

## Andorra

### Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra (2012)

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# Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra

## Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra

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Given that the General Council in its session of 21 June 2012 has approved the following:  
Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra

## **Explanatory memorandum**

Private foreign investment has become a strategic policy tool to promote economic growth driven by states, which seek to attract these resources to attract entrepreneurship, talent, innovation and knowledge.

According to the OECD, beyond the stimulus derived from the investment itself, foreign investment, and especially foreign direct investment, influences growth and increases productivity and efficiency in the use of the recipient country's resources. Thus, one of the main effects of foreign investment is the diversification of the economy, with the creation of new economic sectors, and the increase in the competitiveness of existing sectors. Other effects produced by foreign investment are the dissemination of good practices in business management, technology transfer, the implementation of training programmes and the increase in tax revenues of the recipient countries. So much so that one of the most used incentives by governments has been to open their respective markets to foreign investors by modifying regulatory rules, with the aim of reducing the protectionism that many states traditionally granted to certain national economic sectors.

The Principality of Andorra has not been oblivious to this trend either, as evidenced by Law 2/2008, of 8 April, on foreign investment, which led to the opening of 100 per cent of some activities to foreign capital. However, four years after the path started by that reform that aimed to attract companies whose activities were not essentially present in Andorra, it has been found that the measures promoted have not been sufficient to achieve the objectives that had been planned. And in a context of crisis in which most of the Principality's economic indicators are still showing a downward trend, the need to carry out structural reforms and, in particular, to modify the current legislative framework on foreign investment, is confirmed, with the aim of seeking a wider space for progress and competitiveness.

Thus, the liberalisation of foreign investment, together with the signing of double taxation agreements, following the recent application of direct taxation on companies and economic activities, should position the Andorran economy in a position to compete on equal terms with neighbouring economies. and at

the Andorran economy in a position to compete on equal terms with neighbouring economies, and at the same time should make Andorra an attractive destination for new sectors and companies. In short, economic openness is the path that can provide the greatest guarantees of success to ensure a new phase of growth and prosperity in the Andorran economy and society.

However, this liberalization of investments is not done without taking into account a series of safeguards to preserve the interests that the State considers strategic. Thus, the Law expressly reserves certain matters that should be protected, both to prevent investments from countries considered non-cooperative in the field of money laundering, and by making it possible for the Government to deny, in a reasoned manner, the authorisation of investments whose conditions of implementation may prejudice the exercise of public power, sovereignty and national security, public order, the environment or public health.

The main objectives of economic openness are to attract investments and companies that can contribute significantly to economic development, offering greater diversification of the economy and providing high added value. At the same time, it aims to avoid adverse effects on free competition, the labor market, and the financial balance of public resources. Consequently, a series of objective factors are established to evaluate the investment, such as the employment and training model, the value of the investment, the expansion plan, or the level of commitment to the Principality, among others.

On the other hand, the liberalisation of foreign investment in all sectors of the economy is also accompanied by an important reform with regard to obtaining the economic rights of individuals. Thus, it is established that the economic rights of individuals are acquired by obtaining their legal residence in the Principality. In particular, the current legislation on the exercise of the liberal professions is amended by abolishing the requirement of twenty years of residence for non-nationals to be able to carry out professional activity in Andorra. However, the exercise of the activity of liberal professionals is conditional on their effective and permanent residence, as well as on the criterion of reciprocity, which allows the effective exercise of the liberal profession to Andorran nationals in the state of origin of those who apply to exercise a liberal profession in Andorra.

With regard to investments in real estate, the current limitations established on two flats or apartments per foreign individual have been eliminated, and the necessary link to business activity for investments in real estate made by Andorran companies with a majority of foreign capital has also been abolished. With regard to the authorisation procedure, the prior authorisation procedure is maintained for all direct investments that exceed 10 per cent of participation in companies, and also for investments in real estate. In this way, the guarantees that the new foreign investment regime is adapted to the established objectives are increased. And to speed up the procedure as much as possible, the deadline for resolving the foreign investment application is reduced to one month, extendable for a period of fifteen days, and acceptance is established in the event of silence from the Administration.

With regard to the structure of the Law, it essentially follows that of Law 2/2008, although the modifications introduced have made it necessary to draft a new legislative text that repeals Law 2/2008. Thus, this Law is structured in eight chapters, twenty-two articles, four additional provisions, one transitional, one repealing and three final provisions.

