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Royal Decree-Law 8/2020:

Measures' analysis with
the greatest impact
on companies

COVID-19 Report

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1 INTRODUCTION

The announcement of the alarm state by COVID-19 in Spain entails the approval of extraordinary measures. As part of this criteria, on March 17th, 2020, the Spanish Council of Ministers approved [Royal Decree-Law 8/2020](#), on extraordinary urgent measures to deal with the economic and social impact of COVID-19.

In this report, ECIJA analyzes the main effects that the adopted measures will have and the possible action lines to face them. The analysis focuses on the following areas:

- **Labor:** teleworking and temporary layoffs (ERTEs, by its Spanish acronym)
- **Tax:** extraordinary tax situation.
- **Commercial and Corporate.**
- **Public Procurement.**
- **Moratorium on mortgage payments.**
- **Limitation on foreign investment.**

2 MEASURES IN LABOR PRACTICE: TELEWORKING AND TEMPORARY LAYOFFS.

In the labor area, companies count on different options for managing contracts due to the extraordinary measures that have been adopted to curb the crisis we are facing these days. Below, we explain all points that must be considered related to each of these measures:

1. **Teleworking:** it must be a priority against the temporary lay-offs or reduction of activity.
 - a) **Companies in which teleworking was already established** must continue to comply with the provisions of article 13 of the Workers' Statute.
 - b) In order to facilitate teleworking in **companies in which it has not been foreseen until now**, the compliance of the obligation of carrying out a job risk assessment is expedited. The employee, voluntarily, may carry out a self-evaluation of their position by filling in a questionnaire that is included as an annex at the Real Decree.

2. **Temporary layoffs (ERTE by its Spanish acronym)**

Companies can do temporary suspensions of work contracts or reductions in in the number of hours through two procedures:

- a) **Force majeure:**
 - i. **Requirements:** loss from the activity as a consequence of COVID-19:
 1. Declaration of alarm status, suspension of activities, closure of premises, transport restrictions, limits to the mobility of people or goods, lack of supplies.



2. Urgent or serious situations due to the transmission of the COVID-19 infecting the staff.
3. Adoption of preventive isolation measures decreed by the health authority.

ii. **Procedures and deadlines:**

1. A report regarding the link of the loss from the activity because of COVID-19 must be submitted to the Labor Authority, attaching all the documentation which certifies the cause.
2. The report must be transferred to the employee's representatives or, failing that, to all the staff.
3. The Labor Authority may request a report from the Labor Inspectorate within the next five days.
4. The Labor Authority decides within the non-extendable period of five days.

The Social Security Treasury General Office will exempt the companies from the payment of the business contribution to Social Security and from the concepts of joint collection while the temporary layoff lasts in the percentage of: (i) 100% for companies with less than 50 workers; (ii) 75% for the others.

a) **Objective causes:**

- iii. **Requirements:** economic, technical, organizational or productive causes related to COVID-19.

iv. **Procedure and deadlines:**

1. **Consultation period of a maximum of seven days.** The dialogue will take place with:
 - a. Employees's Legal Representatives; or
 - b. Most representative trade unions in the sector; or
 - c. Ad hoc commission of three employees of the company, according to article 41.4 of the Workers' Statute.

In any case, the representative commission must be created in a maximum of five days.

- d. Communication of the decision to the Labor Authority.
 - e. The Labor Authority may request a report from the Labour Inspection.
3. **Dismissal.** No specialty is regulated by the Royal-Decree Law so it's the ordinary legislation which must be followed.



