security allowances until 31 August 2020. In particular, employees are henceforth eligible for this sick pay regardless of their seniority within the company. Besides, "*travailleurs à domicile*" (a specific status under French law), seasonal employees, intermittent employees and temporary employees are now also eligible for this sick pay.



## Temporary lay-offs and short-time working

The French Government has announced substantial amendments to the rules governing temporary lay-offs and short term working ("*activité partielle*") with the aim of encouraging employers to have recourse to this scheme and thereby limiting redundancies. A Decree has been published in this respect on 26 March 2020 and is applicable retroactively as of 1 March 2020.

Under French labour law, employers may have recourse to temporary lay-offs and short-time working in order to temporarily suspend employment contracts or reduce employees' working hours, without the employees' consent and regardless of the provisions of the employment contract, notably in the event of exceptional circumstances, such as:

- Administrative closure of the company / the site;
- Interruption of public transport services (i.e. employees cannot go to work);
- Remote working is not possible and the employer cannot duly implement the adequate health & safety measures (e.g. social distancing rules); and
- Decrease in business activity due to the COVID-19 outbreak.

Whereas recourse to temporary lay-offs and short-time working is usually subject to prior authorisation of the Prefect (via the DIRECCTE) and prior consultation with staff representatives (CSE), the Decree introduces more flexibility in this respect:

- The request may be filed within 30 days after the employer has started having recourse to temporary lay-offs and short-time working. The authorisation, if granted, will have a retroactive effect;
- The "*préfet*" should provide its response within 2 days (instead of 15 days currently) and absence of response within this time period is deemed as approval (this new rule only applies until 31 December 2020);

- The approval can be granted for up to 12 months (renewable) (instead of 6 months currently); and
- Companies are allowed to submit the CSE meeting minutes (containing this opinion) within two months of the request filed with the "*préfet*".

Furthermore, the compensation measures for employers are substantially improved:

- **Indemnification of employees:** The employer should pay employees an indemnity amounting to at least 70% of the employees' average gross salary or 100% if the employee undertakes training during this period. This indemnity is exempt from social security contributions but not from CSG and CRDS (at a global rate of 6.7%).
- **Indemnification of companies:** In return, the employer receives an indemnification from the State. Whereas this indemnity amounted to €7.74 per unworked hour in companies with up to 250 employees and €7.23 per unworked hour in companies with more than 250 employees, within the limit of 1,000 hours per year and per employee, the financial aid has been substantially increased for all companies irrespective of their headcount. The Decree thus provides that the allowance paid to the employer would be equal to "70% of the hourly gross salary, within the limit of 4.5 times the hourly minimum wage", with a minimum hourly rate of €8.03. Therefore, the financial aid could reach up to €32 per unworked hour.

The Government strongly encourages companies that have recourse to temporary lay-offs and short-time working to limit the amount of dividends that they will distribute and to decrease the remuneration of their corporate officers by 25%.

## Profit-sharing and exceptional bonus

According to an Ordinance dated 25 March 2020, sums paid under a profit-sharing agreement ("*participation*" or "*intéressement*") for fiscal year 2019 can be paid until 31 December

2020 (instead of 31 May 2020 for companies whose fiscal year ended on 31 December 2019).

An Ordinance dated 1 April 2020 also amends the rules pertaining to the exceptional bonus for purchasing power ("prime Macron"). As a reminder, this exceptional bonus that may be paid by employers to employees meeting certain requirements is exempt from income tax and social security contributions, subject to certain terms and conditions. The main amendments are the following:

- The payment of this exceptional bonus is no longer subject to the existence of an optional profit-sharing agreement ("intéressement").
- The deadline of payment is extended to 31 August 2020 (instead of 30 June 2020).
- The payment of this bonus can be contingent upon the employee's work conditions during the covid-19 pandemic (e.g. effective presence in the company's premises).
- The maximum amount of the bonus (i.e. thus exempt from income tax and social security contributions) would be increased to €2,000 (instead of €1,000) for companies where an optional profit-sharing agreement is in force at the date of payment of this bonus.

### Occupational Health Services

An Ordinance dated 1 April 2020 amends the rules applicable to Occupational Health Services:

- Occupational Doctors are allowed to test employees and to put them on sick leave in the event of confirmed or suspected covid-19 infection
- Until 31 August 2020, appointments with the Occupational Doctor should be postponed, unless strictly necessary given the employee's health status or position. This postponement should not prevent recruitments or returns to work following a suspension of the employment contract. The postponed appointments should take place before 31 December 2020.

