

# Questions Clients Are Asking

## QE Paris Client Alert

### COVID-19 : The French Government Intends Extending The Rules Relating To Statutes Of Limitations And Debarment

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|----|---|---|
| 1) | A moratorium on procedural deadlines, appeal periods and statutes of limitations..... | 1 |
| 2) | Continued judicial services in urgent civil and commercial matters .....              | 2 |
- 

The peculiar context of the pandemic and related restrictions raises the issue of the continuity of judicial services, of the rights of litigants and of procedural foreseeability. As a response to these questions, a draft bill was presented to the Senate, on the evening of 18 March 2020, regarding a proposed “Emergency Law No. 376 to address the Covid-19 epidemic”. The authorities are contemplating two sets of initiatives in this context: a moratorium on procedural deadlines, appeal periods and statutes of limitations (1) and maintaining civil and commercial judicial services for urgent matters (2).

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#### 1) A moratorium on procedural deadlines, appeal periods and statutes of limitations

Following the French President and Prime Minister’s announcements, a circular was issued on 14 March 2020 to adjust criminal and civil courts’ activities in light of the measures implemented to prevent and fight the Covid-19 pandemic. In this circular, the Justice Minister issued a reminder that “*as a matter of law, judges are authorized to extend court-imposed procedural deadlines*”, referring by way of example to Pre-trial judges for disputes of EUR 10,000 and more before the Civil Court (*Tribunal judiciaire*), and Pre-trial Counsellors in appeal proceedings.

Many risks and uncertainties remained to be addressed. In particular, the exceptional measures taken in relation to the Covid-19 pandemic are likely to prevent parties from meeting deadlines for filing appeals and statutes of limitations on new claims. Similarly, the so-called “Magendie” mandatory deadlines in appeal proceedings are not adjustable and, if not complied with, result in the inadmissibility of the appeal (for the appellant) or of the first defence brief.

In this context, the draft “Emergency Law No. 376 to address the Covid-19 epidemic” was first presented to the Council of Ministers on 18 March 2020 and filed with the Senate’s bureau that same evening. It will be examined according to accelerated parliamentary procedure. Article 7 of this draft notably aims to empower the Government, in view of addressing the administrative and judicial consequences of the propagation of the Covid-19 virus, to adopt, by way of Ordinance, “*any measure* [...]”

*b) To adapt, interrupt, suspend or extend the term of deadlines that are sanctioned by nullity, lapsing, foreclosure, limitation, unenforceability, cessation of a measure or loss of rights, loss of an accreditation or of an approval, except as regards custodial sentences and sanctions. Such measures shall be applicable as of 12 March 2020 for a duration not exceeding three months after the end of the administrative measures implemented by the Government to hinder the propagation of the Covid-19 virus.”*

The stated purpose of the measure is thus to implement a genuine moratorium on deadlines, appeals and statutes of limitations, that would take retroactive effect on 12 March 2020. While the wording of the draft bill is broad, it will of course be necessary to further analyse the actual provisions of the Ordinance that will be taken after the likely passing of the bill, to check on a case-by-case basis whether a situation is covered and to assess whether a litigant runs any risk by not taking action, be it only on a conservative basis. We will provide an update once the Ordinance has been made public, which is expected to occur during the Council of Ministers on 24 March 2020.

## **2) Continued judicial services in urgent civil and commercial matters**

The draft “Emergency Law No. 376 to address the Covid-19 epidemic” forms part of various steps taken since the beginning of the crisis to ensure the continuity of judicial services and its adaptation to the preventive measures taken to fight the Covid-19 virus. This adaptation has mainly been implemented through the Justice Minister’s circular of 14 March 2020 and the implementation of continuation plans within the various Courts.

While there are differences from one Court to another, a common feature is a limitation on the Court’s activities, focusing on urgent disputes. Thus, taking the Parisian Courts as an example in civil and commercial matters:

Within the Paris Civil Court (*Tribunal judiciaire*), all hearings on the merits and in expedited proceedings have been cancelled. Decisions due to be handed down as of Tuesday 17 March 2020 have been postponed indefinitely. The Court is inaccessible, both physically and by telephone. The parties are not required to take any steps and communications via the electronic platform (RPVA) are not being processed. Only exigent civil emergencies, in expedited or ex parte proceedings, are being processed as of Monday 16 March 2020.

Within the Paris Commercial Court, all of the hearings on the merits have been cancelled until 17 April inclusive. In case of an exigent urgency, summary hearings may be organised. To this end, a judge may receive the parties to deal with ex parte requests to be allowed to file a claim on an urgent basis. The audience with the judge should be reserved via the email address [webmaster@greffe-tc-paris.fr](mailto:webmaster@greffe-tc-paris.fr). Declarations of insolvency can be made electronically through a digital service, [tribunaldigital.fr](http://tribunaldigital.fr). In matters of prevention of insolvency, it remains possible to contact a judge through the email address [prevention@greffe-tc-paris.fr](mailto:prevention@greffe-tc-paris.fr).

Similar rules are being implemented at the Paris Court of Appeal: postponement of hearings and decisions, while maintaining emergency judicial services for urgent matters.

In these exceptional circumstances, litigants should assess the need to take judicial steps conservatively, but without necessarily precluding taking steps in particular where there is a risk for the survival of a business, for instance if a counterparty invokes force majeure in bad faith.

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If you have any questions about the issues addressed in this memorandum or otherwise, please do not hesitate to reach out to us.

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