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Commercial Law Department

**CHANGES TO THE LAW APPLICABLE TO LIBERALISATION OF SOME
DIRECT FOREIGN INVESTMENTS IN SPAIN (II)**

Further to the changes brought in to Law 19/2003, of 4 July, on the legal regime applicable to the movement of capital and financial transactions with foreign natural and legal persons ("Law 19/2003") by Royal Decree 8/2020, of 17 March ("RDL 8/2020"), on extraordinary measures to deal with the economic and social impact of COVID-19 (see previous commentary published in AJ March 2020), the Spanish government has now implemented additional changes to Law 19/2003 by means of **Royal Decree-Law 11/2020, of 31 March, adopting urgent additional social and economic measures to deal with COVID-19** ("RDL 11/2020").

The second transitory provision of RDL 11/2020 temporarily establishes the following quantitative restrictions relating to the obligation to seek prior authorisation for the foreign investments detailed in AJ March 2020:

- All investments of less than one million euros are exempt from the aforesaid prior authorisation obligation.
- Investment transactions in amounts of one million euros or more, but under five million euros, are subject to simplified prior authorisation by the government.

The simplified procedure involves submitting an application to the Head of the General Directorate for International Trade and Investments, who must decide the application within thirty days.

- Investments in amounts of five million euros and above remain subject to the procedure established in Article 6 of Law 19/2003.

The simplified procedure of reference also temporarily applies to transactions in instances when proof can be provided, by any means valid in law, of an agreement entered into by and between the parties or a binding quotation establishing a calculated or calculable fixed price, dated prior to the entry into force of RDL 8/2020.

Furthermore, Final Provision Three of RDL 11/2020 amends the legal definition of direct foreign investments in Spain and provides that all investments which lead to the investor holding 10% or more of company capital in a Spanish company, or company transactions, legal acts or juridical business giving rise to effective participation in managing or controlling the company concerned, are subject to the new legislation suspending direct foreign investments in Spain as established in Article 7 bis of Law 19/2003, in any one of the following scenarios:

- a) if the transaction, legal act or juridical business is performed by natural or legal persons resident in third countries outside the European Union and/or

European Free Trade Association areas.

- b) If the transaction, legal act or juridical business is performed by natural or legal persons resident in European Union or European Free Trade Association countries, but where the beneficial owner is resident in a country outside the European Union and/or the European Free Trade Association areas. 'Beneficial owner' is defined as the natural or legal person who ultimately, either directly or through a third party, holds or controls a percentage greater than 25% of company capital and voting rights in the investor or who exercises direct or indirect control over the investor by any other means.

The purpose of this new amendment to Final Provision Three is to govern indirect investment by foreign investors using investment vehicles located outside the European Union or the European Free Trade Association areas.

Lastly, RDL 11/2020 removes any possibility that the suspension of the law applicable to liberalisation of some direct foreign investments, as established in Article 7 bis, could be lifted by a Council of Ministers Resolution and the changes to Law 19/2003 must therefore be considered permanent.