Other matters of common interest:

1. **Unemployment benefits in the Temporary Layoffs:**
 - a) No minimum contribution period is necessary to access the benefit.
 - b) The periods enjoyed of unemployment benefits because of the suspension of contract will not consume the previous unemployment benefits.
2. Right of adaptation / reduction of working hours to take care of relatives up to second grade due to age, illness, disability or closure of educational centres by COVID-19:
 - a) The need must be proven.
 - b) Periodo f 24 hours in advance
 - c) It is not limited to the minimum or maximum percentage of the working day (can reach the 100%)

3 EXTRAORDINARY TAX MEASURE

After the approval of the new measures contained in the Royal Decree-Law 465/2020, of March 17th, it has been expressly clarified that the suspension of the administrative time periods as referred to in the *Third Additional Provision* of the Royal Decree 463/2020 will not be applicable to the tax time periods, due to the fact that they are subject to specific administrative regulations. In particular, the provision states that **the suspension doesn't affect the deadlines for filing and submissions of tax returns and self-assessments.**

However, section 33 of the Royal Decree-Law 8/2020 provides for the **suspension of certain time periods** that would affect, among others, the time periods to fulfill the payment of the taxes liquidated by the authorities. This would include the taxes that are within the voluntary period of payment and also those that are already within the enforced period.

In addition, the suspension also affects the time periods for deferred and split payment agreements already granted by the authorities, deadlines related to auctions and allocations of property, as well as deadlines to comply with demands, attachment orders and request for information with tax relevance. It would also apply to the time periods for submitting pleadings in procedures to determine to taxes to pay, penalty procedures, procedures for a null and void declaration, procedures to claim refunds of incorrectly paid tax and procedures for correction of clerical errors and revocation, provided that these **have been initiated and not completed prior to the March 18th 2020**. In all the cases mentioned hereabove, the deadlines will be extended until **April 30th 2020**.

However, it should be noted that, in the event that any taxpayer **voluntarily complies** with the request for information or submits pleadings during the suspension period, it would be deemed that such obligation has been fulfilled, so there would be no need to wait until the end of the suspension period.

On the other hand, the deadline of time periods regarding deferred and split payments of taxes granted, the periods related to the development of auctions, as well to the ones established to comply with demands, attachment orders, requests for information and the deadlines established for submitting pleadings, **which are communicated to the taxpayer on March 18th, 2020 or after**, will be extended until **May 20th, 2020**, unless specific regulation grants a longer period.



The exhibit hereunder explains, depending on the date on which the notification has been received by the taxpayer, when the new deadline for making the corresponding payment would expire within the voluntary and enforced period.

Notification in voluntary period	General rule section 62.2 LGT	Special rule RD-Ley 8/2020
From February 1 st until 15 th	March 20 th	April 30 th
From February 16 th until 29 th	April 5 th	April 30 th
From March 1 st until 15 th	April 20 th	April 30 th
March 16 th and 17 th	May 5 th	May 5 th
From March 18 th to 31 st	May 5 th	May 20 th

Notification in executive period	General rule section 62.2 LGT	Special rule RD-Ley 8/2020
From March 1 st until 15 th	March 20 th	April 30 th
March 16 th and 17 th	April 5 th	April 30 th
From March 18 th until 31 st	April 5 th	May 20 th

In addition to the above, it should be kept in mind that the period between March 18th and April 30th 2020, **will not be considered towards the maximum duration of the tax procedures**, although the Administration is empowered to carry out essential activities when necessary. In any case, the period mentioned hereabove **will not be considered for the purposes of statute of limitation and the maximum length of procedures**.

As for the resolutions in appealing procedures and economic-administrative claims, they will be deemed to have been notified to the taxpayers **when a single delivery attempt between March 18th and April 30th has been accredited**.

The period of time for the presentation of economic-administrative appeals or claims against tax liquidations, as well as for administrative appealing against the resolutions in economic-administrative proceedings, **will not start until the end of the period** mentioned in the paragraph hereabove, or until the act has been notified following the rules of the General Taxation Law, if it grants a longer period.

Time periods that have been granted to respond to the requests and requirements of information made by the General Directorate of Cadastre, which are within the response period as of March 18th, will be **extended until April 30th 2020**. The acts for the opening of procedures for pleadings or hearings notified by the *General Directorate of Cadastre* **after March 18th will have a new deadline set at May 20th 2020**. It is important to keep in mind that the period between the date of entry into force of the *Royal Decree-Law 8/2020* until May 20th will not count towards the maximum duration of these proceedings initiated *ex officio*.

