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Royal Decree 571/2023, of 4 July, on foreign investment. (2023)

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I

Foreign direct investment, which includes both foreign investment in Spain and Spanish investment abroad, is one of the most effective mechanisms for facilitating international economic integration. In the case of Spain, foreign investment has been, for decades, a fundamental element in the promotion of the modernisation of the economy, which has facilitated access to the most advanced knowledge and the improvement of productivity and employment. Likewise, the intense investment activity abroad of Spanish companies in recent decades has been a determining element for their internationalisation and that of the Spanish economy as a whole. Foreign investment is also, if we look at its social, environmental, human rights and governance impact, a fundamental pillar for achieving the Sustainable Development Goals and making the 2030 Agenda a reality, as well as for the external projection of Spanish and European values.

II

Article 63 of the Treaty on the Functioning of the European Union (TFEU) prohibits restrictions on the movement of capital between Member States and between Member States and third countries. For its part, Article 65(1)(b) of the Treaty allows Member States to establish procedures for the declaration of capital movements for the purposes of administrative or statistical information and also allows justified measures to be taken on grounds of public security and public order. For its part, Article 346(1)(b) of the Treaty recognises the right of Member States to adopt such measures as they deem necessary for the protection of their essential security interests and which relate to the production of or trade in arms, ammunition and war materiel; Such measures shall not alter the conditions of competition in the internal market in respect of products which are not intended for specifically military purposes.

These articles correspond to the former Articles 56 and 58.1.b) of the Treaty establishing the European Community (TEC), the provisions of which were developed by Law 19/2003, of 4 July, on the legal regime for capital movements and economic transactions abroad. Article 1 of this law proclaims the principle of free movement of capital and economic transactions abroad, while Article 3 stipulates the obligations to provide information on them, and Articles 4, 5, 6 and 7 include the justified measures referred to in Article 65(1)(b) TFEU. For its part, Royal Decree 664/1999 of 23 April 1999 on foreign investment, prior to Law 19/2003 of 4 July, establishes the obligations to declare foreign investment operations in Spain and Spanish investment abroad to the Investment Registry, and establishes the procedure for the suspension of the general regime for the liberalisation of such investments. In addition, it establishes the suspension of the general regime for foreign investment in Spain in activities directly related to national defence.

However, it was necessary to enact a new royal decree on foreign investment that repeals Royal Decree 664/1999, of 23 April, introducing new provisions, for different reasons that are mentioned below.

III

Firstly, and from a statistical point of view, the experience in the management of the Investment Register and the innovation processes observed in the financial markets, given the time that has elapsed since the entry into force of Royal Decree 664/1999, of 23 April, make it necessary to adjust and update the foreign investment declaration regime to the concept of direct investment in this new economic and financial environment. In addition, with regard to the system of declarations for statistical and administrative purposes, the global standard contained in the "Framework Definition of Foreign Direct Investment" published in its fourth edition in 2008 by the Organisation for Economic Co-operation and Development (OECD) should be taken as a reference, which leads to the introduction of a series of changes: on the one hand, in order to adapt to world standards, new operations are incorporated that were not contemplated in Royal Decree 664/1999, of 23 April; on the other hand, the obligation to declare for investments in negotiable securities that do not carry the intention of influencing the control of a company and that, therefore, belong to the category of portfolio investment, is eliminated; Finally, the limits of the different statistical declarations are modified for reasons of the experience accumulated in the twenty years of validity of the previous Royal Decree.

In parallel, Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investment in the Union entered into force in October 2020. In addition, the Regulation is included in Article 65(1)(b) TFEU and, without prejudice to the provisions of Articles 4(2) and 346 of the TFEU, establishes a regulatory framework for mechanisms for the control of foreign investments from outside the EU in the Member States for reasons of security and public order. Article 4 of the Directives states that in order to assess whether a foreign direct investment may affect security or public order, Member States may take into account its potential effects in certain areas, including critical infrastructure and technologies, the supply of key inputs such as energy, or access to sensitive information. Similarly, the same article provides that, for the same purpose, Member States may consider certain characteristics of the investor, such as their possible control by foreign governments, that their investment affects or may affect security or public order in another Member State or the possible exercise of criminal or illegal activities.

This regulation, in addition to establishing common criteria for the control of foreign direct investment within the Union for reasons of security or public order, creates mechanisms for cooperation between the Member States and between them and the European Commission, in order to ensure that they share a minimum of information that must be accurate, exhaustive and reliable.

On the other hand, at the national level, the amendment of Law 19/2003, of 4 July, made by Royal Decree-Law 8/2020, of 17 March, on extraordinary urgent measures to deal with the economic and social impact of COVID-19, has come into force; by Royal DecreeLaw 11/2020, of 31 March, adopting urgent complementary measures in the social and economic field to deal with COVID-19; and by Royal Decree-Law 34/2020, of 17 November, on urgent measures to support business solvency and the energy sector, and in tax matters. These rules and, in particular, the provisions contained in Regulation (EU) 2019/452 of the European Parliament and of the Council, of 19 March 2019, which were developed in our legal system through Royal Decree-Law 8/2020, of 17 March, resulted in the incorporation of a new article 7 bis in Law 19/2003, of 4 July, relating to the suspension of the liberalisation regime for certain foreign direct investments in Spain and the consequent modification of the regime of infringements and sanctions. In this context, Royal Decree-Law 11/2020 of 31 March 2020, in its second transitional provision, completed the applicable regime by articulating the possibility of resorting to a simplified notification and processing procedure in foreign investment operations subject to the suspension regime established in Article 7 bis of Law 19/2003 of 4 July.

All these legal reforms, added to the changes that have taken place in the more than twenty years since the entry into force of Royal Decree 664/1999, of 23 April, make it necessary to articulate a new development that adapts the regulatory rule to the new legal structure and to Regulation (EU) 2019/452 of the European Parliament and of the Council. of 19 March 2019, improve the quality and international comparability of statistics, reduce administrative burdens for the investor, and specify, more precisely, the cases of suspension of the foreign investment regime, to provide greater legal certainty for investors. Likewise, the regulation complies with the provisions of Law 10/2010, of 28 April, on the prevention of money laundering and the financing of terrorism, and refrains from regulating the system of collections and payments from or to abroad, which continues to be developed in accordance with the procedures established in Royal Decree 1816/1991, of 20 December. on Economic Transactions with Abroad, and its implementing provisions.

IV

This royal decree is structured in twenty-six articles distributed in five chapters, three transitional provisions, one repealing provision and three final provisions.

Chapter I (Articles 1 and 2) sets out the object and scope of application.

Chapter II (Articles 3 to 5) is devoted to the declaration of foreign investments in Spain in relation to their subjective and objective aspects, as well as to the declaration of investments to the Investment Registry itself, required and compulsory, for administrative or statistical purposes, after their execution.

Chapter III (Articles 6 to 8) contemplates these same aspects, referring to the regime of Spanish investments abroad.

In essence, in both cases it is a matter of limiting and updating the declarable investments to the information necessary to prepare the Foreign Direct Investment statistics.

Chapter IV (Articles 9 to 20) develops the regime applicable in the event of suspension of the foreign investment liberalisation regime in accordance with the provisions of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 and Law 19/2003 of 4 July 2003 through four sections.

Section 1 (Articles 9 to 12) sets out the common provisions to be applied in the event that the general investment liberalisation regime provided for by default in the applicable legal framework is suspended. In this sense, a voluntary consultation procedure is regulated ex novo to clarify whether or not a certain operation is subject to authorisation in application of the current regime. Likewise, the common regime applicable to the suspension of the liberalisation regime is developed, as well as the a priori subjects subject to authorisation, in application of the aforementioned legal framework, as well as the obligation of notaries to inform interested parties of the regime applicable to foreign investments, in accordance with the provisions of the Law on Notaries of 28 May 1862.

