



# SUSPENSION OF THE LIBERALISATION REGIME OF CERTAIN FOREIGN DIRECT INVESTMENTS IN SPAIN

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Among other actions taken in response to the current global health crisis, the Spanish Government has recently adopted the Royal Decree-Law 8/2020, of 17 March, **on urgent extraordinary measures to address the economic and social impact of COVID-19.**

Under the Fourth Final Provision of the aforementioned regulation, a new Article 7 bis (entitled "*Suspension of the liberalisation regime of certain foreign direct investments in Spain*") is introduced in the Act 19/2003, of 4 July, on the **legal regime of cross-border capital movements and economic transactions**, and on certain measures for the prevention of money laundering.

As long as Article 7 bis remains in force, the so-called **foreign direct investments to be made in critical sectors, as well as those carried out by specific categories of investors, will be subject to prior administrative authorisation.**

For the purpose of such Article, foreign direct investments in Spain shall mean **all investments made by residents of States outside the European Union and the European Free Trade Association, when the investor becomes the holder of a stake equal to or greater than 10% of the share capital of the Spanish company, or when the investor effectively participates in the management or control of the latter** as a result of the corporate transaction, act or legal business).



As for the sectors affected by the new rules, these are:

- a. **Critical infrastructures**, whether physical or virtual (including **energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructures, and sensitive facilities**), as well as **land and real estate** considered key for the use of such infrastructures, understanding as such those referred to in Act 8/2011, of 28 April, on measures for the protection of critical infrastructures.
- b. **Critical technologies and dual-use items** as defined in Article 2.1 of Council Regulation (EC) 428/2009, including **artificial intelligence, robotics, semiconductors, cyber-security, aerospace, defence, energy storage (quantum and nuclear), as well as nanotechnologies and biotechnologies**.
- c. **Supply of essential inputs**, in particular **energy**, understanding as such those regulated by Act 24/2013, of 26 December, on the **Electricity Sector**, and Act 34/1998, of 7 October, on the **Hydrocarbon sector**, or those related to **raw materials** and **food safety**.
- d. Sectors with access to **sensitive information**, in particular **personal data**, or with the capacity to control such information, in accordance with Organic Act 3/2018, of 5 December, on the Protection of Personal Data and digital rights.
- e. **Media networks**.

Please be aware that the **Spanish Government may suspend the liberalisation regime of foreign direct investments in Spain in other sectors** when they may affect **public safety, public order, and public health**.

Irrespective of the investment sector, the **liberalisation regime of foreign direct investments in Spain is also suspended, and therefore subject to the aforementioned prior authorisation**, in the following cases:

- a. If the foreign investor is directly or indirectly **controlled by the government of a third state** (including public bodies or armed forces), applying the criteria set forth in Article 42 of the Commercial Code in order to determine the existence of such control.
- b. If the foreign investor has **invested or partaken in activities within sectors affecting security, public order and public health in another EU Member State**, and in particular those set forth in paragraph 2 of this Article.



- c. If **administrative or judicial proceedings for criminal or illegal activities** have been initiated against the foreign investor in another EU Member State, in the State of origin, or in a third State.

Investment operations carried out **without the required prior authorisation** will be deemed to be **invalid and without legal effect** until their legalisation, and could result in a **fine of up to the amount of the transaction** (and in any event not less than EUR 30,000.00).

Please do not hesitate to contact us for further information.

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