

Emergency law No. 2020-290 dated 23 March 2020 aimed at dealing with the covid-19 epidemic

The "Emergency law No. 2020-290 dated 23 March 2020 aimed at dealing with the Covid-19 epidemic" was adopted by the French Parliament and published in the French Official Journal on 24 March 2020 (the "Law"). It can be read in full [here](#).

This is an enabling law whose purpose is to authorise the French government, in the current unprecedented context of urgency, to take measures that in principle fall within the scope of the law. Among these measures, some are likely to have a particular impact on the real estate sector, in particular by (i) making it possible to defer, in certain cases, or to stagger the payment of professional and commercial rents, (ii) modifying the provisions of certain private law contracts, and (iii) adapting administrative and judicial deadlines and procedures. The orders issued by the government to detail these measures under the Law were presented to the Council of Ministers yesterday.

1. DEFERRAL OR STAGGERING THE PAYMENT OF PROFESSIONAL AND COMMERCIAL RENTS

1.1 Specific provisions of the Law

The Law provides that:

"[...]

l. Under the conditions laid down in Article 38 of the French Constitution, the government may issue, within three months of the publication of this law, any measure, which may come into force, if necessary, as from 12 March 2020, falling within the scope of the law and that may [...]:

g) Allow the full deferral or staggering of the payment of rents, water, gas and electricity bills relating to professional and commercial premises and waive financial penalties and the suspensions, interruptions or reductions in supply that may be applied in the event of non-payment of such bills, for micro-enterprises, within the meaning of Decree No. 2008-1354 of 18 December 2008 relating to the criteria for determining the category to which a company belongs for the purposes of statistical and economic analysis, whose activity is affected by the spread of the epidemic; [...]¹.

1.2 Immediate comments

Our immediate comments on these provisions are as follows:

- the Law does not provide for mandatory cancellation of rents but only for "deferral" or "staggering" (the terms of which will have to be specified by the government in the corresponding ordinance), nor for provisions relating to the duties chargeable to lessees;

¹ Article 11 of the Law. Underlining by Gide.

- the only beneficiaries of this provision are “micro-enterprises” whose activity is “affected by the spread of the epidemic”, it being further specified that “micro-enterprises” are defined by decree as being companies that “on the one hand employ under 10 people” and “on the other hand post an annual turnover or a balance sheet total not exceeding 2 million euros”²;
- the personal situation of lessors is not taken into account by these provisions.

1.3 Private initiative of associations and federations representing lessors

The measures to be taken by the government in this respect must be considered separately from the initiative announced by the associations and federations representing lessors, which are calling on their members to take the following steps in favour of VSEs (“micro-enterprises”) and SMEs³, i.e. businesses that “on the one hand employ under 250 people” and “on the other hand post an annual turnover not exceeding 50 million euros or a balance sheet total not exceeding 43 million euros”⁴:

- a. *“as regards VSEs and SMEs belonging to one of the sectors whose activity is stopped pursuant to section I of Article 1 of the Order of 15 March 2020:*
 - *rents and duties will be requested monthly instead of quarterly;*
 - *the collection of rents and duties is suspended as of 1 April 2020 and for the subsequent periods of cessation of activity imposed by the Order;*
 - *when business resumes, such rents and duties will be subject to deferred or staggered payment without penalty or interest on arrears, and will be adapted to the situation of the companies concerned;*
 - *for VSEs/SMEs, these measures will be applied automatically and without taking into account their specific situation.*
- b. *as regards those companies whose business, while not fully stopped, has been strongly impacted by the health crisis, their situation will be sympathetically analysed on a case-by-case basis, in consideration of their real economic condition*⁵.

² Article 3 of Decree no. 2008-1354 dated 18 December 2008.

³ Press release published by various French associations and federations (ASPIM, FSIF, Caisse des Dépôts, UNPI, CNCC, AFG) representing lessors pertaining to the measure for the suspension of the payment of rents to benefit VSEs and SMEs, dated 20 March 2020.

⁴ Article 3 of Decree no. 2008-1354 dated 18 December 2008.

⁵ Press release published by various French associations and federations (ASPIM, FSIF, Caisse des Dépôts, UNPI, CNCC, AFG) representing lessors pertaining to the measure for the suspension of the payment of rents to benefit VSEs and SMEs, dated 20 March 2020.

2. MODIFICATION OF PROVISIONS IN CERTAIN PRIVATE LAW CONTRACTS

2.1 Specific provisions of the Law

The Law provides that:

"[...]