Section 2 (Article 13) develops the regime for prior authorisation of foreign investment in Spain and Spanish investment abroad by agreement of the Council of Ministers, in application of Article 7 of Law 19/2003, of 4 July.

Section 3 (Articles 14 to 17) develops the regime for prior authorisation of foreign investment in Spain by Agreement of the Council of Ministers, in application of Article 7 bis of Law 19/2003, of 4 July. In this regard, the authorisation regime for certain foreign investments from countries that are not members of the European Union or the European Free Trade Association is regulated, giving an account of the general issues of the procedure, the areas of investment to which this regime applies, the characteristics of the investor that must be taken into account for the purposes of its application, and exemptions thereto.

Section 4 (Articles 18 to 20) specifies the prior authorisation regime for foreign investment in Spain in certain material areas; firstly, Articles 18 and 19 develop the regime applicable to investments in activities directly related to National Defence and the regime applicable to investments in activities directly related to weapons, cartridges, pyrotechnic articles and explosives for civilian use or other material for use by the State Security Forces and Corps, in development of the provision contained in the sole article of Law 18/1992, of 1 July, which establishes certain rules on foreign investment in Spain. Finally, Article 20 specifies the prior authorisation regime to which the acquisitions of real estate for diplomatic purposes of non-member States of the European Union would be subject, on the basis that it is the foreign State and not the foreign natural person who may be residing in Spain when carrying out the procedure. who, in the last instance, proceeds to acquire them.

Chapter V (Articles 21 to 26) sets out a series of general issues that specify the bodies and obligations that complete the regulatory framework applicable to foreign investment; thus, in Article 21 the Foreign Investment Board is presented as an interministerial collegiate body, as provided for in Law 40/2015, of 1 October, on the Legal Regime of the Public Sector, with the functions of reporting on foreign investments; Article 22 contains the report to be published annually by the Ministry of Industry, Trade and Tourism with information on foreign investments and the control mechanisms applied, in application of Regulation (EU) 2019/452 of the European Parliament and of the Council, of 19 March 2019; Articles 23 et seq. contain common provisions relating to the monitoring of the provisions of this Royal Decree, the effect of changes of registered office or residence, and the effect of non-compliance with the obligations set out, as well as the processing of personal data and the confidentiality of the information transmitted.

Finally, there are three transitional provisions whose objective is to maintain the continuity of investment declarations and the correct functioning of the Investment Register, one derogatory provision and three final provisions.

On the other hand, in relation to the procedures of Articles 9.1.a), 13, and 14, the obligation to interact with the Administration by electronic means is established. Taking into account the characteristics of the investment operations under analysis, it is considered proven that the individuals involved have access to and availability of the necessary electronic means.

V

This royal decree is in line with the principles of good regulation, in accordance with Article 129 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, in particular the principles of necessity and effectiveness, proportionality, legal certainty, transparency and efficiency. From the point of view of the principles of necessity and effectiveness, this provision establishes the obligations to declare foreign investment operations in Spain and Spanish investment abroad to the Investment Registry. It also establishes the procedure for the suspension of the general regime for the liberalisation of such investments, adapting them to the new economic and financial environment. With regard to the principle of proportionality, the provision contains the essential regulation to meet the need pursued, simplifying the administrative procedures for the purposes of statistical declaration. The regulation will also increase the legal certainty of operators for the purposes of declaring and controlling investments, and will enable administrative authorities to more effectively carry out their functions of suspending the foreign investment liberalization regime. Finally, it is in line with the requirements of the principles of transparency and efficiency, not only because it establishes a clear framework for action for all operators, but also because the administrative burdens arising from the proposed actions are reduced, where possible.

The adoption of this Royal Decree is consistent with the relevant requirements for the imposition of restrictive measures on grounds of security and public order set out in the WTO agreements, in particular Articles XIV(a) and XIVa of the General Agreement on Trade in Services (GATS). It is also consistent with Union law and with commitments made in other trade and investment agreements to which the Union or Spain are parties or trade and investment provisions to which both have acceded.

This Royal Decree is approved by virtue of the powers recognised to the State by Article 149.1 of the Constitution, in paragraphs 10 and 13, which reserve to the State exclusive competence in matters of foreign trade and the bases and coordination of the general planning of economic activity, as well as under the powers of regulatory development recognised to the Government and included in the first paragraph of the single final provision of Law 19/2003, of 4 July, without prejudice to Articles 19 and 20, which are issued in development of the regulatory authorisation contained in the sole article of Law 18/1992, of 1 July.

By virtue of this, at the proposal of the Minister of Industry, Trade and Tourism, the Minister of Foreign Affairs, European Union and Cooperation, the Minister of Defence, the Minister of the Interior, and the Minister of Economic Affairs and Digital Transformation, with the prior approval of the Minister of Finance and Public Administration, in agreement with the Council of State, and after deliberation by the Council of Ministers at its meeting on 4 July 2023,

I ORDER

Drafted in accordance with the corrigendum published in BOE no. 18, of 20 January 2024. Ref. BOE-A-2024-1049

CHAPTER I

Purpose and scope of application

Article 1. Object.

The purpose of this Royal Decree is to develop, with regard to investments, Law 19/2003, of 4 July, on the legal regime for capital movements and economic transactions abroad.

Article 2. Scope of application.

1. This Royal Decree shall apply to foreign direct investments; foreign direct investments are considered to be those made in Spain from abroad and those made abroad from Spain.

2. The provisions of this Royal Decree shall be without prejudice to the special regimes affecting foreign investment in Spain in those sectors with specific regulation. In such cases, and without prejudice to the provisions of this Royal Decree, the investments shall comply with the requirements of the applicable sectoral regulations.

3. Regardless of the type of contribution in which the foreign investments are materialised, the collections and payments derived from the operations, investments or transactions regulated by this Royal Decree shall be made in accordance with the procedures established in Royal Decree 1816/1991, of 20 December, on Economic Transactions with Foreign Countries, and its implementing provisions.

CHAPTER II

Declaration of foreign investments in Spain to the Investment Registry

Article 3. Subjects of foreign investment in Spain.

For the purposes of declaring investments to the Investment Registry of the Ministry of Industry, Trade and Tourism, "non-residents" are considered foreign investors in Spain in accordance with the definition in Article 2 of Law 19/2003, of 4 July.

Article 4. Purpose of foreign investments in Spain.

Foreign investments in Spain, for the purposes established in the following article, shall include the following:

a) The participation in the capital of Spanish companies, provided it is carried out by a non-resident investor who holds or reaches, through this operation, a participation equal to or greater than 10 percent of the share capital of the issuer or its voting rights.

This category includes both the incorporation of the company, as well as the subscription or acquisition, in whole or in part, of its shares and the assumption or acquisition, in whole or in part, of equity interests.

