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New System for Screening Foreign Direct Investments in Certain Sectors in Spain

Given COVID-19 crisis in Spain, the government has adopted a Royal Decree-Law of extraordinary and urgent measures to deal with the economic and social impact.

Note: Please see Latham's related Client Alert, "[Spanish Government Approves Urgent and Extraordinary Measures to Mitigate the Impact of COVID-19](#)", for a description of the economic measures adopted to deal with the crisis.

The Royal Decree Law 8/2020, of 17 March (the RDL) amends Act 19/2003, 4 July, which is the legal framework for movements of capital and foreign investments in Spain.

The main change adopted by the RDL is to suspend the liberalization of foreign direct investments (FDI) in Spain in certain sectors.

FDI are now subject to the requirement to obtain a previous authorization. Any FDI made without obtaining authorization will be invalid and with no legal effect, and the infringing person may be fined.

The government justifies this new system of FDI screening, which suspends the previous liberalized regime, on the grounds of security and public order derived from the impact of the COVID-19 crisis on the value of Spanish companies in strategic sectors. In addition the Spanish government is adopting this FDI screening system in anticipation of the entering into force in October 2020 of Regulation (EU) 2019/452 of the European Parliament and the Council of 19 March 2019 establishing a framework for the screening of FDI into the EU.

This new Spanish FDI screening scheme came into force on 18 March 2020. It will remain in force until the government decides otherwise.

Foreign Direct Investments affected

FDI affected are those carried out by investors (Foreign Investor) resident outside the European Union and the European Free Trade Association (EFTA countries are Iceland, Liechtenstein, Norway, and Switzerland, that result in either:

- The acquisition of 10% or more of the shares of a Spanish company
- That as a result of the investment, the Foreign Investor is able to have effective participation in the management or control of a Spanish company

Additionally, the new FDI screening system also applies when the Foreign Investor:

- Is directly or indirectly controlled by the government, including state bodies or armed forces, of a third country
- Has made any investment or has already been involved in activities affecting security or public order in a Member State and in particular in those sectors listed below
- Has been subject to any administrative or judicial action in a Member State, in its country or any other third country for engaging in illegal or criminal activities

Sectors affected

FDI in the following sectors is subject to the new screening scheme:

- **Critical infrastructure** (physical or virtual)
This includes infrastructure in the following sectors: energy, transport, water, health, communications, media, data storing and processing, aerospace, defense, elections, finance, sensitive facilities, and any land or real estate that is key for the use of those infrastructures.
- **Critical technology and dual-use products as established in EC Regulation 428/2009**
This includes artificial intelligence (AI), robotics, semiconductors, cybersecurity, aerospace technologies, defense, storage of energy (quantum and nuclear), nanotechnology and biotechnology.
- **Supply of fundamental inputs**
This includes in particular, energy, fossil fuels, raw materials, as well as the food supply.
- **Sectors that have access or capacity to control sensitive information**
This includes personal data in particular.
- **Media**

The Government may extend the new FDI screening system to other sectors on the grounds of public security or public safety and health.

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