



Covid-19 pandemic - Interim rules applicable to general meetings and meetings of collegiate corporate bodies of French unlisted companies

22 April 2020

Following the entry into law of the Health Safety Emergency Law No 2020-290 of 23 March 2020, French Order No 2020-321 of 25 March 2020 (as supplemented by French Decree 2020-418 of 10 April 2020) has adapted the rules governing shareholder meetings and meetings of collegiate corporate bodies of French unlisted companies to address difficulties caused by the Covid-19 pandemic.

You are the legal representative, chairman or a member of a collegiate corporate body of a French unlisted company and you need to convene a shareholder meeting or another meeting of a collegiate corporate body of your company.

A physical meeting is not possible due to the Covid-19 pandemic restrictions. What are your options if the meeting cannot be delayed?

1. The articles of association and the corporate form of your company provide one or more alternative means for holding such meetings.

You should review the articles of association of your company as, depending on the corporate form of your company, its articles may provide an alternative means of convening meetings of collegiate corporate bodies: for example by videoconference, conference call, written consultation (*consultation écrite*) or unanimous act (*acte unanime*). You should use the most appropriate alternative process provided for in the articles and you must comply with the rules they contain in relation to the process and decisions to be taken.

(a) If your company is a French *société anonyme*, then even if French company law authorises board meetings and shareholder meeting to be held by alternative means for certain types of decisions, the articles of association must expressly provide for such alternative means if you wish to organise, for example, a conference call or a videoconference.

(b) If your company is a French *société par actions simplifiée*, it is most likely that the articles of association will provide for electronic means of convening meetings or provide for decisions to be made other than during a physical meeting.

2. The articles of association or the corporate form of your company do not provide an alternative means for holding such meetings, or provide for an alternative means that cannot easily be implemented due to the Covid-19 pandemic restrictions.

You should consider whether you are able to apply the interim rules provided by French Order No 2020-321 of 25 March 2020, as supplemented by French Decree 2020-418 of 10 April 2020.

When?

The interim rules apply to meetings to be held between 12 March 2020 and 31 July 2020, although it is possible that they may be extended to later meetings by a future Decree (but not beyond 30 November 2020).

Which companies?

The interim rules apply to all French listed and unlisted companies, whatever the corporate form, but we will focus below on unlisted companies.

Which meetings?

The interim rules apply to (i) shareholder meetings and meetings of bondholders and other securityholders, and to (ii) meetings of boards of directors, supervisory boards and management boards and of any other collegiate managing or supervisory corporate body whatever the name of such body.

Shareholders meetings, meetings of bondholders and other securityholders

(a) If the company's ability to hold the meeting at the relevant location and on the relevant date as scheduled is inhibited by an "administrative measure that limits or prohibits collective gathering for health safety reasons", the meeting can be held without any physical attendance. We consider that the relevant administrative measure is the prohibition up to 11 May 2020¹ of meetings (i) of more than 100 persons in application of Article 7 of the Decree 2020-293 of 23 March 2020 or (ii) taking place in certain facilities that are subject to specific rules applicable to them as facilities that are open to the public (*établissements recevant du public*) and listed in Article 8 of the same Decree. This means that if a meeting that fulfils the requirements set out above is proposed to take place before the 11 May deadline, the company can hold the meeting without physical attendance. Please note that if you are contemplating convening a meeting during such period with less than 100 persons and in premises that are not listed in Article 8 of Decree 2020-293 of 23 March 2020, you should consider carefully whether you are able to benefit from these interim rules. If the meeting is scheduled after the 11 May deadline, the ability to hold this meeting without physical attendance will depend on the decision by the French government to extend the 11 May deadline.

(b) Where the circumstances in (a) above apply, then irrespective of what is provided for in the articles of association or the applicable securities issuance contract, you can require that participants to the meeting: (i) vote by post prior to the meeting, and/or (ii) attend the meeting by conference call or videoconference (in this case, the interim rules specifically provide that participants shall be included in the attendance rate). The telecommunication means mentioned above must enable: (i) participants who are speaking to be heard and (ii) the deliberations to be broadcast continuously and in real time. Irrespective of what is provided for in the articles of association and if your company is a *société anonyme*, you can also set up a dedicated website² to enable remote voting at the general meeting. In addition, if permitted by law, you can request that decisions be taken by written consultation³, provided that such written consultation is passed in such conditions (notably, deadlines) that ensure collegiality of the deliberations on the relevant matters.

(c) If the formalities for convening a meeting as a physical meeting have already been complied with in whole or in part, you must inform the participants of the changes to the format of the meeting by all

appropriate means no later than 3 days prior to the meeting, even if any formalities remain outstanding. In such circumstances, there are no additional formalities to comply with and the meeting will be considered properly convened.

(d) In the event that votes by post and/or proxies are permitted by French company law or the company's articles of association, the company must follow any voting instruction or proxy sent to it by email. French company law already provided for this by default for companies which are *sociétés anonymes*. If your company is a *société par actions simplifiée*, the articles of association may already authorise the use of such electronics means.

