

Covid-19 and business contracts: Suspension and extension of contractual deadlines during the state of health emergency

One of the Ordinances adopted in furtherance of the Emergency Law of March 23, 2020 to deal with the Covid-19 epidemic provides - for a limited period of time - for (i) the suspension of the effects of clauses sanctioning contractual non-performance, and (ii) the extension of contractual deadlines for the termination or renewal of contracts^[1].

How long does the suspension period last?

The newly enacted rules apply to measures and time-periods which have expired or are due to expire between March 12, 2020 and the expiry of a one-month period from the end of the state of health emergency declared by the Government^[2] (the “**Suspension Period**”).

It should be recalled that the state of health emergency began on March 24, 2020 and is currently supposed to last for a period of two months. On the date hereof, the Suspension Period therefore runs from March 12 to June 24, 2020. However, a subsequent extension of the state of health emergency leading to the extension of the Suspension Period cannot be excluded at this stage.

Which contracts are concerned?

In principle, all private law contracts are affected by the new rules adopted in the context of the health crisis, in particular contracts for the provision of services as well as distribution, supply or insurance contracts.

However, contracts, the deadlines of which have been subject to particular arrangements under the Emergency Law of March 23, 2020 or in application thereof, are excluded from the scope of these rules^[3].

These particular arrangements pertain, for example, to the termination of tourist travel and holiday contracts^[4] or, for micro-businesses, to the payment and termination of contracts for the supply of electricity, gas and

water or the payment of professional and commercial rents^[5].

What happens with periodic penalty payments and clauses aimed at sanctioning the debtor's non-performance?

During the Suspension Period, periodic penalty payments ordered by courts or administrative authorities as well as contractual clauses sanctioning the non-performance of an obligation within a given period are suspended.

In practical terms, periodic penalty payments, penalty clauses (i.e. contractual clauses, the purpose of which is to determine in advance the financial penalty applicable in case of non-performance of a contractual obligation by one of the contractual parties), termination clauses (i.e. contractual clauses providing for the automatic termination of the contract in case of non-performance of a contractual obligation by one of the contractual parties) and forfeiture clauses which should have been, or have started to be, effective between March 12, 2020 and the end of the Suspension Period are suspended. They will take effect upon expiry of a one-month period after the Suspension Period, insofar as the debtor has not performed his obligation in the meantime.

The course of periodic penalty payments and penalty clauses which started running before March 12, 2020 is suspended during the Suspension Period. They will become operative again the day after the end of this Suspension Period.

By way of example, a contract that was to be performed on March 25, 2020 and that provided for automatic termination in the event of non-performance on that date will not be terminated immediately if the debtor has not performed his obligation within the contractually fixed time limit. On the other hand, the termination clause will take effect if the debtor has still not complied with his obligation within one month following the end of the Suspension Period.

It should be specified that the other provisions of the contract continue to apply as a matter of principle^[6]. In particular, the payment of contractual obligations is not suspended and contractual payment installments must be respected.

What happens with clauses that govern the termination or renewal of the contract?

The contractual period for terminating a contract or for notifying its termination or non-renewal, if due to expire during the Suspension Period, is extended by two months following the end of such Period.

For example, if a contract concluded on April 20, 2017 for a period of 3 years provides that it will be tacitly renewed unless terminated by one of the parties no later than 1 month before its end date (i.e. no later than March 20, 2020), each of the parties may still oppose to the renewal of the contract within two months following the end of the Suspension Period.

^[1] Ordinance No. 2020-306 of March 25, 2020 on the extension of deadlines expiring during the state of

health emergency and on the adaptation of procedures during that same period

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755644&dateTexte=20200401> (in French)

[2] Emergency Law No. 2020-290 of March 23, 2020 to deal with the COVID-19 epidemic

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041746313&dateTexte=20200406> (in French)

[3] The related financial and guarantee obligations mentioned in Articles L. 211-36 *et seq.* of the French Monetary and Financial Code are also excluded

[4] Ordinance No. 2020-315 of March 25, 2020 on the financial conditions for terminating certain tourist travel and holiday contracts in the event of exceptional and unavoidable circumstances or *force majeure*)

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755833> (in French)

[5] Ordinance No. 2020-316 of March 25, 2020 relating to the payment of rent, water, gas and electricity bills for the business premises of companies, the operations of which are affected by the spread of the covid-19 epidemic

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000041755842&categorieLien=id> (in French)

[6] It being specified that ordinary legal provisions remain applicable, such as those relating to *force majeure* in contractual matters (Article 1218 of the French Civil Code) or unforeseeability ("*imprévision*") (Article 1195 of the French Civil Code): Cf. our articles entitled [COVID-19: What impact on your business contracts?](#) and [COVID-19 and business contracts: what strategy to follow?](#) published respectively on our Blog in March and April 2020.

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