I. Under the conditions laid down in Article 38 of the Constitution, the government may issue, within three months of the publication of this law, any measure, which may come into force, if necessary, as from 12 March 2020, falling within the scope of the law that may [...]:

c) Amend, with due respect for reciprocal rights, the obligations of legal persons governed by private law carrying out an economic activity with regard to their clients and suppliers, and of cooperatives with regard to their co-operative partners (associés-coopérateurs), in particular in terms of payment periods, penalties and nature of the considerations, especially as regards the contracts for the sale of travel and travel packages mentioned in sections II and III of Article L. 211-14 of the French Tourism Code and services relating to educational stays for minors organised under Article L. 227-4 of the French Social Action and Family Code [...]⁶.

2.2 Impact on certain private law contracts

Given the very general scope of this provision, it could concern a vast majority of companies operating in the real estate sector, it being noted that, in most cases, the "clients and suppliers" referred to in the text are actually "*legal persons governed by private law carrying out an economic activity*".

It will enable the government to unilaterally and retroactively (as of 12 March 2020) modify via general orders the provisions of certain private law contracts subject to French law.

These changes - which could relate in particular to "*payment periods and penalties*" and "*the nature of the considerations*" - will be defined by ordinance by the Government, within the (particularly broad) limits of the legislative capacity. The ordinance will need to be read carefully in the light of the infringements which it may cause to the binding force of contracts.

It should be noted that these measures could impact, in addition to existing agreements, the effectiveness and/or scope of certain legal foundations of common law which could be invoked in contractual matters in the present situation (force majeure, unforeseeable circumstances, good faith, etc.).

⁶ Article 11 of the Law. Underlining by Gide.

3. ADJUSTING TIME FRAMES AND DEADLINES FOR ADMINISTRATIVE AND LEGAL REMEDIES

The French government is authorised by the Law to take any measure to:

- *“adapt the time limits and procedures that apply to the filing and processing of declarations and requests submitted to the administrative authorities, the time limits, terms and conditions of consultation by the public or any authority or body, prior to a decision being rendered by an administrative authority, and, where applicable, the time frames within which such decision can or must be rendered or may arise, as well as the time frames required to carry out controls, work and directives of any nature imposed by laws and regulations, unless they derive from a court decision”⁷;*
- *“adapt, interrupt, suspend or defer set deadlines, which otherwise, if not met, result in nullity, voidness, foreclosure, expiry of the applicable statute of limitations, unenforceability, forfeiture of a right, termination of an approval or authorisation or cessation of a measure, with the exception of measures involving deprivation of liberty or sanctions. These measures are applicable as of 12 March 2020 and may not exceed by more than three months the expiration of the administrative police measures taken by the French government to slow down the spread of the Covid-19 virus”⁸;*
- *“adapt, interrupt, suspend or defer set deadlines, which otherwise, if not met, result in nullity, voidness, foreclosure, expiry of the applicable statute of limitations, unenforceability, forfeiture of a right, termination of an approval or authorisation or cessation of a measure, with the exception of measures involving deprivation of liberty or sanctions. These measures are applicable as of 12 March 2020 and may not exceed by more than three months the expiration of the administrative police measures taken by the French government to slow down the spread of the Covid-19 virus”⁹.*

Although they are not expressly provided for by the Law, it is not excluded at this stage that new measures for interrupting/extending remedy deadlines (against court decisions or town planning authorisations, for instance) will be adopted.

4. OTHER SPECIFIC MEASURES PROVIDED BY THE LAW

The Law contains other provisions that may have an impact on certain activities in the real estate sector. These include, but are not limited to, the government’s authority to take action to:

- *“adapt the provisions of Book VI of the French Commercial Code and those of Chapter I of Title V of Book III of the Rural and Maritime Fishing Code in order to facilitate the preventive handling of the consequences of the health crisis on businesses and farms”;*
- *“simplify, further specify and adapt the rules relating to the drawing-up, finalisation, audit, review, approval and publication of accounts and other documents that legal persons governed by private law and other entities are required to file or publish, in particular those*

⁷ Article 11 I 2° a) of the Law.

⁸ Article 11 I 2° b) of the Law.

⁹ Article 11 I 2° c) of the Law.

rules pertaining to time frames, as well as adapt the rules relating to the allocation of profits and the payment of dividends”;

- *“simplify and adapt the conditions under which meetings and collegiate governing bodies of legal persons governed by private law and other entities meet and deliberate, as well as the rules pertaining to general meetings”;*
- *“adapt the law applicable to building co-ownership (copropriété) to take into account, in particular for the appointment of the property managers (syndics de copropriété), the impossibility or difficulty in convening general meetings of co-owners”.*

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