



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

March 2020



iarmendia@grupobsk.com



meguren@grupobsk.com



pmiguel@grupobsk.com

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.

This publication is for general information only. It is not legal advice, and legal counsel should be contacted before any action is taken that might be influenced by this publication.