On the other hand, it should be noted that the Royal Decree-Law 8/2020 also has included a change in the Property Transfer and Certified Legal Documents Tax in the form of a **new exemption**. From now on, the taxpayer will be exempt of the gradual tax



of Transfer and Stamp Tax, in case of public deeds recording contractual novations of mortgage loans and credit facilities that take place under the provisions of the Royal Decree-law 8/2020.

The package of measures that has been approved also has an impact on the **customs area**. However, the provisions of the Royal Decree 8/2020 state that the suspension of the tax periods mentioned in this article will not affect the time period for pleadings and comply with demands made by the Authorities, because they are subject to specialties contained in the customs regulations. Nonetheless, the new measures establish that the head of the Customs Office and Special Taxes from the Spanish tax administration is enabled to approve that the declaration procedures and customs clearance can be carried out by any public servant working for the customs office.

4 COMMERCIAL AND CORPORATE MEASURES

Regarding commercial and corporate area, in the following paragraphs we highlight the main urgent measures required by RDL 8/2020 in this legal sector.

I. EXTRAORDINARY MEASURES APPLICABLE TO LEGAL ENTITIES (ARTICLE 40)

a) Holding of meetings and adoption of resolutions

During the alarm period and even if the bylaws of the relevant legal entities had not foreseen it:

- i. **All meetings** of managing bodies of legal entities **may be held by videoconference** provided that this method ensures authenticity and bilateral or plurilateral connection in real time with image and sound of attendees.
- ii. The **resolutions** of said managing bodies **may be adopted by means of written vote and without meeting**, whenever the chairman so decides. Moreover, this method will be mandatory if more than one member of the relevant body requests its use.
- iii. **Article 100 of the Commercial Registry Regulations** will apply in respect of the resolutions adopted through the method described in the preceding paragraph ii, even if the relevant legal entities are not commercial companies. Specifically, pursuant to this article, the resolutions will be deemed to have been adopted at the place of the registered office and on the date of receipt of the last of the votes. Likewise, and unless otherwise provided in the bylaws, the vote must be sent within a period of ten days as from the date on which the request to cast the vote is received, lacking value otherwise.

b) Drafting and approval of annual accounts

The **period of three months** as from the end of the financial year **to draft the annual accounts** and, if legally required, the management report and other documents that are legally required by law, **is suspended**, resuming again for another three months as from the end of the alarm state.

If, on the date of declaration of the state of alarm, the managing body of a legal entity had already drafted the accounts corresponding to the previous year, the



period for accounting verification of those accounts, if the audit were mandatory, will be extended for **two months as from the end of the alarm state**.

The ordinary **general meeting to approve the accounts** for the previous year will meet **within three months from the end of the aforementioned term** to draft the annual accounts.

c) Convening and holding of the general meeting

If the **notice of call** of the general meeting has been published **before the declaration of the state of alarm**, but the day of **holding is foreseen after said declaration**, the managing body can **modify** the place and time scheduled for the holding of the meeting **or revoke the agreement for the meeting** by means of a notice published at least forty-eight hours in advance on the company's website or, if the company does not have a website, in the Official State Gazette (*Boletín Oficial del Estado*).

In case of revoking the agreement for the meeting, the managing body should proceed with a new notice of call within one month after the end of the state of alarm.

The notary required, if applicable, to attend a general shareholders' meeting and take minutes of the meeting may use means of remote communication in real time that adequately ensure the fulfillment of the notary's functions.

d) Separation Right

Even if a legal or statutory cause concurs, **the shareholders cannot exercise the separation right** in capital companies until the end of the state of alarm.

e) Reimbursement of contributions to cooperative shareholders

The **reimbursement of the contributions** to cooperative shareholders that cause a loss during the duration of the state of alarm is **extended** until six months have elapsed since the end of the state of alarm.

f) Dissolution

In case that, during the period of the state of alarm, **the term of the company as set out in the bylaws had elapsed**, the company will not be dissolved until two months have elapsed from the end of said state.