This Ordinance further indicates that occupational health services should actively take part to the prevention of covid-19 through:

- circulating to employers and employees information on covid-19 and prevention measures;
- assisting companies for the determination and the implementation of prevention measures in relation to covid-19;
- providing advice to companies for the increase or adaptation of their business activity due to covid-19.

### Termination of protected employees

Under French law, termination of a protected employee is subject to the Labour Inspector's approval. In this respect, the Labour Inspector should first carry out an investigation prior to granting his/her approval. The Ministry of Labour has published guidelines in order to adapt the investigative process in the pandemic context. In particular:

- Relevant documents should be sent to the parties by mail or email (instead of being put at the disposal of the employee on the Labour Authority's premises).
- Physical meetings should be avoided. Exchanges between the Labour Authority and the parties (i.e. employer and employee) should take place in writing (by mail or email) or via videoconference.

### Data Protection measures

The French Data Protection Authority (CNIL) has also published guidelines according to which employers may not:

- Take any measure likely to infringe individuals' privacy, rights and freedoms, in particular by collecting health data that would go beyond the management of suspected exposure to the virus;
- Collect personal data, in a systematic and generalised manner, or through individual enquiries or requests, for the purpose of searching possible symptoms presented by employees and their relatives;
- Collect health data that may only be collected by the health authorities qualified to process

- these special categories of data and to take measures appropriate to the situation;
- Implement mandatory body temperature screening of each employee/ visitor; and
  - Collect medical records or questionnaires from all employees.

Being aware of the employers' obligation to ensure health and safety of employees set out under the French Labour Code, the CNIL's guidance reports practical actions that can be implemented by the employer. In particular, the employer may:

- Continue raising awareness and invite employees to provide individual relevant information in relation to potential exposure to both employer and competent health authorities;
- Facilitate the transmission of the information internally by setting up dedicated channels and appointing key contacts;
- Promote remote working and encourage the use of occupational health; and
- Follow recommendations made by the health authorities.

On 19 March 2020 the European Data Protection Board ("EDPB") issued a statement on the processing of personal data in the context of the COVID-19 outbreak. The statement includes several measures which apply to the processing of personal data in the employment context. In particular, the employer should:

- provide transparent information to data subjects on the processing activities that are being carried out and their main features, including the retention period for collected data and the purposes of the processing;
- adopt adequate security measures and confidentiality policies ensuring that personal data are not disclosed to unauthorised parties. Measures implemented to manage the current emergency and the underlying decision-making process should be appropriately documented;
- pursuant to the principle of proportionality and minimisation, only collect health

- information to the extent permitted by national law;
- inform staff about COVID-19 cases and take protective measures, but not communicate more information than necessary. The employer can communicate the name of the employee(s) who contracted the virus, only if it is necessary, if the national law allows it, and if the concerned employee(s) has been informed;
- obtain employees' personal information to fulfil their duties and to organise the work in line with national legislation.

The statement also provides that the employer can process personal data without obtaining the consent of the data subjects if the processing is necessary for reasons of public interest, such as the control of diseases and other threats to health; or to comply with another legal obligation, such as obligations relating to health and safety in the workplace.

Regarding the processing of health data, the employer may rely – on a case by case basis – on the following legal basis to process special categories of personal data, including health data:

- Art. 9 para. 2 i) of the GDPR (necessity for reasons of public interest in the field of public health); or
- Art. 9 para. 2 c) of the GDPR (processing is necessary to protect the vital interests of the data subject).

## Tax measures

In order to support businesses in the context of the COVID-19 pandemic, the following tax measures have been implemented with immediate effect following the announcement by President Macron on 12 March.

### Postponement of payment of tax instalments

Companies can elect to defer the payment of corporate income tax (and salary contribution as well as payroll tax due in March 2020), without

any justification nor late payment penalty, for up to three months. The Government has announced that companies that benefit from this deferral should suspend the distribution of dividends. We expect a law to be enacted in this respect in the upcoming days.

