

**Temporary adaptation of the rules relating to distressed companies  
(updated on 10 December 2020)**

Faced by the feared rise of bankruptcies and their employment consequences, in addition to the government measures already adopted since 12 March 2020 to reflect the consequences of the public health emergencies for private companies and agricultural businesses and to avoid massive job destruction, by an *ordonnance* dated 20 May 2020, the French government decided to temporarily amend French distressed companies law with the objective of "*making it more effective in dealing with distressed companies in light of the specific characteristics due to the exceptional nature of the health crisis*".

Whilst the latest amendments to French distressed companies law were more creditors-oriented, the recent amendments show a desire to, above all, preserve companies by (i) allowing an earliest detection of distressed companies, (ii) strengthening the conciliation proceedings through measures suspending individual legal actions and broadening the eligibility conditions to the accelerated safeguard proceedings, (iii) facilitating the adoption or amendment of the safeguard or reorganization plans, (iv) allowing the financing of the observation period (*période d'observation*) and the safeguard or reorganization plans by introducing a new privilege and (v) when it appears to be the preferable solution to protect employment, facilitating the transfer of the business to the directors or shareholders.

Following the second lockdown decided end of October 2020, by an *ordonnance* dated 25 November 2020, the French Government has decided to partly strengthen the efforts started end of March 2020 with the aim of taking into account the changes made to the health and economic situation. Furthermore, the applicability of some of the measures has been recently extended up to **31 December 2021**. This extension aims to allow distressed companies (whose number is expected to increase during 2021) to continue to benefit from the said measures.

**1. General measures**

**Strengthening of the alert procedure**

*(applicable until 31 December 2021 included)*

- When it appears to the auditor (*commissaire aux comptes*) that the urgency requires the adoption of immediate measures and that the director refuses to adapt them or proposes measures that the auditor considers insufficient, the auditor **can inform the President of the competent Court as soon as he first informs** the chairman of the board of directors or the chairman of the supervisory board or the manager, as the case may be.

In this case, the auditor shall inform the President of the Court of his findings and actions by any means and without any delay. He shall provide him with a copy of all useful documents as well as all the reasons supporting the insufficiency of the decisions adopted.

The auditor may, on his own initiative or at the request of the President of the Court, communicate to the President of the Court any additional information likely to provide him with accurate information on the economic and financial situation of the company.

- The auditor can also, **and at any time, request to be heard by the President of the Court**. He is released from statutory confidentiality obligation (*secret professionnel*) vis-à-vis the President of the Court.

**Extension of time limits applicable to judicial officers**

*(applicable to ongoing proceedings and proceedings opened between 12 March 2020 and 23 August 2020 included)*

The President of the Court may, at the request of the appointed judicial administrator (*administrateur judiciaire*), the creditors' representative (*mandataire judiciaire*), the liquidator (*liquidateur judiciaire*) or the plan implementation officer (*commissaire à l'exécution du plan*), extend the legal time limits for a five-month period.

## 2. Conciliation proceedings

<p><b>Extended duration of the conciliation proceedings</b></p>	<ul style="list-style-type: none"> <li>- For pending proceedings and proceedings opened between 12 March 2020 and 23 August (included): conciliation proceedings <b>automatically extended for a five-month duration</b>.</li> <li>- For proceedings opened between 24 August 2020 and 31 December 2021 (included): the duration of the conciliation proceedings might be <b>extended, one or more times</b>, at the request of the conciliator. The decision of the conciliator shall be issued on grounds and <b>the duration cannot exceed ten months</b>.</li> </ul>
<p><b>Strengthening the conciliation proceedings and suspending of individual legal actions</b> <i>(applicable to ongoing proceedings until 31 December 2021 included)</i></p>	<ul style="list-style-type: none"> <li>- When a creditor called for participating to conciliation proceedings does not accept, within the time limit determined by the conciliator, the request made by the conciliator to postpone the due date of payment of his claim for the duration of the conciliation proceedings, the debtor can request from the President of the Court who opened the proceedings, with a view, in particular, to secure the cash position: <ul style="list-style-type: none"> <li>• the suspension or prohibition to instigate proceedings condemning the debtor to the payment of a due amount or to the termination of a contract for failure of the debtor to pay a due amount (the deadlines related to the forfeiture (<i>déchéance</i>) or to the termination rights are postponed),</li> <li>• the suspension or prohibition to instigate enforcement proceedings (<i>procédure d'exécution</i>) on movable or immovable properties and distribution proceedings (<i>procédure de distribution</i>) without any attributive effect (<i>effet attributif</i>) prior to the application (the deadlines related to the forfeiture (<i>déchéance</i>) or to the termination rights are postponed),</li> <li>• to defer or postpone the payment of due amounts: the surcharges of interest (<i>majorations d'intérêts</i>) or late payment interest (<i>intérêts de retard</i>) are not incurred within the time limit determined by the judge.</li> </ul> </li> <li>- This new mechanism is applied without prejudice to the debtor's ability to obtain payment facilities (<i>délais de grâce</i>) of two years maximum (C. Civ. art. 1343-5), under some new favorable conditions: until 31 December 2020, the debtor can request from the judge to apply Article 1343-5 of the French Civil Code <b>prior any formal notice being served or legal action being filed</b> by a creditor who did not accept, within the time limit determined by the conciliator, the request made by the conciliator to postpone the due date of payment of his claim (and without any contradictory debate (<i>débat contradictoire</i>)). The judge rules by taking into account the debtor's situation and the creditor's needs.</li> </ul>