It also includes the acquisition of securities issued by public or private persons or entities residing in Spain, such as subscription rights to shares, convertible bonds, or other similar securities that by their nature grant the right to participate in the capital, as well as any legal transaction by which voting rights in a resident company are acquired.

b) The acquisition of shares and interests in collective investment institutions and closed-end collective investment entities (such as hedge funds, real estate funds, venture capital funds, alternative investment funds, and other similar entities), provided that the management company is a resident and as a result, a participation equal to or greater than 10 percent of the assets or share capital of the entity, as the case may be, is acquired or the right to acquire such a participation is granted.

c) Contributions by shareholders to the equity of Spanish companies that do not entail an increase in the share capital, provided that the shareholder has a stake in the capital equal to or greater than 10 per cent.

d) The constitution and expansion of the endowment in Spain of non-resident branches.

e) Financing to Spanish companies or branches from companies of the same group through deposits, credits, loans, negotiable securities or any other debt instrument, whose amount exceeds 1,000,000 euros and, in addition, their repayment period is longer than one calendar year.

f) The reinvestment of profits in Spanish companies, provided that they are made by anon-resident investor who holds a stake equal to or greater than 10 per cent of the share capital of the Spanish company.

(g) Other forms of investment such as the constitution or formalisation of joint venture contracts, joint ventures, foundations, economic interest groupings, or communities of property; or participation in any of them when the non-resident investor's participation represents a percentage equal to or greater than 10 per cent of the total value and, in addition, is greater than 1,000,000 euros.

h) The acquisition of real estate located in Spain by non-residents, the amount of which exceeds 500,000 euros.

Article 5. Declaration of foreign investments in Spain to the Investment Registry.

1. Foreign investments in Spain and their divestment shall be declared to the Investment Registry of the Ministry of Industry, Trade and Tourism on a mandatory basis and subsequent to their completion, except as provided for in section 5 of this article. The form and deadline for making the declarations will be determined in the implementing regulations of this Royal Decree, and the regulations cited in the third transitional provision will be applicable until then.

2. In general, the investment will be declared by the non-resident owner. When the declaration must be made by a third party, the non-resident owner must provide all the necessary data to carry it out.

3. In particular:

a) Investment transactions carried out in collective investment undertakings and closed- end collective investment undertakings shall be declared by their management company.

b) When the transaction has been carried out by a Spanish notary, either as a result of its legal regime or by agreement of the parties, the notary shall send to the General Council of Notaries, through the notarial electronic office, the information on such transactions within the period and with the content established in the implementing regulations of this Royal Decree. This Council will be responsible for managing and centralizing the information that will in turn be sent to the Investment Registry. In this way, in the event that the non-resident owner has delivered to the notary all the necessary data for the declaration, he will be relieved of the obligation to make it; otherwise, the notary must expressly warn him of this obligation. Consuls or consular affairs officers who exercise notarial functions abroad will be exempt from this declaration, the obligation falling exclusively on the non-resident holder. Once the circumstances have been analysed, the diplomatic official may refuse, if necessary, to intervene.

4. In addition, companies resident in Spain, branches in Spain of non-residents and management companies of Spanish collective investment undertakings and closed-end collective investment undertakings that have foreign participation (hedge funds, real estate funds, venture capital funds, alternative investment funds and other figures of a similar nature), must submit to the Investment Registry an annual report on the evolution of the Investment in the following cases:

a) When the branches in Spain of non-resident companies have an endowment or net worth of more than 3,000,000 euros.

b) In the case of Spanish companies that are dominant in a group of companies as defined in Article 42 of the Commercial Code and provided that the non-resident investor's participation in the share capital or in the total voting rights is equal to or greater than 10 per cent.

c) In the case of Spanish companies with a share capital or net worth of more than3,000,000 euros and in which the non-resident investor's participation in their share capital or in the total voting rights is equal to or greater than 10 per cent.

5. Those investments that fall within the scope of Article 4, with their immediate or ultimate origin in non-cooperative jurisdictions, regulated by Order HFP/115/2023, of 9 February, which determines the countries and territories, as well as the harmful tax regimes, that are considered to be non-cooperative jurisdictions, must declare:

a) Prior to making the investment and applying the corresponding thresholds:

1º In the case of the investments referred to in Article 3(a) to (g), if the foreign shareholding exceeds 50 per cent of the Spanish company to which the investment is addressed.

2. In the case of the investments referred to in Article 4(h).

b) After the investment in its entirety, without the application of thresholds.

• Section 1 has been drafted in accordance with the corrigendum published in BOE no. 18 of 20 January 2024. Ref. BOE-A-2024-1049

CHAPTER III

Declaration of Spanish investments abroad to the Investment Registry

Article 6. Subjects of Spanish investments abroad.

For the purposes of this Royal Decree, Spanish investors abroad are considered to be "residents" in accordance with the definition in Article 2 of Law 19/2003, of 4 July.

Article 7. Purpose of Spanish investments abroad.

Spanish investments abroad, for the purposes established in the following article, may be carried out through any of the following operations:

a) Participation in the capital of non-resident companies, provided that it is carried outby a resident investor who holds or achieves, through this operation, a participation equal to or greater than 10 per cent of the issuer's share capital or its voting rights.

This modality is understood to include both the incorporation of the company, as well as the subscription or total or partial acquisition of its shares and the assumption or total or partial acquisition of company shares.

Likewise, the acquisition of securities issued by non-resident public or private persons or entities, such as share subscription rights, bonds convertible into shares or other similar securities that by their nature give the right to participation in the capital, as well as any legal transaction by virtue of which political rights are acquired in a non-resident company, is also included in this type of operation.

b) The acquisition of units and shares in collective investment schemes, provided that the management company is non-resident and as a result a stake equal to or greater than 10 per cent of the entity's equity or share capital is to be acquired, as the case may be.

c) Contributions by partners to the equity of foreign companies that do not involve an increase in the amount of capital, provided that the partner has a stake in the capital equal to or greater than 10 per cent.

d) The constitution and expansion of the number of branches abroad for residents.

e) Financing to non-resident companies or branches from resident companies of the same group through deposits, credits, loans, negotiable securities or any other debt instrument, the amount of which exceeds 1,000,000 euros and, in addition, their repayment period is longer than one calendar year.

f) The reinvestment of profits in non-resident companies, provided that they are made by a resident investor who holds a stake equal to or greater than 10 per cent of the share capital of the non-resident company.

g) The constitution or formalisation of joint venture account contracts, temporary joint ventures, foundations, economic interest groupings or communities of property; or the participation in any of them when the total value corresponding to the resident investor's participation represents a percentage equal to or greater than 10 per cent of the total value and, in addition, is greater than 1,000,000 euros.

h) The acquisition of real estate located abroad, the amount of which exceeds 300,000euros.

Article 8. Declaration of Spanish investments abroad to the Investment Registry.

1. Spanish investments abroad and their divestment shall be declared to the Investment Register of the Ministry of Industry, Trade and Tourism on a mandatory basis and subsequent to their completion, except as provided for in section 5 of this article. The form and deadline for making the declarations will be determined in the implementing regulations of this Royal Decree, and the regulations cited in the third transitional provision will be applicable until then.

2. In general, the investment will be declared by the resident owner. When the declaration must be made by a third party, the resident owner must provide all the necessary data to carry it out.

3. In particular:

a) Investments made in financial instruments channelled through investment firms, credit institutions or other resident entities which, where appropriate, carry out some of the activities inherent to them and which act on behalf of and at the risk of the investor as the intermediary holder of such securities, shall be declared by said entity, which shall submit the information determined in the rules for the application of this Royal Decree.

b) Investment transactions carried out by collective investment institutions and investment funds or by Spanish resident pension funds must be declared by the management company of the same.