If before the declaration of the state of alarm, and during said state, a **legal or statutory cause for dissolution** of the company concurs, the legal period applicable to the announcement by the managing body of the general shareholder's meeting to adopt the resolution for the dissolution of the company or the resolutions that have the purpose of enervating the cause, is suspended until the end of said state of alarm.

Should the legal or statutory cause for dissolution occur during the period of the state of alarm, **the directors will not be liable for the corporate debts incurred during that period**.

II. SUSPENSION OF THE PERIOD OF EXPIRY OF ENTRIES IN THE REGISTRY DURING THE VALIDITY OF THE ROYAL DECREE DECLARING THE STATE OF ALARM. (ARTICLE 42)



During the period of validity of the state of alarm and, if applicable, any extensions thereof, **the period of expiry** of the presentation entries, preventive notes, mentions, marginal notes and any other **registry entries** that may be cancelled due to the passage of time, **is suspended**.

III. DEADLINE FOR THE DUTY TO FILE FOR INSOLVENCY (ARTICLE 43)

While the state of alarm is in force, the debtor who is in a state of insolvency, or who has notified the competent court for the declaration of insolvency the initiation of negotiations with creditors, **is not obliged to request the declaration of insolvency**.

Moreover, the judges **will not admit the applications for compulsory insolvency** until two months have passed since the end of the state of alarm. In addition, if during that period an application for **voluntary insolvency** has been submitted, **the same will be admitted for processing with preference**, even if it is dated after any **compulsory insolvency** applications.

5 MEASURES REGARDING PUBLIC PROCUREMENT

The article 34 of the Royal Decree-Law 8/2020, March 17th, establishes a series of measures regarding public procurement which try to alleviate the negative consequences of COVID-19 in the normal evolution of public contracts that are currently being executed.

In fact, the limitation of people's freedom of movement, the suspension of the opening of premises and retail establishments, the incentive of *teleworking* for individuals and Administrations (Royal Decree 463/2020, March 14th and its modifications), produce a situation in which it is impossible to execute the current public contracts, whatever these may be.

Let consider, for example, and this case is real, a public service concession contract concluded between a mainly tourist municipality and a company, consisting on the installation, maintenance and advertising exploitation on the street of urban furniture. Given the state of alarm, the tourist establishments have been dramatically reducing their demand and the hotels are been closed, tourists are been repatriating to forced marches to their countries and the consideration of the contract, the advertising exploitation of urban furniture, is also drastically reduced when requesting advertisers (who have also had to close their retail stores) to terminate their contracts.

These measures of the Royal Decree-Law 8/2020 are intended to relieve these negative effects by mediating specific and transitory measures such as in the previous example, the restoration of the economic balance of the contract by means of extending its initial duration to a maximum of 15%.

Obviously, given that the priority objective of the Royal Decrees approved is to protect the health and safety of citizens and to contain the progression of the disease, these measures do not apply to contracts for services or sanitary, pharmaceutical, security,



cleaning or maintenance of computer systems, services or supplies necessary to guarantee the mobility and security of transport infrastructure and services whose object is linked to the health crisis caused by COVID-19.

In this context, four measures' groups are established, by type of contract, whatever the entities belonging to the Public Sector that celebrate them. The most outstanding aspects are the following:

1) **Contracts for services and supplies of successive provision** in which the employer undertakes to deliver a plurality of goods periodically, intermittently or successively. In these cases, when the execution becomes impossible, as a consequence of the COVID-19 or because of the measures adopted by the public authorities to combat it, these contracts **will be automatically suspended** since the factual situation that prevents their provision takes place and until that provision can be resumed.

For these situations, the Royal Decree-Law proceeds to replace the indemnities that the current legislation collects when there are ordinary causes of suspension and termination of contracts, through which they are expressly specified and detailed, given the current reasons of exceptionality and temporality.

Thus, in this type of contract, the contracting entity must pay the contractor the damages and losses actually suffered by the contractor during the suspension period, **upon request and reliable proof** of its reality, effectiveness and amount by the contractor, **although limited to**: 1.º Salary expenses; 2.º the expenses for maintenance of the definitive guarantee; 3.º the rental costs or maintenance costs of machinery, installations and equipment directly assigned to the execution of the contract; and, finally, 4.º the expenses corresponding to the insurance policies provided in the specifications.

