



COVID-19 CORPORATE NEWSLETTER

**APPROVAL OF FINANCIAL STATEMENTS
ORDINANCE NO. 2020-318 OF 25 MARCH 2020
EXTENSION OF THE DEADLINE FOR THE PREPARATION,
CLOSING, AUDIT, REVIEW, APPROVAL AND
PUBLICATION OF THE FINANCIAL STATEMENTS**

6 APRIL 2020

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Of the 25 ordinances issued by the government in the context of the Covid-19 outbreak on 25 March 2020, two specifically concerned corporate law.

The first introduced flexibility concerning the holding of general meetings and other corporate bodies of legal persons or other entities (see our previous publication on the subject). The idea here was to avoid a blockage in the functioning of companies during containment.

A second ordinance - No. 2020-318 of 25 March 2020 - aims this time to adapt the rules on the preparation, closing, audit, review, approval and publication of the financial statements of these same legal persons or entities, by extending the applicable deadlines. It enables companies to alleviate difficulties in preparing financial statements and/or auditing during the period of the health emergency.



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The scope of application is very broad and concerns any private law entity, with or without legal personality (civil and commercial companies, EIGs, cooperatives, mutuals, associations, foundations, *sociétés en participation*, etc.).

1. Approval of financial statements

Article 3 of the ordinance automatically extends by 3 months the deadlines for approving the financial statements and the documents attached thereto (or the deadline for convening the meeting to approve them) of any entity, whether such deadlines are provided for by law or the bylaws.

For a company closing its accounting period on December 31, 2019 subject to the obligation to approve its financial statements within 6 months of such closure, the deadline is therefore extended until September 30, 2020 without the need to apply to the Commercial Court for such an extension.

**Points for attention:**

By extending the deadline for approving the financial statements, the ordinance de facto extends the deadline for closing the accounting books in the SA or other entities in which only a deadline for approval is provided.

However:

- the ordinance does not regulate the situation of companies (e.g. an SAS) which would have provided a specific deadline in their bylaws for closing their accounting books;
- moreover, if the ordinance derogates from the law or the bylaws, it does not provide for the situation where the deadline for approving the financial statements results from a shareholders' agreement.



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Two clarifications as to the entities concerned:

- The extension does not apply to entities that have appointed an auditor when the latter has issued its report on the financial statements before March 12, 2020; the auditor's report constitutes assurance that the financial statements have been prepared and certified and that there is therefore nothing to prevent their approval; these entities will therefore be able to benefit from the provisions of the ordinance No. 321-2020 facilitating the holding of their general meeting; and
- these provisions are applicable to entities closing their accounting books between September 30, 2019 and June 23, 2020 (one month after the date of cessation of the health emergency declared by Article 4 of the Emergency Law of March 23, 2020).

In view of the new applicable deadline, companies will have to be vigilant in their relationship with their auditor if they wish to approve their financial statements earlier (e.g. for distribution or if they are included in the scope of consolidation of a foreign parent company that does not benefit from this flexibility).



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2. Preparation of provisional management documents

In accordance with the French Commercial Code, commercial companies exceeding certain thresholds are required to prepare provisional management documents (a statement of realizable and available assets and current liabilities, a provisional profit and loss statement, a cash flow statement and a provisional financing plan).

These documents must be prepared or reviewed within 4 months of the end of each semester. The ordinance extends this deadline by 2 months.

These provisions shall apply to documents relating to semesters closed between November 30, 2019 and June 23, 2020 (expiry of a period of one month after the date of cessation of the public health emergency).



3. Presentation of financial statements for SA with a management and supervisory boards

Pursuant to Article L.225-68, paragraph 5, of the French Commercial Code, the Management Board of a SA shall present the annual financial statements to the Supervisory Board within three months of the end of each accounting period.

The ordinance extends this deadline by three months, except for companies that have appointed an auditor when the latter has issued his report on the financial statements before March 12, 2020.

These provisions are applicable to companies closing their accounting books between 31 December 31, 2019 and June 23, 2020 (expiry of a period of one month after the date of cessation of the health emergency).



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4. Other provisions

The deadline of three months applicable to the preparation by the liquidator of a company of the annual financial statements and a written report (Article L.237-25, paragraph 1, of the French Commercial Code) is extended by two months.

For private-law entities receiving public subsidies, the six-month deadline provided for producing a financial report certifying that the expenditures incurred are consistent with the purpose of the subsidies is extended by three months.



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