(e) Where your company is a *société anonyme*, the provisions described in (b) above will apply as follows:

(i) The Decree 2020-418 of 10 April 2020 has brought forward the deadline prior to the general meeting for the sending of any proxy granted to another participant or spouse. This enables the company to refuse any proxy it receives after the fourth day prior to the general meeting. The proxyholder must also send the voting instruction to the company before the same deadline. The relevant provision of this Decree seems to require that the proxyholder vote only by electronic means on the company's website, but there are reasons to believe that companies could also accept any voting instruction from a proxyholder received by email (which is the same as authorising the proxyholder to vote by post). The deadline of four days prior to the general meeting is not consistent with the deadline mention in (c) above for informing shareholders (i.e. 3 days prior to the general meeting). It can be assumed that this discrepancy is an oversight of the French government given the urgency with which the Decree was passed into law, which should not have any major consequence in practice as the company will in all likelihood be able to inform shareholders more than 3 days in advance of the general meeting.

¹ The initial deadline provided for by the Decree 2020 -293 of 23 March 2020 (15 April 2020) was extended to 11 May 2020 by Decree 2020-423 of 14 April 2020.

² Article 5 of the Decree 2020-418 of 10 April 2020 refers to Article R. 225-61 of the French commercial Code relating to the implementation by French *sociétés anonymes* of a website to allow remote voting at the general meeting.

³ Article 6 of the Order No 2020-321 of 25 March 2020 only refers to "written consultation", which seems not to include the possibility that all participants sign a unanimous act to take the relevant decision.

(ii) Irrespective of what is provided for in the French Commercial Code and in the articles of association, the company must accept any request by a shareholder who has already voted remotely, sent a proxy or applied for an admission card (*carte d'admission*) or an attendance certificate (*attestation de participation*), to choose another means by which to participate in the general meeting, provided its instructions are received by the company within a period of time consistent with the applicable laws, as adapted by provision outlined in (e)(i) above.

(f) If the chairman cannot be present at the general meeting, a board member or legal representative may be appointed by the board to carry out his/her functions. In addition, if there is no shareholder available for the role of observer (*scrutateur*), the chairman may choose two observers outside the shareholders.

Meetings of boards of directors, supervisory boards and management boards and of any other collegiate managing or supervisory corporate body whatever the name of such body

Irrespective of what is provided for in the articles of association and internal rules (as the case may be), and whatever the decision to be taken by the relevant corporate body:

(a) You can hold meetings of the collegiate corporate bodies (including those relating to the approval of annual accounts for French *société anonymes*) by conference call or videoconference. Those electronic means must enable to (i) participants speaking to be heard and (ii) the deliberations to be broadcast continuously and in real time.

(b) Decisions of collegiate corporate bodies (including those relating to the approval of annual accounts for French *société anonymes*) can be taken by written consultation⁴ provided that such written consultation is passed in such conditions (notably, deadlines) that ensure the collegiality of the deliberations on the relevant matters.

Which decisions?

The interim rules apply to any decision taken by an ordinary or extraordinary shareholder meeting, bondholders and other securityholder meeting and any collegiate corporate bodies, whatever the nature of the decision. The interim rules also apply to any person that has the right to attend the relevant meeting (such as statutory auditors or works council representatives).

Which formalities?

(a) If the relevant body that has the power to convene the general meeting delegates that power to a legal representative, such delegation of authority must be in writing and must specify the duration of the delegation of authority as well as the identity and scope of authority of the delegate.

(b) The minutes of the meeting must specify that the meeting was held in accordance with the interim rules and if applicable, the relevant administrative measure that restricts or prohibits collective gatherings.

Key Contacts



Guy Benda
Partner, Corporate
T +33 1 44 56 44 27
E guy.benda@freshfields.com



Guillemette Burgala
Partner, Corporate
T +33 1 44 56 29 80
E guillemette.burgala@freshfields.com



Arnaud Mouton
Senior Associate, Corporate
T +33 1 44 56 27 22
E arnaud.mouton@freshfields.com

⁴ Article 9 of the Order No 2020-321 of 25 March 2020 only refers to “written consultation”, which seems not to include the possibility that all participants sign a unanimous act to take the relevant decision.

freshfields.com

This material is provided by the international law firm Freshfields Bruckhaus Deringer LLP (a limited liability partnership organised under the law of England and Wales) (the UK LLP) and the offices and associated entities of the UK LLP practising under the Freshfields Bruckhaus Deringer name in a number of jurisdictions, and Freshfields Bruckhaus Deringer US LLP, together referred to in the material as 'Freshfields'. For regulatory information please refer to www.freshfields.com/en-gb/footer/legal-notice/.

The UK LLP has offices or associated entities in Austria, Bahrain, Belgium, China, England, France, Germany, Hong Kong, Italy, Japan, the Netherlands, Russia, Singapore, Spain, the United Arab Emirates and Vietnam. Freshfields Bruckhaus Deringer US LLP has offices in New York City and Washington DC.

This material is for general information only and is not intended to provide legal advice.