## 3. Accelerated safeguard proceedings (AS) and accelerated financial safeguard proceedings (AFS)

<p><b>Facilitate the opening of accelerated safeguard proceedings and accelerated financial safeguard proceedings</b> <i>(applicable between 22 May 2020 and 31 December 2021 included)</i></p>	<ul style="list-style-type: none"> <li>- When the opening of accelerated safeguard proceedings or accelerated financial safeguard proceedings are requested, the required thresholds provided for in Article L. 628-1 paragraph 4 of the French Commercial Code are not applicable (<i>i.e.</i>, accounts certified by an auditor or established by a chartered accountant <u>and</u> 20 employees, 3,000,000 euros (tax excluded) for the turnover <u>or</u> 1,500,000 euros for the balance sheet total).</li> </ul>
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<p><b>Transition to the reorganization proceedings or the judicial liquidation proceedings</b> (applicable between 22 May 2020 and 31 December 2021 included)</p>	<p>If no safeguard plan is adopted within a three-month time period as of the date of the opening judgement, the Court shall, on the request of the debtor, the judicial administrator, the creditors' representative or the Public Prosecutor:</p> <ul style="list-style-type: none"> <li>• opens reorganization proceedings, if the conditions of Article L. 631-1 of the French Commercial Code are met, or</li> <li>• pronounces a judicial liquidation proceedings, if the conditions of Article L. 640-1 of the French Commercial Code are met, (instead of directly ends the proceedings, as provided for in Article L. 628-8 paragraph 2 of the French Commercial Code).</li> </ul> <p>This Court decision ends the proceedings (AS or AFS).</p>
<p><b>4. Safeguard proceedings and reorganization proceedings</b></p>	
<p><b>Communication of the salary claim statements to the AGS (Wages Guarantee Agency)</b> (applicable until 31 December 2021 included)</p>	<p>One version of the statements of salary claims (<i>créances salariales</i>) which trigger the payment of the wages by the entity in charge (the 'AGS') is drawn up by the creditors' representative and provided to the AGS without waiting for the employees' representative or the bankruptcy judge (<i>juge commissaire</i>).</p> <p>If this version does not comply with the statements of salary claims certified by the bankruptcy judge, the creditors' representative will promptly provide the latter to the AGS.</p>
<p><b>Introduction of a Post Money Privilege called "safeguard or reorganization privilege"</b> (applicable to proceedings opened between 22 May 2020 and 31 December 2021 included)</p>	<p><u>Scope of application:</u></p> <ul style="list-style-type: none"> <li>- Contributors of new money to the debtor to ensure the continuation of the company's business and its sustainability can benefit from the safeguard or the reorganization privilege within the limit of their contribution: <ul style="list-style-type: none"> <li>• <b>during the observation period</b> (in this case, the contributions of new money are authorized by the bankruptcy judge. His decision is registered on the register of loans and payment deadlines granted to the debtor (<i>registre des prêts et des délais de paiement consentis au débiteur</i>) held by the clerk at the Court, with the mention of the identity of the author of the contribution and the amount); and</li> <li>• <b>for the implementation of the safeguard or reorganization plan</b> ordered or amended by the Court.</li> </ul> </li> <li>- Contributions granted in the context of a capital increase do not benefit from the safeguard or the reorganization privilege.</li> <li>- The judgment adopting or amending the plan shall mention each constituted privilege and specify the guaranteed amounts.</li> </ul> <p><u>Ranking:</u></p> <ul style="list-style-type: none"> <li>- Creditors benefiting from the safeguard or reorganization privilege are paid for the amount of their contribution: <ul style="list-style-type: none"> <li>• <b>by priority, before all others claims;</b></li> <li>• <b>in the order provided for under paragraph III of Article L. 622-17 and paragraph III of Article L. 641-13</b> of the French Commercial Code, being: <ul style="list-style-type: none"> <li>○ after the salary claims benefiting from the super-priority right of the AGS (<i>superprivilège des salaires</i>), salary claims which arose after the opening judgment and not paid in advance by the AGS, legal costs and fees, claims benefiting from the conciliation privilege (<i>Privilège de</i></li> </ul> </li> </ul> </li> </ul>