The procedure created *ad hoc* is the following: 1.- **The contractor's request** accrediting the contracting authority the impossibility of executing the contract as a consequence of the exceptional situation; 2.- response of the contracting authority **within 5 calendar days**, after which, without notifying the contractor of the express resolution, **this silence should be understood as dismissal**.

2) In the **remaining service and supply contracts**, when the contractor delays in meeting the deadlines set for the reasons that concern us, but offers to meet its commitments **if the initial term is extended** or the extension in course, the contracting body will grant it, giving it a term that will be, at least, equal to the time lost for the aforementioned reason. In addition, **as long as it is requested and accredited**, the contractors will be entitled to the payment of the additional salary expenses that they would actually have incurred as a consequence of the time lost due to COVID-19, up to a maximum limit of 10% of the initial price of the contract.

3) **In works contracts**, when the situation created by COVID-19 results in the impossibility of continuing the execution of the contract, the contractor may request **its suspension** from the moment the factual situation that prevents its provision occurs and until this provision can be resumed.



The procedure to prove these circumstances, as well as the imperative deadlines and the derogatory effect of the absence of a response from the contracting authority are the ones we have seen in point 1 for service and supply contracts for successive services.

The provisions of this section will also apply to those contracts in which, according to the “work development program or work plan”, the completion of its execution period were scheduled between March 14th, the start date of the State of Alarm, and during the period that it lasts, and as a consequence of the factual situation created, the delivery of the work cannot take place. In these cases, the contractor may request an **extension of the final delivery period** as long as it offers to fulfil its pending commitments if the initial term is extended.

Agreed the suspension or extension of the term, **only** the following concepts **will be compensable**, as long as the contractor proves to be up to date with its labour, social and current obligations with its subcontractors and suppliers:

- a) The salary expenses that the contractor actually pays to the personnel assigned to the ordinary execution of the contract, during the suspension period (in particular, the base salary, the disability supplement, extraordinary bonuses, and the vacation remuneration in the terms of the VI general collective agreement of the construction sector 2017-2021);
 - b) Expenses for maintenance of the definitive guarantee;
 - c) Expenses of rentals or maintenance costs of machinery, installations and equipment;
 - d) The expenses corresponding to the insurance policies, provided in the specifications.
- 4) In the **works concession and service concession contracts**, as we have seen, the factual situation created by COVID-19 will entitle the concessionaire **to re-establish the economic balance of the contract** by extending its initial duration to a maximum of 15% or by modifying the economic clauses included in the contract. For this, the contracting authority must be accredited for the impossibility of executing the contract as a consequence of this situation.

The objective of this rebalancing is to compensate the concessionaires for the loss of income and the increase in the costs incurred with respect to those foreseen in the ordinary execution of the contract during the period of the factual situation created by COVID-19. Such compensation will only proceed **upon request and reliable proof of the reality, effectiveness and amount by the contractor of those expenses**.

In short, the Decree-Law 8/2020, March 17th, establishes a series of emergency measures to try to minimize the negative effects of the situation created by the *coronavirus* pandemic on public contracts that had been carried out in the entry into force of the Alarm State.

However, the exceptional situation experienced by individuals, companies and Administrations; the short deadlines that are established after which the suspension request can be understood as dismissed, leading the contractor to helplessness or legal proceedings; the gaps created by the rule itself (sections 2 and 3 of article 34 indicate:



"as long as they have not lost their purpose as a consequence of the factual situation created by COVID-19", but what if it has lost it? How to reset the equation?); as well as the uncertainty weighing on upcoming events and the very viability of many companies, predict a new conflict associated with this sector.

It is, therefore, appropriate for contractors to carry out a detailed analysis of the situation in which their contracts remain, in order to make in due time and form the application of the protective measures most convenient for them.

6 MEASURES IN THE MORATORIUM ON MORTGAGE PAYMENTS

The measures of the extraordinary decree for the alarm state include the moratorium on mortgage payments for groups particularly vulnerable (articles 7 to 16 of the RD 8/2020).

