

# The application for the foreign investment authorization

## Suspension of the foreign direct investment liberalization regime

Royal Decree-Law 8/2020 of March 17 ("**RDL 8/2020**") and Royal Decree-Law 11/2020 of March 31 amended Law 19/2003 of July 4, 2003 on the legal regime of capital movements and foreign economic transactions and on certain measures for the prevention of money laundering, directly affecting the liberalization regime for foreign direct investment in Spain - that in which (i) the investor controls or manages the company or (ii) acquires a participation of 10% or more - by introducing a mechanism of authorization prior to the investment.

In the same line, the recently published Royal Decree-Law 34/2020, of November 17, on urgent measures to support business solvency and the energy sector, and on tax matters, includes new amendments in relation to such suspension of the liberalization regime.

In any case, the investments affected, by subjective criteria (conditions of the investor) or objective criteria (sectors that may have an impact on public order, public safety and public health such as essential supplies, media, national defense, etc.), must submit the corresponding request for administrative authorization before the General Directorate of International Trade and Investments and, after a report from the Foreign Investment Board, the Council of Ministers will decide accordingly.

## Simplified procedure and ordinary procedure

For this purpose, the regulations in question provide for a simplified regime that requires a decision to be taken within 30 days in the case of operations that fall into one of the following two categories:

- Investments that prove, by any means valid in law, the existence of an agreement between the parties or binding offer dated prior to the entry into force of RDL 8/2020.
- Investments equal to or greater than 1,000,000 euros and less than 5,000,000 euros.

On the other hand, in the ordinary procedure, the term to decide on the granting of the authorization is extended to 6 months. In both cases, once the corresponding period has elapsed without a decision in either direction, the authorization will be deemed to have been denied due to negative silence.

The authorized investments must be carried out within the period specifically indicated in the authorization or, within 6 months.

## Breach

Failure to comply with the duty to request authorization will result in the nullity of the investment, with no legal effects; in addition to constituting a very serious infringement that will result in the imposition of financial penalties that may reach the value of the operation.

Based on the above, it is advisable to carry out an analysis prior to each investment transaction to determine whether or not it is subject to obtaining the required authorization. At Seegman, we offer this type of service to our clients to support them in the analysis and obtaining of the necessary authorizations to carry out their investment.



**Víctor Vega**  
vvega@seegman.com  
Senior Associate



**Leonardo Britto**  
lbritto@seegman.com  
Foreign Investment Director