	<p>New Money), claims secured by real estate securities (in judicial liquidation proceedings only);</p> <ul style="list-style-type: none"> <li>o opening judgment, included loans and claims resulting from the performance of ongoing contracts and for which the contracting party agreed to receive a deferred payment.</li> </ul> <ul style="list-style-type: none"> <li>- Claims secured by the safeguard privilege cannot be subject to deferred payment maturities or write-off, unless the creditors expressly agreed to them.</li> </ul>
<b>5. Safeguard plans and reorganization plans</b>	
<p><b>Facilitating the adoption of safeguard plans or reorganization plan</b></p> <p><i>(applicable to ongoing proceedings until 31 December 2021 included)</i></p>	<ul style="list-style-type: none"> <li>- At the request of the judicial administrator or the creditors' representative, the bankruptcy judge may reduce from thirty to fifteen days the time limit applied to the individual consultation of the creditors (the failure to reply within this time limit shall be considered as an agreement to the proposals made for the repayment of the debt pursuant to Article L. 626-5 paragraph 2 of the French Commercial Code).</li> <li>- Within the framework of the individual consultation of creditors and the consultation of the general meeting of bondholders, proposals made for the repayment of debts and any answer to these proposals may be communicated by any means enabling the creditors' representative to determine with certainty the date of the receipt.</li> <li>- When commitments for repayment of debts can be based on a certificate issued from the chartered accountant or the auditor, they relate to claims admitted or undisputed for which the creditor filed a proof of claim, as well as to identifiable/estimated claims, in particular regarding claims for which the time limit to declare them has expired (potential debts).</li> </ul>
<p><b>Duration of safeguard and reorganization plans</b></p> <p><i>(applicable to ongoing proceedings and proceedings opened between 12 March 2020 and 23 August 2020 included)</i></p>	<ul style="list-style-type: none"> <li>- For pending proceedings and proceedings opened between 12 March 2020 and 23 August 2020 (included), the duration of the safeguard or reorganization plans could be extended following a request filed to the Commercial Court during 12 March 2020 and 23 August 2020 (included) (i) either by the plan implementation officer, <b>for a five-year duration</b> or (ii) the public prosecutor's office, <b>for a maximum period of one year</b>.</li> <li>- The duration of the safeguard or reorganization plans could be extended <b>for a maximum duration of one year</b> following a request filed to the Commercial Court as from 24 August 2020 and during a period of six months, by the plan implementation officer, or the public prosecutor's office.</li> </ul> <p>These extensions may be granted without complying with the procedure usually requested for any substantial modification of the plan initially adopted by the Court.</p>
<p><b>Other situation of extension of the duration of safeguard plans and reorganization plans</b></p> <p><i>(applicable to ongoing proceedings and until 31 December 2021 included)</i></p>	<p>Pursuant to <i>Ordonnance</i> No. 2020-596 dated 20 May 2020, new assumptions for the extension of the duration of the safeguard plan or the reorganization plan are introduced in addition to those mentioned above:</p> <ul style="list-style-type: none"> <li>- Possible extension of the duration of the adopted safeguard or reorganization plans <b>for a maximum time period of two years</b> upon request filed by the Public Prosecutor or the plan implementation officer.</li> </ul> <p><b>This two-year time period may be added to the term of the automatic and optional extensions set out above.</b></p> <p>For each case of extension of the duration of the plan, the President of the Court or the Court shall adapt the payment deadlines initially</p>