The said measure is mainly aimed to avoid the evictions consequence of the impossibility to pay the mortgage quotes due to the national sanitary emergency situation that is occurring nowadays.

- **Beneficiaries:**

The moratorium on payment will be applied to loan or credit contracts secured by a real estate mortgage signed to finance the purchase of a habitual residence and which are in a situation of economic vulnerability in order to pay for it as a result of the COVID-19 crisis.

These measures will also be applicable to the guarantors and sureties of the principal debtor, with respect to their habitual residence and under the same conditions as those established for the mortgage debtor.

- **Situation of economic vulnerability:**

The mortgagor will be considered in a situation of economic vulnerability when it is in one of the following situations (in force in any case on the date of entry into force of RD 8/2020, 18 March 2020):

- That the mortgage debtor becomes **unemployed or, in the case of a business or professional, suffers a substantial loss of income or a substantial drop in sales.**
- That **the total income of the members of the family unit does not exceed**, in the month prior to the application for the moratorium:

- a) In general, the limit of three times the monthly Public Indicator of Multiple Effects Income (hereinafter, "**IPREM**¹").

¹ IPREM: 537.84.-€, therefore, inferior to 1.611.-€.



- b) This limit shall be increased by 0.1 times the IPREM for each dependent child in the household. The increase applicable per dependent child shall be 0.15 times the IPREM for each child in the case of a single parent household.
 - c) This limit shall be increased by 0.1 times the IPREM² for each person over 65 years of age who is a member of the family unit.
 - d) In the event that any of the members of the family unit has a declared disability of over 33%, a situation of dependency or illness that makes him/her permanently incapable of carrying out a work activity, the limit provided for in sub-section i) shall be four times the IPREM³, without prejudice to the accumulated increases per dependent child.
 - e) In the case that the mortgage debtor is a person with cerebral paralysis, mental illness, or intellectual disability, with a recognized degree of disability equal to or greater than 33 per cent, or a person with physical or sensory disability, with a recognized degree of disability equal to or greater than 65 per cent, as well as in the cases of serious illness that makes the person or his career demonstrably unable to carry out a work activity, the limit provided for in subsection (i) shall be five times the IPREM⁴.
- That **the mortgage quota, plus expenses and basic supplies, is greater than or equal to 35% of the net income received by all the members of the family unit.**
 - That as a result of the sanitary emergency, **the family unit has suffered a significant alteration of its economic circumstances** in terms of efforts to access housing, in the following terms:
 - a) That a significant alteration in economic circumstances has occurred when the effort represented by the mortgage charge on the family income has been multiplied by at least 1.3.
 - b) That there has been a substantial fall in sales when this fall is at least 40 %.

Family unit shall mean: the debtor; his or her spouse not legally separated or registered partner; and the children, regardless of age, living in the residence, including those linked by a guardianship, foster care or family relationship and his or her spouse not legally separated or unmarried partner, who live in the residence.

- **Need for evidence by the mortgage debtor:**

² 53,78

³ 2.151.-€

⁴ 2.689.-€



The mortgage debtor is required to prove the existence of the above circumstances by presenting the following documents:

- **Unemployment**: by means of a certificate issued by the organization managing the benefits, stating the monthly amount received as unemployment benefit or subsidy.
 - **Stop of activity for self-employed persons**: by means of a certificate issued by the Tax Administration State Agency or the competent authority of the Autonomous Community, where appropriate, on the basis of the statement of cessation of activity submitted by the applicant.
 - **Number of people living in the residence**: by means of (i) a family book or document certifying a unmarried partner; (ii) a certificate of registration of the persons registered in the residence, with reference to the time of presentation of the supporting documents and the previous 6 months and/or; (iii) a declaration of disability, dependency or permanent incapacity to work.
 - **Ownership of assets**: through (i) a simple note from the Land Registry index service of all the members of the family unit and/or (ii) deeds of sale of the house and the granting of the loan with mortgage guarantee.
 - **Responsible declaration by the debtor regarding compliance with the requirements demanded to be considered without sufficient economic resources according to RD 8/2020.**
-
- **Submission of applications and granting of the moratorium:**

Applications for a moratorium may be submitted from the day after the entry into force of the RD 8/2020, this is from **19 March 2020**.

