

Spain Approves New Royal Decree on Foreign Investments

Royal Decree 571/2023, which will enter into force on September 1, 2023, amends the regime for foreign investments in Spain and, particularly, the investment control regime.

The Spanish government approved Royal Decree 571/2023 of July 4, 2023, which further develops Law 19/2003 of July 4, 2003 on the legal regime of capital movements and foreign economic transactions and annuls Royal Decree 664/1999.

Law 19/2003 (as amended) and Royal Decree 571/2023 regulate the general liberalized system for foreign investments in Spain. These regulations also establish the scenarios in which this general liberalized system may be suspended if an investment is deemed to affect public order, public security, public health, or national security. In these scenarios such investment would require prior administrative clearance.

Royal Decree 571/2023 is designed to reflect the changes over the past two decades since the implementation of Royal Decree 664/1999 and to further adapt the Spanish foreign investment regime to Regulation (EU) 2019/452.

In particular, Royal Decree 571/2023 will mainly modify and further develop the mechanism for the control of foreign direct investments, particularly those described in Article 7 bis of Law 19/2003 as well as those related to national defense, diplomatic real estate, and certain weapons.

The most significant changes in Royal Decree 571/2023 to the control mechanism established in Article 7 bis of Law 19/2003 have already been applied in practice by the relevant authorities. However, a number of new features can be summarized as follows:

- **Shortening of the deadline to adopt a decision.** The review period to adopt a decision has been shortened from six to three months. If the authorities do not issue a decision within that period, the filing is understood to be rejected. If authorities request additional information, the “clock stops” until a response is provided.
- **Elimination of the simplified procedure of 30 working days.** All applications, regardless of the value of the investment, will adhere to a uniform three-month deadline for resolution.
- **Officialization of the voluntary consultation procedure.** Investors will have the opportunity to obtain a confidential and legally binding response on whether a transaction triggers the obligation to

notify or not within a maximum period of 30 business days. The investor will not be able to submit a formal filing until a response to the voluntary consultation is received.

- **Exemptions.** A new exemption system has been established, which now varies depending on the sector in which the target company operates.
 - In the energy sector, the investment will be exempted if (i) the target company is not involved in regulated activities; (ii) as a consequence of the transaction, the target company does not become a dominant operator; and (iii) if energy production assets are involved, the investor does not acquire as a result of the transaction 5% or more of installed power per technology.
 - In any other sector mentioned in Article 7 bis.2 of Law 19/2003, investments in companies with a turnover of less than €5 million are exempted, with the following exceptions: if the Spanish target company (i) owns critical infrastructures; (ii) has technologies developed under programs and projects of particular interest to Spain; (iii) qualifies as a certain electronic communications operator; (iv) conducts activities related to research and development of mineral deposits of strategic raw materials.
 - The acquisition of real estate that is not linked to critical infrastructures or that is not indispensable and can be substituted for the provision of essential services is also exempted.
- **Transactions not subject to the control mechanism of Article 7 bis of Law 19/2003.** (i) increases in ownership by investors who already possess a minimum of 10% stake in the Spanish target company, provided that such increases do not result in a change of control; and (ii) internal restructurings.
- **Obligated entity in private equity structures.** The entity obligated to the control regime in private equity structures will be the general partner as long as the rest of the partners (known as limited partners) do not have any political rights or have access to privileged information of the Spanish target company.
- **Successive transactions.** If multiple investment transactions occur between the same buyers and sellers regarding the same Spanish target company within a two-year period, they will be treated as a single transaction, considering the date of the latest transaction as the transaction date.
- **Number of filings.** If the investment relates to the acquisition of joint control by various investors over the Spanish target company, only one filing must be submitted by all relevant investors.
- **Consequence of not filing when required.** Investors will be prohibited from exercising economic and political rights in the Spanish target company until the authorization is granted and under the conditions established therein. Investment transactions carried out without the required prior authorization will have no legal validity and effects.
- **Authorizations are valid for a period of six months.** If the investment authorized is not made within such period (or any other detailed period in the authorization) the investor should ask for an extension which will only be granted for six additional months. If the investment is not completed within this extended timeframe the authorization will no longer be valid and the investment will be unauthorized.

National Defense Control Mechanism

Royal Decree 571/2023 also establishes important novelties regarding the national defense control mechanism:

- The review period to adopt a decision has been shortened from six to three months.
- Investors will have the opportunity to obtain a confidential and legally binding response on whether a transaction triggers the obligation to notify or not within a maximum period of 30 business days.
- The national defense control mechanism will be triggered by both (i) investments made by foreign entities and individuals not resident in Spain, and (ii) with the new amendments, by foreign individuals resident in Spain.
- The national defense control mechanism will not apply to: (i) investments in Spanish companies that do not exceed 5% of the company's capital and if the investor does not participate in the administrative bodies; (ii) investments of 5%-10% in a Spanish company capital, as long as the investor undertakes in a public document not to participate in any administrative bodies and not to exercise, use, or transfer their voting rights to third parties.

New Weapons Control Mechanism

Royal Decree 571/2023 also establishes a new control mechanism applicable to activities associated with the manufacturing, trading, or distribution of weapons, cartridges, pyrotechnic articles, and explosives intended for civilian use. Unlike for other control mechanisms, no specific quantitative thresholds exempt the obligation of submitting a filing. Subjectively, the applicable scope is similar to the national defense control mechanism, and applies to foreign entities and individuals not resident in Spain as well as foreign individuals resident in Spain.

Investments affected by more than one control mechanism will be subject to a sole clearance decision.

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