	<p>adopted by the Court to the new duration of the extended plan, by deviating, if necessary, from them.</p> <p>Within the limit of the term of the extended plan, the President of the Court or the Court may also apply the following provisions (Article 1343-5 paragraph 1 to paragraph 3), <i>i.e.</i>:</p> <ul style="list-style-type: none"> <li>• to postpone or schedule the payment of due amounts for a maximum of two years, depending on the situation of the debtor and the needs of the creditor;</li> <li>• to order that the amounts corresponding to the deferred maturities are subject to a reduced interest rate at least equal to the legal rate, or that the payments are first charged on the capital;</li> <li>• to require the debtor to perform acts to facilitate or secure the payment of the debt in order to grant such measures.</li> </ul> <p>- The duration of the plan may be extended <b>from ten to twelve years in the event of a substantial amendment</b> (<i>modification substantielle</i>) in the objectives or the means of the plan.</p> <p>When the request for the substantial amendment of the plan is related to the terms and conditions of the debt repayment, the clerk shall inform the concerned creditors by registered letter with acknowledgement of receipt. The lack of response from the concerned creditors shall be considered as an agreement to the proposed amendments except for debt write-off or for debt conversion into equity.</p>
<p>6. Facilitated disposal plans</p>	
<p><b>Disposal plans and waiver of incompatibilities</b></p> <p><i>(applicable to ongoing proceedings and until 31 December 2020 included)</i></p>	<ul style="list-style-type: none"> <li>- The request authorizing <i>de jure</i> directors (<i>dirigeants de droit</i>) or <i>de facto</i> directors (<i>dirigeants de fait</i>) (and their parents or relatives) to acquire the company can be filed directly by <b>the debtor or the judicial administrator</b>, where the proposed disposal enable to secure employments.</li> <li>- Hearings are held with the presence of the Public Prosecutor (failure to do so would entail the nullity of the judgment). The Court rules by a specially motivated judgment, after consulting the controllers (<i>créanciers contrôleurs</i>). The appeal filed by the Public Prosecutor against the Court decision adopting the disposal plan shall have suspensive effect (<i>effet suspensif</i>).</li> <li>- Regarding all disposal plans, the time limit for convening the contracting parties and the creditors holding security interest is reduced from fifteen days to eight days before the date of hearings.</li> </ul>
<p>7. The debtor's recovery</p>	
<p><b>Encouraging the debtor's recovery</b></p> <p><i>(applicable to ongoing proceedings and no later than 17 July 2021)</i></p>	<ul style="list-style-type: none"> <li>- References to decisions adopted in the context of safeguard or reorganization proceedings are automatically deleted from the trade and companies register (<i>registre du commerce et des sociétés</i>) at the end of a one-year time period as of the date of the plan's court approval (instead of two years), when the plan is still ongoing.</li> <li>- These measures are applicable to ongoing proceedings and proceedings opened until the date of entry into force of the <i>Ordonnance</i> transposing into French law the European Directive No. 2019/1023 on restructuring and insolvency dated 20 June 2019, and no later than 17 July 2021 included.</li> </ul>

## Sources

### Sources

- *Ordonnance* No. 2020-341 dated 27 March 2020 adapting the rules relating to the difficulties of companies and agricultural businesses to the public health emergency and amending certain provisions of criminal procedure.
- *Ordonnance* No. 2020-595 dated 20 May 2020 amending *Ordonnance* No. 2020-304 dated 25 March 2020 adapting the rules applicable to the courts of the judicial order ruling in non-criminal matters and to co-ownership managing agent contracts.
- *Ordonnance* No. 2020-596 dated 20 May 2020 amending the rules relating to the difficulties of companies and agricultural businesses due to the covid-19 epidemic.
- *Ordonnance* n° 2020-1443 dated 25 November 2020 amending the rules relating to the difficulties of companies and agricultural businesses due to the covid-19 epidemic. Report to the President of French Republic relating to this *ordonnance*.
- Article 124 of the Law n° 2020-1525 dated 7 December 2020 for the acceleration and simplification of the public action.
- Report n° 3347 dated 17 September 2020 of the Special Committee of the French National Assembly in charge of reviewing the draft of the Law n° 2020-1525 for the acceleration and simplification of the public action adopted by the French Senate (pages 224, 225 and 562).