4. In addition, resident holders of Spanish investments abroad, resident companies with branches abroad and resident management companies of foreign investment funds (hedge funds, real estate funds, venture capital funds, alternative investment funds and other figures of a similar nature), must submit to the Investment Registry an annual report on the evolution of the investment in the following cases:

a) Investments in branches abroad of resident companies, with an endowment or net worth of more than 1,500,000 euros.

b) Investments in foreign companies whose activity is the direct or indirect holding of shares in the capital of other companies, regardless of the amount of the investment and provided that the resident investor's participation in the share capital or in the total voting rights of the foreign company is equal to or greater than 10 per cent.

c) Investments by residents in foreign companies with a share capital or net worth of more than 1,500,000 euros and in which the resident investor's participation in the share capital or in the total voting rights of the foreign company is equal to or greater than 10 per cent.

5. Those investments listed in Article 7, with immediate or ultimate destination in noncooperative jurisdictions regulated in Order HFP/115/2023, of 9 February, which determines the countries and territories, as well as the harmful tax regimes, which are considered to be non-cooperative jurisdictions, must declare:

a) Prior to making the investment and applying the corresponding thresholds:

1º In the case of the investments referred to in letters a) to g) of Article 7, if the Spanish participation exceeds 10 per cent of the foreign company to which the investment is addressed.

2. In the case of the investments referred to in Article 7(h).

b) After the investment in its entirety, without the application of thresholds.

• Section 1 has been drafted in accordance with the corrigendum published in BOE no. 18 of 20 January 2024. Ref. BOE-A-2024-1049

CHAPTER IV

Suspension of the general liberalisation regime for certain external investments

Section 1 Common provisions for the suspension of the general liberalisation regime

Article 9. Voluntary consultation.

1. Prior to making the investment, the subjects referred to in the following article may consult on the application to their specific investment project of the suspension of the investment liberalisation regime provided for in Articles 13, 14, 18 and 19, that is, of their submission to an authorisation procedure. These prior consultations will be addressed to:

a) The Directorate-General for International Trade and Investment of the Ministry of Industry, Trade and Tourism in relation to the investments referred to in Articles 13, 14 and 19, or with investments that may be subject to more than one of the authorisation regimes provided for in Articles 13, 14, 18 and 19.

b) The Directorate-General for Armaments and Material of the Ministry of Defence, in relation to the investments exclusively referred to in Article 18.

2. The Directorate-General consulted shall have a period of thirty working days to respond, following a favourable report from the Foreign Investment Board to its proposal. The calculation of the period will begin on the day following the submission of the application and will suspend the possibility of requesting authorisation until the resolution is notified. If this period has elapsed without an express resolution, the interested party may submit an application for authorisation of the investment operation.

3. The resolution of the consultations will be binding on the bodies and entities of the Administration consulted in relation to the consultant.

4. That consultation shall provide all the information necessary to enable it to conclude whether or not the investment liberalisation suspension schemes referred to in paragraph 1 are applicable.

5. If the information provided is considered insufficient, the general directorate consulted may require the consultant to provide the necessary additional information, indicating that, if he does not do so, he will be considered to have withdrawn his consultation. The request for additional information suspends the calculation of the thirty day period for resolving the consultation, within the framework of the provisions of Article 22.1.a) of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

6. The actions referred to in this article shall be confidential.

Article 10. Subjects of foreign investment requiring authorization.

1. The following are considered to be subjects of foreign investment for the purposes of the application of this chapter:

a) "Non-resident" foreign investors, as defined in Article 2 of Law 19/2003 of 4 July.

b) "Resident" foreign natural persons, regardless of their nationality, when Articles 18 and 19 apply, by virtue of the provisions of Law 18/1992, of 1 July, which establishes certain rules on foreign investment in Spain.

2. The following Management Companies of institutions, entities, or arrangements will be considered holders of foreign investment and, therefore, subject to foreign investment authorization, provided that the partners or beneficiaries do not legally exercise voting rights or have privileged access to company information:

a) Collective investment undertakings or closed-end collective investment undertakings resident in the European Union or the European Free Trade Association, or similar entities or entities that are resident in third countries.

b) Occupational pension funds or other retirement investment entities that are authorized and domiciled in the European Union or the European Free Trade Association, or similar entities or arrangements that are residents of third countries.

Article 11. General framework for authorisations.

1. Requirement for prior authorisation: acts, businesses, transactions and operations for which authorisation is mandatory by virtue of the provisions of this chapter may be carried out only by obtaining the corresponding express administrative authorisation and under the conditions established by it. In particular:

a) Investment operations carried out without the mandatory prior authorization will be invalid and have no legal effect until they are legalized. The foreign investor will not be able to exercise economic and political rights in the Spanish company subject to the investment until the required authorization is obtained.

(b) Where two or more foreign investment transactions take place within a period of two years between the same buyers and sellers, they shall be considered as one carried out on the date of the last transaction.

c) In the case of investments carried out through the agreement of two or more investors, in order to exercise joint control over the object of the investment, a single application for prior authorisation by all investors will be required.

d) In the case of investments included in more than one of the cases provided for in Articles 13, 14, 18 and 19, all of them shall be submitted simultaneously to the Foreign Investment Board for a report and shall be submitted jointly to the Council of Ministers in a single proposal for an Agreement.

e) The authorised investments must be made within the period specifically indicated in the authorisation or, failing that, within a period of six months. If the period has elapsed without the investment having been made, it will be understood that the authorisation is null and void, unless an extension is obtained. The interested parties may request from the body that has authorised the investment operation a single extension for the implementation of the investment, for a period of six additional months which, if not carried out within that period, will be definitively unauthorised. The request for an extension of the validity of the authorisation of an investment that has not been executed must be made, in any case, before the expiry of the period indicated in the authorisation or, failing that, within six months from the notification of the authorisation.

f) Any alteration of the terms of the investment authorised in accordance with the previous sections must be notified to the body of the Administration that processed the corresponding application.

g) When such alteration substantially modifies the conditions of the investment, it will be subject again to the prior administrative authorization procedure. In the event of doubt as to the substantial nature of the modification, the prior consultation procedure regulated in Article 9 of this Royal Decree may be resorted to, unless the competent Directorate-General consider, following a report from the Foreign Investment Board, that the modifications are of little relevance in terms of impact on health. security and public order.

2. Content of the resolutions: The agreements, resolutions or decisions provided for in Articles 13, 14, 18, 19 and 20, within the framework of the provisions of Law 19/2003, of 4 July, may consist of:

a) Unconditional authorisations.

b) Refusal of authorisation.

(c) Authorisations subject to conditions imposed by the resolution body or to commitments submitted by the investor and accepted by the resolution body.

d) Archiving due to withdrawal by the investor or because it is considered that the operation is not subject to any regime for suspending the liberalisation of foreign investments.

In the event that the resolution of the competent administrative body obliges the foreign investor to adopt measures to mitigate the risks detected, said resolution will specify the administrative body that, in accordance with its own powers, must be responsible for monitoring compliance. This body will resolve any issues that may arise during the surveillance and, following a report from the Foreign Investment Board, will resolve by declaring the surveillance over.

3. Information for the assessment of applications: the evaluation of applications for authorisation must take into consideration:

a) The information provided by the investor in its application. If the information provided is considered insufficient, the competent Directorate-General may require the applicant to provide the necessary additional information, indicating that, if they do not do so, they will be considered to have withdrawn their application. The request for additional information suspends the calculation of the three-month period for resolving and notifying the resolution relating to the application for authorisation, within the framework of the provisions of Article 22.1.a) of Law 39/2015, of 1 October.

(b) Information provided, where appropriate, by the Commission or other Member States in the framework of the communication mechanism provided for in Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 on the screening of foreign direct investment in the Union. If necessary, the three-month period for resolving and notifying the resolution relating to the application for authorisation will be suspended, within the framework of the provisions of Article 22 of Law 39/2015, of 1 October.

c) The information provided by the General State Administration, other administrations, economic agents, civil society organizations, or social partners, regarding a direct foreign investment that may affect national security, public health or order, national defense, or foreign policy, as deemed appropriate to collect.

d) The conformity of the actions of the State in which the ultimate investor resides with the international commitments signed by Spain in matters affecting public security, public health or public order.

