

# Coronavirus/COVID-19: French Ordinance Enacts Moratorium on Statutes of Limitations, Procedural and Contractual Deadlines

Skadden

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If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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The COVID-19 pandemic may make complying with certain statutory or contractual deadlines materially or physically impossible. To address this situation, Ordinance No. 2020-306, passed by the French government on March 25, 2020, enacts a “moratorium” on such deadlines that would have otherwise expired between March 12, 2020, and one month after the end of the state of health emergency declared by the French government (the Moratorium Period). France declared a state of health emergency for a two-month period ending on May 24, 2020, subject to extension; therefore, the Moratorium Period is currently scheduled to expire on June 24, 2020. (Deadlines and measures deriving or resulting from criminal law and criminal proceedings are addressed by a separate ordinance.)

### Statutes of Limitations and Other Procedural Deadlines

The moratorium has been enacted for statutes of limitations and other statutory procedural deadlines that would have otherwise expired during the Moratorium Period. After the Moratorium Period has ended, the suspended terms will start running again for their normal duration, beginning from the end of the Moratorium Period but within a two-month limit. For example, if a one-month deadline to perform a procedural action expired during the Moratorium Period, such procedural action would need to be performed within one month after the end of the Moratorium Period; if a procedural deadline that expired during the Moratorium Period was longer than two months, it would be reduced to two months starting from the end of the Moratorium Period.

### Judicial and Administrative Measures

Certain judicial and administrative measures which would otherwise have expired during the Moratorium Period are extended for a period of two months from the end of the Moratorium Period. Notably, this covers conservatory measures (freezing orders), investigative measures, authorizations, licenses, and approvals, prohibitions or suspensions that have not been imposed as a sanction. However, any such measures ordered before March 12, 2020, may be amended or terminated by a judge or the relevant authority.

### Contractual Remedies

The requirement to perform contractual obligations is not suspended during the Moratorium Period, except for certain exceptions, such as when a party can raise a *force majeure* defense. However, certain contractual remedies for breach of contract (liquidated damages clauses, termination clauses, penalties for late performance (astreintes) and forfeiture clauses) that would otherwise have taken effect during the Moratorium

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Period are deemed suspended and will start running and produce their effects one month after the end of the Moratorium Period. Liquidated damages and penalties for late performance that took effect prior to March 12, 2020, are suspended during the Moratorium Period.

## **Tacit Renewal Clauses and Termination Periods**

When an agreement provides (i) that it can only be terminated within a specified period or (ii) that it is renewed automatically unless such renewal is opposed within a specified period, such specified periods that would have expired during the Moratorium Period are extended for two months from its expiration.

## **Precautionary Steps**

The moratorium enacted does not waive the obligation to perform procedural and contractual steps during the Moratorium Period. Companies are encouraged to take a precautionary approach in order to mitigate risks. Notwithstanding the moratorium, companies should comply with applicable statutes of limitations, as well as procedural and contractual deadlines, to the extent possible, at least for conservatory purposes. Moreover, as the Moratorium Period will likely expire just before or during summer 2020, companies should closely monitor the procedural and contractual steps that must be performed to avoid unfortunate slip-ups.