

Special Information Briefing  
COVID-19 (No. 12):

New amendments to Law 19/2003 of 4 July on the regulation of capital flows and international transactions

## Index

1. Procedure for authorising ongoing investments and investments which involve a reduced amount referred to in Article *7bis*
2. Amendment of section 1 of Article *7bis* in relation to the definition of foreign direct investment
3. Deletion of section 6 of Article *7bis* in relation to its period of validity

Madrid, 2 April 2020

On 1 April 2020, **Royal Decree-law 11/2020 of 31 March** was published in the Official State Bulletin, **adopting additional urgent social and economic measures to deal with COVID-19 (“RDL 11/2020”)**. The RDL establishes a new range of measures, mainly of a social and economic nature, which expand upon and enhance those already adopted through the Royal Decree-laws approved in recent days, as well as Royal Decree 463/2020, of 14 March, which declared the state of alarm for the management of the health crisis caused by COVID-19, and its subsequent extension, approved by Royal Decree 476/2020, of 27 March.

RDL 11/2020 introduces certain amendments to Law 19/2003 in relation to the creation of Article *7bis* of the aforementioned regulation approved by RDL 8/2020, which regulates certain restrictions on foreign direct investment in Spain for reasons of security, public order and public health in Spain’s main strategic sectors.

Thus, RDL 11/2020 extends the scope of the application of Article *7bis* to investments made by investors who are resident in the European Union and European Free Trade Association countries but who are controlled by entities resident outside those jurisdictions. It also provides for a simplified authorisation process for investments of between EUR 1 million and EUR 5 million (with an exemption for those of less than EUR 1 million), or those transactions that already existed at the time of the entry into force of Article *7bis*.

**1. Procedure for authorising ongoing investments and investments which involve a reduced amount referred to in Article *7bis***

Until the approval of the regulations governing the content of Article *7bis* in greater detail, RDL 11/2020 provides that applications for prior administrative approval of foreign direct investment investments regulated in Article *7bis* as described below shall, temporarily, be governed by a simplified procedure.

- (i) Investments for which there is evidence of an agreement between the parties or a binding offer in which the price has been fixed, determined or determinable, prior to the entry into force of RDL 8/2020.
- (ii) Investments with a value of between EUR 1 million and EUR 5 million.

Applications for authorisation will be addressed to the holder of the Directorate-General for International Trade and Investment, which shall decide upon the report of the Board of Foreign Investment. The simplified procedure provided for in Article 96 of Law 39/2015 of 1 October on the Common Administrative Procedure for Public Administrations, which establishes that the procedure should be resolved within thirty days. Failure to respond within the said timeframe (*“silencio negativo”*) shall amount to a rejection of the application.

Finally, RDL 11/2020 also provides that transactions of less than EUR 1 million shall be provisionally exempt from the obligation for prior authorisation until another minimum amount is established by regulation.

## **2. Amendment of section 1 of Article 7*bis* in relation to the definition of foreign direct investment**

The amendment introduced concerns the subjective scope of the definition of "foreign direct investment" given in Article 7*bis*. Thus, the previous version of the aforementioned provision, as amended by RDL 8/2020, included those investments made by residents of countries outside the European Union and the European Free Trade Association. With the approved amendment, the scope of the application of the rule was extended to residents of countries in the European Union and the European Free Trade Association in circumstances where the real owners are residents of countries outside of the European Union or the European Free Trade Association.

In establishing what is to be understood by "real ownership", the new wording of Article 7*bis* states that such ownership shall exist when residents of countries outside the European Union or the European Free Trade Association ultimately own or control, directly or indirectly, more than 25% of the capital or voting rights of the investor, or when they exercise control, directly or indirectly, over the investor by other means.

## **3. Deletion of section 6 of Article 7*bis* in relation to its period of validity**

RDL 11/2020 deletes Article 7*bis* which had been introduced by RDL 8/2020. The provision that has been deleted provided that the suspension [of the liberalisation] would be in force until the Council of Ministers agreed to its removal.

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