

Spain Amends Again New Foreign Direct Investment Screening System

The Spanish government adopts a new Royal Decree-Law which amends the FDI screening system approved at the beginning of the COVID-19 crisis.

On 17 March, Royal Decree-Law 8/2020 suspended the liberalisation of foreign direct investment (FDI) in Spain in certain sectors (please see for more details [Client Alert New System for Screening Foreign Direct Investments in Certain Sectors in Spain on this Royal Decree-Law](#)). This measure required FDI in certain sectors or made by certain foreign investors to obtain prior authorisation. Any FDI made without obtaining authorisation will be invalid and with no legal effect, and the infringing person may be fined.

On 31 March, Royal Decree-Law 11/2020 amended Spain's new FDI screening regime in the following ways:

- Definition of *Foreign Investor* for the purposes of the suspension of the liberalisation of affected transactions¹:
 - Non-European resident companies (non-EU companies) or non-European Free Trade Association resident companies (non-EFTA companies)
 - EU or EFTA-resident companies whose ultimate parent companies are non-EU companies or non-EFTA companies

For these purposes, beneficial ownership of the ultimate parent company is understood to exist if the latter holds or controls, directly or indirectly, a 25% or greater stake of the capital or of the voting rights of the company making the investment, or when it exercises control, directly or indirectly, of the company making the investment by any other means.

- The government may establish thresholds under which FDI may be exempted from the screening system. Those thresholds are expected to relate to the amount of the transaction. Generally any transaction below €1 million is exempted from the new FDI system.

- Existing FDI transactions not yet closed but on which the price has been agreed before the entry into the force of the new FDI screening system (18 March) are subject to a simplified authorisation procedure. This simplified procedure is also generally applied to FDI transactions for an amount between €1 million and €5 million until the FDI thresholds mentioned above are approved.
- In principle, the new FDI screening shall be in force until one month elapses following the end of the estate of alarm except if the Government, in light of the circumstances, decides to extend it.

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Endnotes

- ¹ The transactions affected are defined as the acquisition of 10% or more of the shares of a Spanish company or whether as a result of the transaction, the foreign investor is able to have effective participation in the management or control of a Spanish company. Portfolio investments are therefore excluded.