Likewise, it is expected that the debtor included in the scope of application of the RD 8/2020 may apply to the creditor, up to fifteen days after the end of the validity of the RD 8/2020, for a moratorium on the payment of the loan with mortgage guarantee.

The creditor entity must proceed to its implementation within a maximum period of 15 days from the request for the moratorium. Once the moratorium has been granted, the creditor entity will inform the Spanish National Bank (Banco de España) of its existence and duration for accounting purposes and of the fact that it has not been included in the calculation of risk provisions.

- **Moratorium effects:**



It will result in the **suspension of the mortgage debt** during the period stipulated for it and the consequent non-application during the period of validity of the moratorium of the early maturity clause included in the mortgage loan contract.

During the period of validity of the moratorium, the creditor entity **cannot demand the payment of the mortgage quota, nor of any of the concepts that compose it** -this is the amortization of the capital or payment of interests-, neither in full, nor in a percentage. Neither will interest be payable.

7 LIMITATION ON FOREIGN INVESTMENT IN SPAIN

The recent and unforeseen events related to COVID-19 are generating a very significant global impact on the economic and financial world. For this reason, the Spanish Government has taken extraordinary measures aimed to ensure an exhaustive control over foreign investment transactions relating to Spanish companies which is currently regulated under **Spanish Law 19/2003, of 4th July, on the Legal Regime of Capital movements and Economic Transactions Abroad**.

In this regard, **the Final Provision (number fourth) of Royal Decree Law 8/2020** of March 17, on extraordinary urgent measures to face the economic and social impact of COVID-19 ("RDL 8/2020") adds to the aforementioned law a new **article 7.bis**, which establishes the following:

- **Foreign direct investments:** for the purposes of this article, foreign direct investments in Spain will include any investments made by investors resident in countries outside the European Union and the European Free Trade Association where, as a consequence of the investment:
 - (i) the investor acquires a stake equal to or greater than ten percent (10%) of the share capital of the relevant Spanish company; or
 - (ii) there is a corporate transaction, act or legal business which entails an effective participation in the management or an acquisition of control of said company.
- **Object:** Suspension of the liberalization of the foreign direct investments' regime in Spain, in certain sectors that affect public order, public security and public health. These investment transactions will be subject to the granting of an authorization prior to the completion of the corresponding transaction.
- **Sectors:** The foregoing limitation affects the sectors detailed below, although such list may be extended to other sectors that affect public safety, public order and public health:
 - a) Strategic infrastructures, whether physical or virtual (including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral, financial, and other sensitive facilities), as well



as premises and real estate deemed as key for the operation of those infrastructures.

- b) Strategic technologies and dual-use items (as these are defined in article 2, paragraph 1, of the Council Regulation (EC) No 428/2009), including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.
 - c) Essential supplies, including in particular energy, or those related to raw materials, as well as food security.
 - d) Sectors with access to sensitive information, including in particular personal data or with capacity to control such information.
 - e) Media sector.
- **Affected investors:** This limitation also affects those direct investors:
 - Who are directly or indirectly controlled by a foreign government body (including by the army or any public bodies)
 - Who have made investments or participated in activities in sectors relating to security, public order and public health in other EU Member State members?
 - Who are affected by any open administrative or judicial procedure (whether in an EU Member State or in the State of origin or in a third State) for criminal or illegal activities.
 - **Breach consequences:** Failure to obtain the required authorization will entail the lack of validity and legal effectiveness of the investment transaction as long as it is not legalized. Likewise, the performance of any acts, businesses, transactions or operations without requesting the necessary authorization, or prior to its granting, or in breach of the conditions established in the authorization, will constitute a very serious infringement and will entail the corresponding sanction that may even reach the total value of the investment.
 - **Duration:** Royal Decree Law 8/2020 will be in force as long as the Government of Spain does not expressly announce the termination of the State of Alarm.