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COMMISSION FOR THE FINANCIAL MARKET PRONOUNCES REGARDING THE SCOPE OF THE APPLICATION AND EFFECTS OF THE NEW ARTICLE 30 OF LAW NO. 21,227 – COVID UNEMPLOYMENT INSURANCE LAW

The Commission for the Financial Market (" **CMF** "), on May 28, 2020, has issued the Official Letter No. 22,260 (the " **Official Letter** ") in response to the pronouncement request sent by the Treasury Minister of the Chilean Government, Mr. Ignacio Briones Rojas, to clarify the scope of the enforcement and the effects of the new article 30 of Law No. 21,227, which empowers the access to the unemployment insurance benefits provided in Law No. 19,728, in exceptional circumstances (the " **Covid Unemployment Insurance Law"** or the **"Law** "), incorporated by Law No. 21,232 which introduces amendments and modifications to the aforementioned Law (the " **Amending Law** "). 1

The new article 30 of the Covid Unemployment Insurance Law 2 , was approved by the National Congress on May 6, 2020, and provides, in general terms, that the companies that are organized as stock corporations under the provisions of Law No. 18,046 on Stock Corporations (the " **Stock Corporations Act** ") and which submit themselves to the benefits contained in the Covid Unemployment Insurance Law, or, those companies that are part of a business group, in accordance with the provisions of article 96 of Law No. 18,045 on Securities Market (the " **Securities Market Law** ") 3 and, regarding such business group, any of the entities submit themselves to benefits of the Covid Unemployment Insurance Law, they may not distribute dividends to their shareholders, under the provisions of articles 78 and 79 of the Stock Corporations Act, during the entire financial year in which the company, or one of the entities of the business group, has suspended employment contracts before the Administrator Company of the Unemployment Fund (Sociedad Administradora del Fondo de Cesantía).

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Likewise, the new article 30 of the Law provides that those companies which are controlled by entities that maintain capitals or by related companies in countries or jurisdictional territories with preferential tax regime or Tax Havens will not be able to submit themselves to the Covid Unemployment Insurance Law provisions.

In accordance with the foregoing, the CMF confirms in the Official Letter that the entities described in the new article 30 of the Covid Unemployment Insurance Law, who intend to submit themselves to the labor and social security benefits provided in such regulation, **may not distribute dividends during the commercial year in which such entities maintain suspended employment contracts.** Said restriction would extend temporarily between June 1, 2020 (which corresponds to the publication date of the Amending Law) and the date on which the respective business year ends. In that sense, as of June 1, 2020 and throughout the remainder of this year, the aforementioned entities **will be prevented** from distributing eventual dividends with a charge to profits from fiscal years prior to 2019, dividends that have not been distributed from fiscal year 2019 and provisional dividends charged to fiscal year 2020.

Conversely, the CMF establishes that the legal prohibition described above **would not receive application** concerning those agreements on the distribution of profits or dividends that have been agreed and adopted by the respective Shareholders' Meetings held **prior to the date of publication of the Amending Law (June 1, 2020)** , even when the dividends so agreed are pending payment to the shareholders.

Regarding the dividends that correspond to be distributed as profits of financial year 2020, the CMF provides that such dividends **may be distributed** during the first quarter of year 2021, on the understanding that, at that date, employment contracts are not kept suspended by the respective company.

Finally, the CMF expresses its concern regarding the dividends' distribution prohibition that affects the entire business group, in those circumstances in which, at least, one of the entities of said group, decides to submit themselves to the provisions of the Covid Unemployment Insurance Law. In that sense, the CMF questions such prohibition as it is inconsistent with the **necessary separation that must exist regarding the management decisions that the administration body of each entity (of the business group) may or shall adopt** , notwithstanding the decisions that may be adopted in

other entities of the same business group. Likewise, the CMF expresses its concern about the **potential impact that this prohibition could have in the case of business groups,** since the shareholders other than those of the company of the business group that submitted themselves to the provisions of the Law, **could be significantly** affected, including those minority shareholders or the Institutional Investors, such as Pension Funds and Mutual Funds, which in their portfolios consider shares of stock corporations that may be or are subject to the prohibition of article 30 of the Covid Unemployment Insurance Law.

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1 https://www.diariooficial.interior.gob.cl/publicaciones/2020/06/01/42669/01/1768106.pdf

2 Article 30 of Law No. 21,227 (Covid Unemployment Insurance Law):

"The companies organized as stock corporations according to Law No. 18,046 and which submit themselves to this law, or are part of a business group, according to Article 96 of Law No. 18,045, in which any of the entities of said group submit themselves to this law, may not distribute dividends to their shareholders according to articles 78 and 79 of law No. 18,046, during the fiscal year in which the company or one of the entities of the business group has suspended employment contracts before the Administrator Company of the Unemployment Fund (Sociedad Administradora del Fondo de Cesantía).

Those companies which are controlled by entities that maintain capitals or by related companies in countries or jurisdictional territories with preferential tax regime to which the Article 41 H of the Income Tax Law refers will not be able to submit themselves to the Covid Unemployment Insurance Law."

3 Article 96 of Law No. 18,045 on Securities Market:

"Business group is the set of entities which presents ties of such a nature regarding their ownership, administration or credit responsibility, that makes presume that the economic and financial

performance of its members, is guided by the common interests of the group or subordinate to them, or that there are common financial risks in the credits granted to them or in the acquisition of securities they issue. The following are part of the same business group: a) A company and its controller; b) All companies that have a common controller, and the latter, and c) Any entity determined by the CMF (…).”

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