

COVID-19: French Ordinance Adapts Access to Court-Supervised Restructuring Proceedings and to Insolvency Proceedings

A Shielded Period offers distressed companies more time and flexibility.

On March 27, 2020, the French government issued ordinance 2020-341¹ (the Ordinance) to ensure that French restructuring and insolvency courts are available to French companies facing difficulties during the state of health emergency that was declared by emergency law 2020-290 of March 23, 2020² (the Emergency Law). The Emergency Law provides that the state of health emergency will last until May 24, 2020, unless subsequently extended.

One of the Ordinance's goals is to ensure that distressed companies are not forced into insolvency proceedings (*redressement judiciaire or liquidation judiciaire*) by creditors or other third parties and retain the ability to apply for the court proceedings, including court supervised restructuring proceedings (*mandat ad hoc or conciliation*), that are best suited to their needs.

To this end, the Ordinance determines a period that starts on March 12, 2020 and ends on the date on which the state of health emergency ends increased by three months (the Shielded Period). The Shielded Period currently runs from March 12, 2020 until August 24, 2020. It will last longer if the state of health emergency is extended. The Ordinance provides that, if on March 12, 2020 a company was not required under French law to either apply for conciliation or insolvency proceedings then, until the end of the Shielded Period:

- The company will be entitled to apply for court-supervised restructuring proceedings, *sauvegarde* or insolvency proceedings
- No one will be able to force the company into insolvency proceedings
- If, absent the Ordinance, the company would have been required to apply either for conciliation proceedings or for insolvency proceedings at a date falling within the Shielded Period, its management will not incur any liability for failing to do so provided that they make such application within 45 days from the end of the Shielded Period

Under French law, unmodified by the Ordinance, a company is required to either apply for conciliation or insolvency proceedings (*redressement judiciaire or liquidation judiciaire*) within at most 45 days of finding

itself in suspension of payments (*cessation des paiements*), i.e. unable to pay its liabilities that are due and payable out of its cash and cash equivalent assets.

The Ordinance allows a company that, during the Shielded Period, becomes in suspension of payment for 45 days or more to choose whether to apply for:

- Proceedings that previously required no suspension of payments (*mandat ad hoc* and *sauvegarde*)
- Proceedings that previously required a suspension of payments (*redressement judiciaire* or *liquidation judiciaire*)
- Conciliation proceedings, for which a company could previously apply within up to 45 days of becoming in suspension of payments

Other requirements, apart from the suspension of payments, continue to apply. Companies should expect heightened scrutiny on whether or not these other requirements are met in light of (i) the various measures taken by the French government to help businesses and (ii) the constraints imposed by the state of health emergency that may in practice result in focusing available resources on emergencies. They should also expect courts to convey more forcefully which proceedings they consider to be more appropriate.

In order to allow proceedings to take place, the Ordinance grants extensive powers to each commercial court to organize the way in which it will handle applications to commence proceedings. Most commercial courts have already put in place dedicated email addresses and are setting up videoconference systems in order to hold hearings where they are required (*sauvegarde* and insolvency proceedings).

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Endnotes

- ¹ Ordinance n° 2020-341 of March 27, 2020 adapting the rules relating to businesses and farming businesses facing difficulties to the state of health emergency and modifying certain procedural rules in criminal matters, published in the French Official Gazette on March 28, 2020.
- ² Emergency Law n° 2020-290 of March 23, 2020 in order to face the covid-19 epidemic, published in the French Official Gazette on March 24, 2020.