4. Communication to the National Securities Market Commission (hereinafter, CNMV): In cases where the suspension of the general liberalization regime may apply, and therefore prior authorization is required for acquisitions resulting from a public offer to purchase, sell, or subscribe to shares admitted to trading on a regulated Spanish market, the Directorate-General for International Trade and Investments of the Ministry of Industry, Trade and Tourism or the Directorate-General of Armament and Material of the Ministry of Defense will notify the CNMV, so that the offeror includes this information in the documentation that may need to be disclosed in relation to the offer.

5. In the case of the procedures regulated in Articles 9.1.a), 13, 14 and 19, electronic processing shall be mandatory at all stages in accordance with the provisions of Article 14. 2 and 3 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations. Applications, communications and other required documentation will be submitted to the electronic registry of the Ministry of Industry, Trade and Tourism.

6. An appeal for reconsideration may be lodged against refusal of authorisation and against authorisations subject to conditions or commitments contained in the agreements, resolutions or decisions provided for in Articles 13, 14, 18, 19 and 20, within the framework of the provisions of Article 6 of Law 19/2003 of 4 July 2003, in accordance with the provisions of Articles 123 and 124 of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, or directly contentious-administrative appeal in accordance with Law 29/1998, of 13 July, regulating the Contentious Administrative Jurisdiction.

• Sections 1 and 2 have been drafted in accordance with the corrigendum published in BOE no. 18, of 20 January 2024. Ref. BOE-A-2024-1049

Article 12. Notarized authorization of investments subject to prior authorization.

A notary who is aware that a foreign investment operation is subject to prior authorisation must inform the applicants of the need to obtain it in accordance with the provisions of the Law on Notaries of 28 May 1862.

Consuls or consular affairs officers exercising notarial functions abroad shall not be involved in investment operations subject to prior authorization.

Section 2 Specific provisions for the suspension of the general liberalisation regime in application of Article 7 of Law 19/2003 of 4 July 2003

Article 13. Regime for prior authorisation of foreign investments by agreement of the Council of Ministers.

1. In the cases referred to in Article 7 of Law 19/2003 of 4 July, the Council of Ministers at the proposal of the head of the Ministry of Industry, Trade and Tourism and, where appropriate, of the head of the department responsible for the matter, and following a report from the Foreign Investment Board, may agree, with reasons, to suspend the liberalisation regime for foreign investments which, by their nature, form or conditions of implementation, affect or may affect activities related, even if only occasionally, to the exercise of public authority or to activities that affect or may affect public safety, health or order in Spain.

2. Once the liberalisation regime has been suspended, applications for authorisation shall be addressed to the head of the Directorate-General for International Trade and Investment and the decision shall be made by the Council of Ministers at the proposal of the head of the Ministry of Industry, Trade and Tourism, following a report from the Foreign Investment Board.

3. After three months have elapsed from the date on which the application for authorisation has been requested in accordance with Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations, without an express resolution having been issued, it shall be deemed to have been rejected due to administrative silence, in accordance with Article 24.1 of said Law, and with Article 6.2 of Law 19/2003, of 4 July.

Section 3 Specific provisions for the suspension of the general liberalisation regime in application of Article 7 bis of Law 19/2003 of 4 July 2003

Article 14. General issues.

1. The liberalisation regime for certain foreign direct investments in Spain is suspended under the terms established in Article 7 bis of Law 19/2003, of 4 July. It must be ensured that the examination of such investments, as well as the measures that may arise from it, are necessary and proportionate to preserve public safety, health and order, in accordance with Article 65 of the Treaty on the Functioning of the European Union.

2. However, the liberalisation regime for foreign direct investment in Spain shall not be suspended when the investment operation has no or little impact on the legal interests protected by Article 7a of Law 19/2003 of 4 July 2003 and Article 65 of the Treaty on the Functioning of the European Union and in accordance with the provisions of the Treaty on the Functioning of the European Union. In any case, with the provisions of Article 17 of this Royal Decree.

3. The following shall not be considered as direct investments within the meaning of Article 7a.1 that may be subject to control:

a) Internal restructuring in a group of companies.

b) Increases in business holdings by a shareholder who already has a stake of more than 10 per cent and which are not accompanied by changes in control.

4. The beneficial ownership of direct investments made by residents of countries of the European Union or the European Free Trade Association shall be deemed to be residents of countries outside the European Union and the European Free Trade Association when the latter, individually or in concert, ultimately own or control, directly or indirectly, more than 25 per cent of the investor's capital or voting rights, or when they otherwise exercise control, directly or indirectly, of the investor.

5. For the purposes of applying Article 7a(1) of Law 19/2003 of 4 July 2003, in order to determine the existence of control, the provisions of Article 7(2) of Law 15/2007 of 3 July 2007 on the Defence of Competition shall apply, that is to say, the examination of contracts, rights or any other means which, having regard to the circumstances of fact and law, confer the possibility of exercising decisive influence over the undertaking.

6. The application for authorisation shall be addressed to the person in charge of the Directorate-General for International Trade and Investment of the Secretary of State for Trade.

7. If the information contained in the application is considered insufficient, the Directorate-General for International Trade and Investment may require the applicant to provide the necessary additional information, indicating that, if they do not do so, they will be deemed to have withdrawn their application for authorisation under the terms provided for in Article 68 of Law 39/2015. of 1 October.

8. The resolution of such applications shall correspond, following a report from the Foreign Investment Board:

a) To the person in charge of the Directorate-General for International Trade and Investment, when the amount of the investment is equal to or less than five million euros.

b) The Council of Ministers, in all other cases.

9. The maximum period for resolving the application and notifying the interested party will be three months.

Article 15. Areas of investment.

For the purposes of applying Article 7a(2) of Law 19/2003 of 4 July, the following is a list of areas in which certain foreign investments, where there is a risk of affecting public safety, health, or public order, will result in the suspension of the liberalization regime:

1. Critical infrastructures shall be understood as those classified as such under Law 8/2011 of April 28, which establishes measures for the protection of critical infrastructures, and are consequently listed as such in the National Catalogue of Strategic Infrastructures as provided for in Article 4 of that law. These infrastructures, whether physical, virtual, networks, or systems, include energy, transport, water, health, communications, media, data processing or storage, aerospace, defense, electoral, or financial infrastructures, as well as sensitive facilities, and the land and real estate necessary for their operation

2. It shall be understood that:

(a) Critical and dual-use technologies include those defined in Article 2(1) of Regulation(EU) 2021/821 of the European Parliament and of the Council of 20 May 2021 establishing a Union regime for the control of dual-use items, brokering, technical assistance, transit and transfer; including telecommunications, artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defense, energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies.

(b) Key technologies for industrial leadership and empowerment include the essential enabling technologies for the future referred to in Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing the Horizon Europe Framework Programme for Research and Innovation and repealing Decision 2013/743/EU. These technologies include advanced materials and nanotechnology, photonics, microelectronics and nanoelectronics, life science technologies, advanced manufacturing and transformation systems, artificial intelligence, digital security and connectivity.

c) Technologies developed under programmes and projects of particular interest to Spain include those involving a substantial amount or percentage of funding from the budget of the European Union or Spain. Among others, those that benefit from funding under the instruments listed in the Annex "List of projects or programmes of interest to the Union" referred to in Article 8(3) of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 shall be considered as such.