The first chapter contains general provisions that establish the definitions and legal nature of foreign investments, the safeguard clauses, the types and forms of foreign investment, following the categories traditionally used in the European Union in order to increase legal certainty, and also regulate payments and collections derived from foreign investments to fulfil a control function.

Chapters two to five establish the regime for each of the four forms of foreign investment: direct investments, portfolio investments, real estate investments, and other forms. The meaning of each is defined, the scope is delimited, total liberalization for each is foreseen, and it specifies which require prior authorization, such as direct investments exceeding 10% ownership, real estate investments, and other forms of investment. For portfolio investments, liberalization is maintained in general without requiring an authorization process.

Chapters six and seven contain the rules relating to competences and procedures, as well as the formalization and registration of foreign investments. To this end, an eighth chapter is introduced, which regulates the Foreign Investment Registry as the administrative body responsible for the registration functions of foreign investments.

The additional provisions amend Law 6/2008, of 15 May, on the exercise of liberal professions and professional colleges and associations; Law 20/2007, of 18 October, on Public Limited Companies and Limited Liability Companies, amended by Law 4/2008, of 15 May, and the Law on Real Estate Property Transfers, of 15 December 2000.

The transitional provision establishes a procedure to regulate the registration of foreign investments made prior to the entry into force of the Law.

Finally, the final provisions empower the Government to develop the Law in a regulatory manner, establish the economic rights of foreign individuals when they acquire residence in Andorra and establish the entry into force of the Law.

# Chapter One. General provisions

## Article 1. Definitions and legal nature

1. Foreign investments in the Principality of Andorra are considered to be acquisitions, for any reason, of assets located in the Principality of Andorra by:

- a) Natural persons not resident in the Principality of Andorra.
- b) Individuals residing in the Principality of Andorra with less than 3 years of uninterrupted residence, counted from the date of obtaining the immigration permit or similar document, who make a foreign investment in real estate.
- c) Legal persons of foreign nationality, including public entities of foreign sovereignty.
- d) Legal persons of Andorran nationality with a foreign participation in their capital or voting rights, directly or indirectly, in a percentage equal to or greater than 50 per cent jointly. Foreign investments are also those destined for branches or other types of permanent establishments in Andorra of non-residents; and those made by other Andorran legal persons when at least 50 per cent of the voting rights of their decision-making body belong, directly or indirectly, to any of the natural or legal persons, described in letters a), b), c) and d) of this article.
- e) Legal persons of Andorran nationality, with a foreign participation in their capital or voting rights, directly or indirectly, of less than 50 per cent and more than 5 per cent, and who make a foreign investment in real estate.
- f) Legal persons of Andorran nationality, who are financed directly or indirectly, by any of the persons, described in letters a), b), c) and d) of this article.

The acquisition of movable property or the acquisition or constitution of rights shall not be considered foreign investment or subject to this Law, unless this Law expressly defines them as foreign investment.

2. For the purposes of this Law, foreign holdings are understood to be held by natural persons who are not residents or who have less than 3 years of uninterrupted residence, counted from the date of obtaining the immigration permit or similar document.

3. In accordance with this Law, foreign states, foreign official public entities and institutions, and public companies and companies of foreign nationality are understood to be public entities of foreign sovereignty when the holder of the majority of their capital belongs to any of the aforementioned entities, or are subject to their effective control or are classified as public by the legislation of the country of origin.

4. Investments made by foreign individuals residing in Andorra with more than 3 years of residence acquire the status of foreign investments when the aforementioned persons cease to reside in Andorra.

5. Foreign investments made by individuals who are not resident in Andorra lose this status when these persons acquire residence in the Principality of Andorra, and maintain residence in the Principality of Andorra for more than 3 years in the case of investments in real estate. Under no circumstances will this circumstance entail the refund of the tax that was generated and settled, at the time, on the merits of the Law on Foreign Investment Tax in the Principality of Andorra.

6. Foreign investments are those made by Andorran legal persons when they change their nationality, or when the foreign participation in them or the period of residence places them in one of the cases established in sections d), e) or f) of section 1.

