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Commercial Law Department

**ROYAL DECREE-LAW 2/2021. STRENGTHENING AND
CONSOLIDATING COMPANY MEASURES TO PROTECT EMPLOYMENT**

Royal Decree-Law 2/2021 of 26 January ("RD-L 2/2021") was published on 27 January 2021, which, as regards corporate matters, covers two relevant issues relating to (i) the distribution of dividends and (ii) the holding of meetings of the governing bodies remotely.

Dividend distribution

RD-L 2/2021, among other company measures to protect employment, includes agreements with social stakeholders to extend Proceedings Regulating Temporary Employment or ERTes from 1 February 2021 to 31 May 2021, under conditions resembling those existing to-date.

Likewise, RD-L 2/2021 also extends dividend distribution and forecast restrictions until 31 May 2021.

It should be recalled that the first legal text restricting the distribution of dividends was Royal Decree-Law 18/2020, of 12 May, according to which companies initiating ERTes due to force majeure and the profits derived from the latter, would not be able to distribute dividends for the tax year in which those ERTes were applied, unless they refunded the amount corresponding to the exemption applied for Social Security contributions.

Although the wording of the rule could be improved, since most companies have a financial year which coincides with the calendar year, it must be understood that the limitation affected the distribution of dividends from profits generated during the 2020 financial year, whose application must be approved at the ordinary general meetings to be held in 2021, as well as the amounts on account of the profit for the 2020 financial year that may have been agreed during that year. The restriction would not cover dividends from profits charged to the 2019 financial year and available reserves, which could have been distributed in 2020 or may be distributed in subsequent years. There remains doubt as to what will happen in the future with the profits for the 2020 financial year and whether, in any way, the rule would, in fact, compel companies to pay into an unavailable reserve amounts corresponding to the profit for the 2020 financial year.

In any event, this restriction did not apply to those entities that, as of 29 February 2020, had fewer than 50 workers (or similar) registered with the Social Security.

Furthermore, Royal Decree-Law 24/2020 of 26 June extended that restriction to companies that had applied ERTes for economic, technical, organisational, and productive reasons (ETOP) due to Covid-19.

Now, as we have mentioned above, the recent RD-L 2/2021 extends the restrictions and forecasts relating to the distribution of dividends until 31 May 2021.

In the light of the article's wording, it appears that, should the company have a financial year which coincides with the calendar year, the restriction should apply to the distribution of dividends for the entire financial year 2021, the same rules and doubts indicated above in relation to Royal Decree-Law 18/2020 being applicable.

Holding meetings of the governing bodies remotely

Moreover, the seventh and final provision of RD-L 2/2021 adds a fourth paragraph to article 3 of Royal Decree-Law 34/2020 of 17 November. In this regard, it should be recalled that article 3 of RD-L 34/2020 had eliminated any reference to the possibility of holding meetings of the governing and administrative bodies for any type of company remotely, by solely regulating remote attendance at and holding of general meetings.

Now, also as an exceptional measure solely valid during 2021, remotely holding meetings of the governing and administrative bodies is allowed and the adoption of the agreements in writing and without a meeting by those bodies, even if the articles of association have not provided for it. The requirements for the above are the same as those set out in RD-L 34/2020 for general meetings, i.e., that all attendees have the necessary means, that the secretary of the body can acknowledge their identity, and that this be recorded in the minutes, which he/she shall immediately forward to the email addresses of each of the attendees.