



Flash Covid-19 - Economic law team

Inter-company credit and Covid-19: updates on payment delays during the health crisis

The consequences of the cessation of activity of a significant proportion of companies due to the Covid-19 epidemic are already being felt on inter-company payment terms. Indeed, many sectors are seeing longer payment terms and their cash-flow is being heavily impacted.

1. What has the Health Emergency Law provided for in this respect?

In order to prevent as far as possible business failures linked to the current crisis, the emergency Law n° 2020-290 of 23 March 2020 aiming at dealing with the covid-19 epidemic provides in particular that the government may, by order, take any measure «modifying, with due respect for reciprocal rights, the obligations of legal persons carrying out an economic activity with regard to their customers and suppliers as well as cooperatives with regard to their member-cooperators, particularly in terms of payment periods and penalties and the nature of the counterparties (...)». The government therefore has three months to lay down the rules for a derogatory framework for payment terms in order to help those of the companies which are the most affected by the current health crisis.

2. What can we expect from the forthcoming ordinance on this matter?

It is likely that the rules currently provided for in Article L. 441-10 of the French Commercial Code will be relaxed. However, this relaxation will probably not be achieved by extending the deadlines without distinction according to the sector or the size of the companies. For example, it may be left to the professional organisations to negotiate derogatory sectoral agreements within a strictly defined framework.

3. What until the publication of the ordinance?

Caution is called for. Until the publication of a possible ordinance, the legal framework in force theoretically continues to apply. Companies therefore take a risk in deviating from the legal ceilings, which are of public order. The Minister of the Economy and Finance, Bruno Le Maire, has already announced that non-compliance with the rules on payment terms, particularly on the part of large companies, would preclude the granting of a State guarantee for bank loans granted to companies under the Decree of 23 March 2020 (Press conference by Bruno Le Maire on 24 March 2020), although this condition is not included in the text of the Decree.

4. What can companies that are victims of late payments do?

Companies currently facing serious and immediate payment difficulties from their customers are invited to turn to their professional organisations, which can refer the matter to the «crisis committee» set up jointly by the Ministry of the Economy and the Banque de France to deal with the most difficult cases amicably.

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