

The Spanish Government publishes an amendment clarifying the reform of the Foreign Direct Investment Screening regime approved last 17 March 2020.

Royal Decree-Law 8/2020, of 17 March, of urgent exceptional measures to face the social and economic impact of COVID-19 (**RDL 8/2020**), put in place *ad hoc* public spending, employment measures and set up a new foreign direct investment (**FDI**) regime applicable to critical infrastructures, supplies, technologies and industries.¹ Click [here](#) to view our alert reporting on RDL 8/2020.

The FDI regime put in place by RDL 8/2020 has been amended by Royal Decree-Law 11/2020, of 31 March, adopting complementary urgent measures to face the social and economic impact of COVID-19 (**RDL 11/2020**). RDL 11/2020 clarifies some important issues related to indirect ownership and procedure.

Following the amendment introduced by RDL 11/2020, an investment is considered to be foreign *either* if:

- (a) the investor is residing in countries outside of the EU/EFTA space; or
- (b) the investor is an EU/EFTA resident, but is actually controlled by foreign (non-EU/EFTA) residents. An EU/EFTA investor is deemed to be controlled by a foreign investor if (i) the foreign investor ultimately owns, directly or indirectly, a stake of 25% or more of the share capital/voting rights in the EU/EFTA investor; or (ii) the foreign investor exercises, by any other means, either direct or indirect control over the EU/EFTA investor.

The above clarification, coupled with the administrative and judicial precedents cited in our prior note applicable to weapons, weapon systems and dual-use products, will make it much harder to set up corporate or ownership structures seeking to avoid application of the authorization regime.

RDL 11/2020 further introduces:

- (a) A *de minimis* rule according to which any investments below € 1,000,000 are exempted (this amount might be amended by the future administrative regulations developing Article 7 bis of Law 19/2003).
- (b) On the other hand, it puts in place a simplified authorization procedure for (i) transactions signed but not yet closed, *i.e.*, which price or price determination mechanism was agreed in a binding offer before the entry into force of RDL 8/2020; and (ii) investments ranging between € 1,000,000 and € 5,000,000, until the future regulations developing Article 7 bis of Law 19/2003 come into force.

The simplified authorization procedure enables authorization within one month by the Directorate General for International Trade and Foreign Investments. The standard procedure requires authorization by the Council of Ministers by procedure lasting for up to six months.

Transactions subject to the authorization regime must be subject to a condition precedent of prior approval. Moreover, non-compliance with the obligation amounts to a very serious infringement which may result in fines ranging between € 30,000 and the transaction value, and a public or private admonition.

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The information contained in this bulletin does not constitute legal advice.

¹ This authorization regime is in line with the EU regime approved last year. See our alert on the EU Regulation [here](#).