3. Essential supplies shall be understood as those that are indispensable and non substitutable for the provision of essential services relating to the maintenance of basic social functions, health, safety, social and economic well-being of citizens, or the effective functioning of State institutions and public administrations, the disruption, failure, loss or destruction would have a significant impact. In particular, the following shall be considered fundamental:

a) The supplies provided by companies that develop and modify software used in the operation of critical infrastructures in:

1. the energy sector, for the operation of generation plants, regasification plants, transmission and distribution networks, storage and the operation of facilities or systems for the supply of electricity, hydrocarbons, biofuels and renewable gases;

2. the water sector, for the management, control and production of drinking water and waste water treatment;

3. the telecommunications sector, for the management and operation of facilities or systems used in the transmission of voice and data and in the processing and storage of data;

4. the financial and insurance sector, for the operation of facilities or systems used inthe supply of banknotes and coins, card payment systems, the management and settlement of transactions involving financial assets and derivatives, as well as the provision of insurance services;

5. the health sector, for the management of hospital information systems, the management of facilities and systems used in the distribution of prescription medicines, and of laboratory information systems;

6. the transport sector, for the management of facilities or systems used in the transport of passengers or goods by air, sea or land (whether rail or road), public transport or logistics; or

7. In the field of food safety, for the management of facilities or systems used in the supply of food.

b) Other indispensable and non-substitutable supplies that guarantee the integrity, security or continuity of activities affecting critical infrastructures, the supply of water, energy (hydrocarbons, renewable gases, biofuels or electricity), strategic raw materials and telecommunications or transport services, health services, food security, research facilities, or the financial and tax system.

4. The following shall be considered companies with access to sensitive information:

a) Those that have access to data on strategic infrastructures that, if revealed, could be used to plan and carry out actions aimed at causing the disruption or destruction of these, as set out in Article 2 section l) of Law 8/2011, of 28 April, which establishes measures for the protection of critical infrastructures.

b) Those that have access to databases related to the provision of essential services such as the supply of water, energy (hydrocarbons, gas or electricity) and telecommunications or transport services, health services, food safety, research facilities, financial services or the tax system.

c) Those that have access to official databases that are not publicly accessible.

d) Those that carry out activities that are subject to a mandatory impact assessment on personal data in accordance with Article 35.3 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of their personal data and on the free movement of such data, and repealing Directive 95/46/EC (Regulation General Data Protection).

Article 16. Characteristics of the investor.

For the purposes of the application of section 3 of article 7 bis of Law 19/2003, of 4 July, and in relation to foreign investments for which there is a risk that they may affect public safety, health or order, the liberalisation regime is suspended under the following terms:

1. In order to determine whether a foreign investor is controlled, directly or indirectly, by the government of a third country, including public bodies or the armed forces, the concept of control established in Article 7.2 of Law 15/2007 of 3 July 2007 on the Defence of Competition shall apply, that is, the examination of contracts, rights or any other means which, having regard to the circumstances of fact and law, confer the possibility of exercising decisive influence over the undertaking.

In addition, for the purpose of determining the actual control by an ultimate investor over a particular company or group of companies:

a) It may be investigated whether the direct or indirect control of the investor is articulated through significant financing, including subsidies, by the government of a third country.

b) Investments made by vehicles through which public funds, or public employee pension funds, are invested, may be understood not to be under public control and, therefore, are exempt from the authorisation regime, if the nature of the fund manager, the legal or statutory provisions appointing its administrators or other statutory provisions relating to its management or nature, it follows that their investment policy is independent and focuses exclusively on the performance of their portfolios without the political influence of a third State.

2. In order to determine whether the investments made or the activities in which the foreign investor has participated may have affected public safety, order or health in another Member State, in particular in the sectors listed in paragraph 2 of Article 7 bis of Law 19/2003 of 4 July, the information received in the framework of the cooperation mechanisms in relation to foreign direct investments may be used provided for in Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019.

3. In order to determine whether there is a serious risk that the foreign investor will engage in criminal or illegal activities affecting security, public order or public health in Spain, account shall be taken, preferably, of the final administrative or judicial sanctions imposed on the investor in the last three years, in particular in areas such as money laundering, environmental, tax, or the protection of sensitive information.

Article 17. Exemptions.

In accordance with the authorization of section 6 of article 7 bis of Law 19/2003, of 4 July, the following foreign investment operations are exempt from being subject to the prior authorisation regime:

1. In the energy sector, regardless of their amount, the foreign investments referred to in paragraph 2.c) of Article 7 bis of Law 19/2003, of 4 July, in which the investor does not meet any of the characteristics provided for in paragraph 3 of the same article and provided that the following conditions are met, shall be exempt from prior authorisation:

a) That the acquired companies or assets do not carry out regulated activities, understood as the operation of the electricity system and market, the transmission and distribution of electricity, the supply of electricity in non-peninsular territories, the technical management of the gas system, and the regasification, basic storage, transport and distribution of natural gas. Likewise, those others established by the applicable sectoral legislation will be considered regulated activities.

b) That, as a result of the transaction, the company does not acquire the status of dominant operator in the sectors of generation and supply of electricity, production, storage, transport and distribution of fuels or biofuels, production and supply of liquefied petroleum gases or production and supply of natural gas, under the terms regulated in Royal Decree-Law 6/2000, of 23 June, on urgent measures to intensify competition in markets for goods and services.

c) When the foreign investment involves the acquisition of electricity production assets, provided that the share of installed power per resulting technology is less than 5 per cent.

For the purposes of calculating the market share by technology, the following criteria shall be taken into account:

1º The share of installed power is obtained as the quotient between the installed power in the hands of the investor and the total installed capacity of the national electricity generation park, calculated by production technology.

2º For the purposes of calculating the installed power in the hands of the investor, all production assets already owned by the investor, directly or indirectly, at the time of the application for authorisation of the foreign investment shall be taken into account, in addition to the assets that can be acquired.

3º Electricity production assets must be weighted according to the degree of maturity and execution of the associated investment projects, taking into account their state of administrative processing.

4º Likewise, the calculation of the installed capacity quota will be carried out taking into account the time horizons and objectives for the integration of renewables provided for in the energy planning instrument in force at the time of the application for authorisation of foreign investment.

d) When the foreign investment involves the acquisition of companies that carry out the activity of marketing electricity, in accordance with the provisions of Article 6.1.f) of Law 24/2013, of 26 December, on the electricity sector, provided that the number of customers of the acquired company is less than 20,000.

2. In all other cases referred to in letters b), c), d) and e) of Article 7 bis.2 of Law 19/2003, of 4 July, foreign investments in which the turnover of the acquired companies does not exceed 5,000,000 euros in the last closed accounting year shall be exempt from prior authorisation provided that their technologies have not been developed under the umbrella of programmes and projects of particular interest to Spain. However, foreign direct investments will always be subject to authorisation:

a) When they occur in electronic communications operators in which any of the following conditions are met:

1. That they hold concessions for the use of the public radio domain, in frequency bands harmonised in accordance with European Union legislation.

2. That they are holders of titles enabling the use of orbit-spectrum resources within the scope of Spanish sovereignty or

3. That they have been classified as operators with significant power in a relevant market in the electronic communications sector.

b) When they are operations related to activities of research and exploitation of mineral deposits of strategic raw materials, understood as those referred to in Article 7a, paragraph 2, letter c) of Law 19/2003, of 4 July, or, in the alternative, those that the European Commission has identified in Annex I of Communication (2020) 474 final, of the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, of 3 September 2020, or a European legislative act replacing it.