### Tax rebates in extreme or difficult situations

Companies can request tax rebates. Requests may relate to corporate income tax and the French business tax (i.e. CFE and CVAE). However, requests on VAT, assimilated taxes and transfer of the withholding tax collected on salary income are for the moment excluded. Tax rebates will be granted on a case-by-case basis after an examination of the company's situation.

### Early repayment of tax credit receivables

Companies which benefit from one or more tax credit receivables that are refundable in 2020 may request the refund of these receivables immediately. The refundable amount corresponds to the balance of the receivable after it has been set off against the corporate income tax due for fiscal year 2019. This mechanism applies to all refundable tax credits in 2020, including the Research tax credits (CIR) and the Competitiveness and Employment tax credit (CICE).

## €300 billion state guarantee and other financial assistance

A Financial Law for 2020 has been adopted by the French Parliament on 20 March 2020 and published in the Official Journal of the French Republic on 24 March 2020. The Financial Law for 2020 includes the following measures:

- the introduction of an exceptional State guarantee of up to €300 billion for all new unsecured loans granted by banks and financing companies between 16 March and 31 December 2020 to non-financial

companies registered in France (for borrowers other than SME, the guarantee is subject to administrative approval); an order (*arrêté*) published on 24 March 2020 specified the following conditions for loans to be eligible and for State guarantees to be issued:

- minimum period of 12 months during which no repayment of the loans will be made, following which the borrower may choose to opt for an amortization over an additional period of 1, 2, 3, 4 or 5 more years;
  - maximum amount of the loans for the same borrower will depend on the size of the borrower;
  - guaranteed amount between 70% and 90% depending on the size of the borrower;
  - the indemnifiable amount for the purpose of determining the sums due by the State under a Guarantee shall correspond to the loss suffered by the lender after exercising all enforcement means including after the opening of insolvency proceedings;
  - guarantee fees will be payable by the lender;
  - for SMEs the guarantee will be available following an application being sent electronically to Bpifrance by the lender;
  - for other companies the guarantee will be issued by an order (*arrêté*) of the Ministry of Economy.
- the provision of the necessary funds to address the impact of the health crisis on the economy and employment:
    - implementation of unemployment benefits for employees affected by the crisis; and
    - other measures for companies whose turnover is less than €1 million.

## Financial support measures for companies

The Emergency Law enables legislation to be passed by ordinance within three months as of the publication of the law in areas related to social and economic measures aiming at supporting companies affected by the Covid-19 crisis, including financial measures.

Such measures will notably include:

- direct and indirect aids to companies in great difficulty, in particular by setting up a fund financed by local and regional authorities;
- liquidity support for companies in difficulty;
- possibility for Bpifrance to grant bank guarantees on loans already in place or to grant loans with no collateral required.

Against this background:

- at the Bpifrance level, Bpifrance has announced various measures of credit support to strengthen the financial structure of SMEs and intermediary medium-sized companies experiencing cash-flow difficulties. These comprise unsecured loans ranging from €50,000 to €30M with a maturity of 3 to 5 years for working capital needs, guarantees (up to 90%) for credit facilities with a maturity of 3-7 years, and guarantees (up to 90%) of overdraft facilities which have been confirmed by a bank for periods of 12 to 18 months. Bpifrance have said they will also extend their existing guarantees with respect to investment facilities where an extension of maturity has been accepted by the lenders. Finally, extension of maturity of certain Bpifrance loans will be considered.
- at European level, the European Commission has launched a series of measures enabling Member States to support their national companies (e.g. payment of direct subsidies or tax benefits capped at EUR 500,000 per company, granting of state guarantees financed by bank loans, granting of public and private loans at reduced rates).

## Corporate meetings, and preparation of annual accounts

In view of the ban on physical meetings, the Emergency Bill allows the French Government to simplify and adjust the conditions and rules under which meetings and collegiate governing bodies of private legal persons and other entities meet and deliberate, as well as the rules relating to general meetings.

Ordinance no. 2020-321 dated 25 March published on 26 March sets out provisional rules. These rules will apply retroactively from 12 March 2020 until 31 July 2020, unless extended to a later date, which shall not fall later than 30 November 2020, subject to administrative measures restricting the ability to hold meetings due to public health reasons applying at the time of the convening notice or at the time of the meeting.