3. Investments through which real estate is acquired that is not affected by any critical infrastructure or that is not essential and non-replaceable for the provision of essential services.

4. Transitory investments, i.e. of a short duration (hours or days) in which the investor does not have the capacity to influence the management of the acquired company because they are underwriters and underwriters of share issues and public offers for the sale or subscription of shares. It will be the final investors who, where appropriate, need authorisation.

Section 4 Specific provisions for the suspension of the general liberalisation regime in certain sectoral areas

Article 18. Prior authorisation regime for foreign investments in Spain in activities directly related to National Defence.

1. The liberalisation regime is suspended and will require authorisation in respect of foreign investments in Spain in activities directly related to national defence, such as those affecting the industrial capabilities and areas of knowledge necessary to provide the equipment, systems and services that provide the Armed Forces with the necessary military capabilities, as well as those intended for the production (understood as design and manufacture), maintenance or trade of defence material in general, in accordance with Law 18/1992, of 1 July, which establishes certain rules on foreign investment in Spain.

2. This suspension of the liberalisation regime, and the consequent requirement of prior administrative authorisation, is excepted in the following cases:

a) Investment in Spanish companies when they do not reach 5 per cent of the share capital of the Spanish company, provided that they do not allow the investor to be a member, directly or indirectly, of its administrative body.

b) When between 5 and 10 per cent of the share capital has been reached, provided that the investor notifies the Directorate-General for Armaments and Material and the Directorate-General for International Trade and Investment of the operation and accompanies said notification with a document in which he reliably undertakes in a public deed not to use, to exercise or assign their voting rights to third parties, or to form part of any administrative bodies of the listed company.

3. Applications for authorisation shall be addressed to the head of the Directorate-General for Armaments and Material of the Ministry of Defence, and their decision shall be taken by the Council of Ministers at the proposal of the head of the Ministry of Defence and following a report from the Foreign Investment Board.

In those cases in which the foreign investment, due to its nature, characteristics or amount of the operation, does not affect the essential interests of defence, it may be authorised by the head of the Directorate-General for Armaments and Material, following a report from the Foreign Investment Board.

4. The maximum period for resolving the application and notifying the interested party of the resolution will be three months.

Article 19. Prior authorisation regime for foreign investments in Spain in activities directly related to weapons, cartridges, pyrotechnic articles and explosives for civilian use or other material for use by the State Security Forces and Corps.

1. The liberalisation regime is suspended and will require authorisation in respect of foreign investments in Spain in activities related to the manufacture, trade or distribution of arms, cartridges, pyrotechnic articles and explosives for civilian use, in accordance with Law 18/1992, of 1 July, the provisions of the Weapons Regulations, approved by Royal Decree 137/1993, of 29 January, and in the Explosives Regulations, approved by Royal Decree 130/2017, of 24 February, and the Regulations on pyrotechnic articles and cartridges, approved by Royal Decree 989/2015, of 30 October.

2. Applications for authorisation shall be addressed to the head of the Directorate-General for International Trade and Investment and the decision shall be made by the Council of Ministers at the joint proposal of the head of the Ministry of the Interior and the head of the Ministry of Industry, Trade and Tourism, following a report from the Foreign Investment Board.

3. The maximum period for resolving the application and notifying the interested party will be three months.

Article 20. Regime of prior authorisation for the acquisition of real estate for diplomatic purposes of non-member States of the European Union.

1. Prior administrative authorisation shall be required for direct or indirect investments made in Spain by non-member States of the European Union for the acquisition of real estate for their diplomatic or consular representations, unless there is an agreement to liberalise them on a reciprocal basis.

2. Applications for authorisation shall be addressed to the corresponding administrative body of the Ministry of Foreign Affairs, European Union and Cooperation, and their decision shall be taken by the Council of Ministers at the proposal of the head of the Ministry of Foreign Affairs, European Union and Cooperation, following a report from the Foreign Investment Board.

3. The maximum period for resolving the application and notifying the interested party will be three months.

CHAPTER V

Common provisions

Article 21. Board of Foreign Investment.

1. The Foreign Investment Board is the inter-ministerial collegiate body, attached to the Directorate-General for International Trade and Investment of the Secretary of State for Trade, with the functions of reporting on foreign investment.

2. The Foreign Investment Board is responsible for:

a) To report on those matters concerning specific foreign investments, their treatment, regulation or application of the same, which are submitted to it by its President or by the body that is competent in the matter.

b) To report on the prior consultations referred to in Article 9, proposals for authorisation or surveillance files under the terms established by this Royal Decree.

c) To agree, where appropriate, communications on guiding or methodological criteria for the analysis and instruction of the operations submitted to it.

d) To report on any other matter that its President requests.

e) Any other powers entrusted to it by current legislation.

3. The Foreign Investment Board shall be composed of the following members:

a) A Chairperson, headed by the head of the Directorate-General for International Trade and Investment.

b) Members: A representative of the National Intelligence Centre (CNI), and a representative of the Operational Directorate of the Department of National Security of the Presidency of the Government. In addition, a representative of each Ministry with a minimum rank of Deputy Director General or similar will be members.

c) A Secretariat headed by the head of the Sub-Directorate General for Foreign Investments or a person who replaces him or her with a minimum level of Deputy Director General or similar.

4. The Foreign Investment Board may meet both in its plenary configuration, which will be the one that mandatorily reports on the proposals for authorisation, and in working groups constituted by part of its members and convened by its Presidency, for the preparation of specific matters that will subsequently be submitted to all its members.

5. The matters favourably reported by the Foreign Investment Board shall be drawn up at the proposal of the Chair, who shall request the issuance of a report prepared by its Directorate-General and, when it deems it appropriate, by other departments represented on that Board.

6. The Foreign Investment Board may obtain from any public administration, body, entity or agency, as well as from any private natural or legal person, the information it needs for the exercise of the powers referred to in paragraph 2 of this Article, insofar as it is necessary for the proper performance of its own task and for that sole and exclusive purpose. always in accordance with the legal system in force, and in particular with the provisions of the special legislation on the protection of personal data or, where appropriate, the classification of the information under analysis, to which all its members will abide. Such information shall be provided to the Board of Foreign Investment within ten working days.

7. The actions of the Foreign Investment Board and its deliberations shall be confidential.

8. Without prejudice to the peculiarities provided for in this Royal Decree, the operation of the Foreign Investment Board shall be in accordance with the provisions of the preliminary title, chapter II, section 3 of Law 40/2015, of 1 October, on the Legal Regime of the Public Sector.

Article 22. Annual report.

By 31 March of each year, the Ministry of Industry, Tourism and Trade shall publish an annual report covering the previous calendar year, which shall include aggregate information on foreign direct investment in its territory and on the implementation of control mechanisms on the basis of the information available to it. and aggregate information on requests received from other Member States in accordance with Article 6(6) and Article 7(5.2). of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019.

Article 23. Tracking.

1. The Directorate-General for International Trade and Investment shall ensure compliance with the provisions of this Royal Decree, as well as with the obligations on the control of foreign investments provided for in European Union law.

2. The Directorate-General for International Trade and Investment shall constitute the Contact Point for the Implementation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019, in accordance with Article 11 thereof, and shall appoint the representative of the Kingdom of Spain in the Group of Experts on Foreign Direct Investment Control referred to in Article 12 thereof. It shall also ensure compliance with the obligations of exchange of information and investment control provided for in said regulation.

3. For the purposes set out in the preceding paragraphs, the holders of the investment, Spanish companies owned by non-residents, management companies of Spanish investment funds with foreign participation or that acquire shares in foreign investment funds, the General Council of Notaries, notaries public, the National Securities Market Commission, investment services companies, credit institutions, insurance and reinsurance companies and other financial institutions that have been involved in investment or settlement operations, as well as all ministerial departments may be required by the Directorate-General for International Trade and Investment to provide the information necessary in each case.

Article 24. Change of registered office and transfer of residence.

The change of registered office of legal persons or the transfer of residence of natural persons will determine the change in the classification of an investment as Spanish abroad or foreign in Spain.

Article 25. Failure to comply with established obligations.

Failure to comply with the obligations established in this Royal Decree will constitute an infringement for the purposes of the provisions of Article 8 of Law 19/2003, of 4 July.

Article 26. Processing of personal data and confidentiality of the information transmitted.

1. In accordance with the applicable provisions on data protection, the information received in application of this Royal Decree may only be used for the purpose for which it has been requested.

2. The members of the Foreign Investment Board and the Administrations participating in the administrative procedures provided for in this Royal Decree shall ensure the protection of confidential information obtained in application thereof, in accordance with national and European Union legislation, and in particular:

a) For compliance with Organic Law 3/2018, of 5 December, on Data Protection and guarantee of digital rights, in the processing of personal data required in application of the provisions of Chapter III.

(b) To ensure that classified information that, where appropriate, has been provided or exchanged in accordance with Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 is not downgraded or declassified without the prior written consent of the originator.

c) For the establishment and monitoring of the mechanisms that, in the case of classified information, are provided for by virtue of Law 9/1968, of 5 April, on official secrets.

First transitional provision. Transitional regime for the procedures for processing authorisation for foreign investments.

The provisions established in Royal Decree 664/1999, of 23 April, on foreign investment, will apply to the procedures for processing foreign investment authorisation files initiated prior to the date of entry into force of this Royal Decree.

Second transitional provision. Transitional regime for the simplified procedures provided for in the second transitional provision of Royal Decree-Law 11/2020, of 31 March, adopting urgent complementary measures in the social and economic field to deal with COVID-19.

The simplified procedures established in section 2 of the second transitional provision of Royal Decree-Law 11/2020, of 31 March, for applications for prior administrative authorisation of foreign direct investment operations included in Article 7 bis of Law 19/2003, of 4 July, initiated prior to the entry into force of this Royal Decree, They will be resolved in accordance with the regulations in force at the time of their initiation.

Third transitional provision. The transitional regime for the application of certain provisions.

One. Until the approval of the implementing rules of this Royal Decree, the procedures applicable to the processing of declarations and the registration of investment operations contained in the Order of 28 May 2001, which establishes the procedures applicable to declarations of foreign investments and their settlement, will remain in force, provided that they do not conflict with the provisions of this Royal Decree. as well as the procedures for the presentation of annual reports and authorisation files; in the Resolution of 26 March 2003 of the Directorate-General for Trade and Investment, specifying the standard forms and instructions to be used by financial intermediaries for electronic filing, as provided for in Annex I, I.2.3, and Annex II, I.2.3 of the Resolution of 31 May 2001, of the DirectorateGeneral for Trade and Investment, of declarations of foreign investments in negotiable securities listed on Spanish markets and of Spanish investments in negotiable securities listed on foreign markets; Order ECO/755/2003, of 20 March, which regulates the electronic filing of subsequent returns through financial intermediaries relating to investment transactions in negotiable securities; in the Resolution of 27 July 2016, of the Directorate General for International Trade and Investment, which approves the foreign investment declaration forms when the person obliged to declare is an investor or company with foreign participation and which replaces the previous Resolutions in this area; and the Resolution of 17 October 2022 (BOE number 249, of 17 October 2022) of the Directorate General for International Trade and Investment, approving the declaration form D-8 Annual Report on the development of investment abroad.

Two. Until such time as the regulatory development of this Royal Decree comes into force, foreign investment operations and their divestment will be declared temporarily using the following forms:

a) Forms DP-1, D-1A and D-1B for declaring foreign investments in Spain made through any of the operations in Article 4, sections a), b), c), d), and g).

b) Forms DP-2, D-2A and D2B for declaring foreign investments in Spain made through the operations of Article 4, section h).

c) Forms DP-3, D-5A and D-5B for declaring Spanish investments abroad made through any of the operations in Article 7, sections a), b), c), d), and g).

d) Forms DP-4, D-7A and D-7B for declaring Spanish investments abroad made through the operations referred to in Article 7, section h).

Three. Until the regulatory development of this royal decree comes into force, temporarily, the following shall not be declared:

(a) The operations referred to in Article 4(e) and (f). (b) The operations referred to in Article 7(e) and (f). Four. Until such time as the regulatory development of this Royal Decree comes into force:

a) In the case of foreign investment operations in Spain that have been intervened by a Spanish notary referred to in Article 5.3.b), the General Council of Notaries will temporarily not have to manage and centralise the information it receives from the notaries involved and the presentation either by the notary, if required by the declarant to do so, or by the owner of the investment.

b) The annual reports relating to the evolution of foreign investment in Spain defined in Article 5.4 shall be submitted to the Investment Registry using form D-4, except for those relating to collective investment undertakings, which shall not be submitted.

c) The annual reports relating to the evolution of Spanish investment abroad as defined in Article 8.4 shall be submitted to the Investment Register using form D-8, except for those relating to collective investment undertakings, which shall not be submitted.

Drafted in accordance with the corrigendum published in BOE no. 18, of 20 January 2024. Ref. BOE-A-2024-1049

Sole derogatory provision.

Royal Decree 664/1999 of 23 April 1999 on foreign investment is hereby repealed, as well as any regulations of equal or lesser rank that are contrary to the provisions of this Royal Decree.

First final provision. Title of competence.

1. This Royal Decree is issued under the provisions of Article 149.1.10 and 13 of theSpanish Constitution, which confer on the State the powers over foreign trade and the bases and coordination of the general planning of economic activity.

2. Articles 3 and 6 are issued under the exclusive competence that Article 149.1.11 ofthe Spanish Constitution reserves to the State in matters of credit regulation.

3. Chapters II and III are issued under the exclusive competence that Article 149.1.31 of the Spanish Constitution reserves to the State in matters of statistics for State purposes.

Second final provision. Development powers.

1. The heads of the Ministries of Industry, Trade and Tourism, Defence, the Interior, Foreign Affairs, the European Union and Cooperation, and for the Ecological Transition and the Demographic Challenge, in the areas of their respective competences, are authorised to issue the corresponding regulations for the implementation of this Royal Decree.

2. The head of the Ministry of Industry, Trade and Tourism is authorised:

a) To issue the necessary rules to detail the functioning of the Foreign Investment Board, both in its plenary configuration, which will be the one that mandatorily reports on proposals for authorisation, and in working groups constituted by part of its members. In any case, mechanisms must be provided for the non-face-to-face holding of meetings of the Foreign Investment Board, as well as mechanisms for issuing a favourable report by written procedure.

b) To issue orders to update the monetary amounts established in the Royal Decree.

c) To establish in the implementing regulations of this Royal Decree, the procedure fordeclaring investments derived from the change of domicile or residence of their holder, as it implies a change in the classification of the investment.

• Section 1 has been drafted in accordance with the corrigendum published in BOE no. 18 of 20 January 2024. Ref. BOE-A-2024-1049

Third final provision. Entry into force.

This royal decree will enter into force on 1 September 2023.

Done in Madrid, on 4 July 2023.

FELIPE R.

The Minister of the Presidency, Relations with the Cortes and Democratic Memory, FÉLIX BOLAÑOS GARCÍA

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