These rules include, in particular, specific exemptions to permit companies to be able to continue to hold their annual general meetings using alternative means (by circulating written resolutions, using videoconference or "télétransmission" even if not already included in their articles of association) or even allowing for the possibility of holding meetings (and specifically AGM) without the physical presence of shareholders or their representatives ("Tenue à huis-clos").

The procedures for holding these AGMs might be specified in a Decree or other regulation.

Moreover, Ordinance no. 2020-318 dated 25 March (also published on 26 March) provides for the possibility of postponing the approval of annual accounts and certain other documents that private legal persons and other entities without legal personality are required to file or publish (2 or 3 months). This extension will not apply if an appointed statutory auditor has issued his report on the accounts before 12 March 2020.

## Contractual protection measures

In application of the Emergency Law, the French Government adopted on 25 March 2020 several ordinances in order to take appropriate contractual protection measures in the following areas:

- the obligations of companies (while respecting the reciprocal rights) towards their customers and suppliers, in particular amendments in terms of payment deadlines and penalties as well as the nature of consideration, in particular concerning the contracts implementing the sale of travel arrangements and vacation;
- public contracts and the laws governing contracts entered into with the French State or a public entity, in particular adaptation to the contractual provisions with respect to award, deadlines, performance, termination and penalties (ordinance no. [2020-319](#)). The ordinance includes the following measures: time limits for the receipt of applications and offers for the ongoing procedures are extended by a "sufficient period"; amendments may be entered into to extend contracts coming to an end when it is not possible to organise new competitive tenders (no later than a few months); grantors must allow additional time for completion of the contract and cannot impose any sanctions such as penalties if performance is impossible;
- deferral or freeze of rental payments, fluids and energy bills related to business premises, waiver of financial penalties, suspensions, interruptions or reductions in supplies which may be applied in the event of non-payment of these invoices, to the benefit of very small businesses whose activity is affected by the spread of Covid-19.

## Administrative and judicial measures

In order to deal with the consequences, in particular of an administrative nature, of the Covid-19 crisis, in application of the Emergency Law, the French Government adopted on 25 March 2020 several ordinances, which include the following provisional measures:

- adaptation of the time limits applicable to the filing and processing of declarations and requests submitted to administrative authorities, as well as the time limits and procedures for consulting public administrative authorities or bodies (ordinance no. [2020-306](#));
- Adaptation of the time limits and functioning before the administrative courts to take into account the Covid-19 crisis (ordinance no. [2020-305](#)). Such measures include the following: communication of documents, pleadings and opinions to the parties by any means; holding hearings in camera or in restricted publicity; holding hearings using audiovisual means of communication or, where this is not possible, by any electronic means of communication; ruling without a hearing on applications for interim measures;
- adaptation, interruption, suspension or postponement of the term of the time limits provided for, on pain of nullity, lapse, foreclosure, prescription, unenforceability, cessation of a measure or forfeiture of a right, termination of an approval or authorisation, cessation of a measure, except for measures involving deprivation of liberty, or any sanction or other effect (ordinance no. [2020-306](#)). These measures may not exceed by more than three months the expiry of administrative police measures taken to slow down the spread of the Covid virus.

## Insolvency proceedings

The Emergency Law also authorises the French Government to take appropriate measures to amend the laws on insolvency proceedings and distressed companies in order to facilitate preventive treatment of the consequences due to this health crisis.

It is also to be noted that, as with other countries and following the decision by the Ministry of Justice to close all courts and related administrative services, the French judiciary system has had to slow down heavily (with mostly only very urgent cases being dealt with currently). In respect of insolvency proceedings, the Ministry of Justice has issued a note for the attention of all French courts pursuant to which pre-insolvency or insolvency proceedings such as safeguarding proceedings (*procédures de sauvegarde*), rehabilitation proceedings (*redressements judiciaires*) or liquidation proceedings (*procédures de liquidation*) are not

to be considered as urgent proceedings in the context where the government is taking measures to avoid the occurrence of such proceedings. The same applies for conciliation proceedings (conciliation). However, in the same note the Ministry of Justice considers that the following proceedings are to be considered as urgent:

- the appointment of a *mandataire ad hoc* (which requires the company to be solvent); and
- disposal plans in the context of *redressement judiciaire* or *liquidation judiciaire*, when such disposal plans are certain to have a significant impact on employment.

We are expecting more clarifications and guidelines in respect of insolvency proceedings in the coming days with the implementation of the Emergency Law by way of decree.

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