7. Investments made by foreign legal persons lose the status of foreign investments when they become governed by Andorran law, or when they cease to be in the cases established in sections d), e) or f) of section 1, either in relation to the percentage or the period of residence. Under no circumstances will this circumstance entail the refund of the tax that was generated and settled, at the time, on the merits of the Law on Foreign Investment Tax in the Principality of Andorra.

The classification as a foreign investment entails the obligation to declare it to the Foreign Investment Register and the settlement of the corresponding tax on the merits of the Law on Foreign Investment Tax in Real Estate in the Principality of Andorra.

## Article 2. Safeguard clause

1. Foreign investments made by individuals residing, domiciled, or, in the case of legal entities, nationals of any country considered non-cooperative in matters of money laundering and terrorist financing, as defined by the Financial Action Task Force (FATF) or the competent international body in this matter, are not authorized. Likewise, investments made by individuals or legal entities for whom the bodies responsible for the prevention of money laundering and terrorist financing issue an unfavorable report are also not permitted.

2. The competent ministry in matters of foreign investment can only deny authorization for foreign investment, always with justification, when the investment could harm, even occasionally, the exercise of public authority, national sovereignty and security, public order and economy, the environment, public health, or the general interest of the Principality. This also applies to any direct foreign investment related to sensitive goods, as defined by the Law on the Control of Sensitive Goods, dated March 4, 1999.

To assess compliance with the provisions established in the previous paragraph, the Government must

to assess compliance with the provisions established in the previous paragraph, the Government must regulate the objective elements and factors that, when applicable, the competent ministry in matters of foreign investment must verify. These elements and factors should allow the evaluation of whether the foreign investment might have an adverse effect on free competition, the labor market, and the balance of public resources.

3. To carry out the economic activities related to a foreign investment, the holder must observe and comply with the laws and regulations that govern the specific sector or sectors where the activities take place.

### **Article 3. Classes and forms**

Foreign investments can be made through monetary or non-monetary contributions, and can be made through any of the following forms: (a) direct investments, (b) portfolio investments, (c) investments in real estate and (d) other forms of investment.

### **Article 4. Collections and payments**

Collections or payments derived from foreign investments and their settlement must be made through banks authorised in the Principality of Andorra or banks domiciled in one of the countries that are not considered non-cooperative in the prevention of money laundering and terrorist financing, defined by the Financial Action Task Force (FATF).

### **Article 5. Transfer abroad**

The holders of foreign investments made in accordance with this law and the regulations that implement it can transfer abroad the proceeds obtained from the liquidation of their investments and the income generated from such investments.

### **Article 6. Transmission**

In any case, transfers of foreign investments to the Principality of Andorra are subject to compliance with the requirements and conditions established in this Law, regardless of whether the place where the parties carry it out is in the territory of the Principality or abroad.

### **Article 7. Nullity**

Acts and businesses contrary to this Law and those carried out in fraud of the same are null and void, without prejudice to acts and businesses formalized with third parties in good faith, which will maintain their effectiveness.

## **Chapter two. Direct investments**

### **Article 8. Definition**

Direct investments are investments that are intended to be made through participation in Andorran companies or through the constitution or expansion of branches or other types of permanent establishments.

### **Article 9. Field**

Direct investments consisting of participation in Andorran companies include the incorporation of the company; the subscription and total or partial acquisition of shares or shareholdings, the acquisition of securities such as subscription rights for shares or shareholdings, obligations convertible into shares or participations or other similar that by their nature grant the right to participate in the capital of the company, as well as any legal business by virtue of which voting rights are acquired.

### **Article 10. Regime**

1. Prior authorisation from the Ministry responsible for foreign investment is required to make direct investments consisting of acquiring shares or rights in an Andorran company when, as a result of the acquisition, the acquirer directly or indirectly holds a stake of more than 10% of the share capital or voting rights.

Foreign direct investments consisting of a direct or indirect shareholding of less than or equal to 10% of the share capital or voting rights of Andorran companies, although they do not require prior authorisation, are subject to a subsequent declaration to the Foreign Investment Register.

2. Prior authorisation must also be obtained from the Ministry responsible for foreign investment to make direct investments consisting of setting up or expanding branches or other types of permanent establishments of any business activity that is to be carried out.

3. In the case of transfers of shares or voting rights in an Andorran company due to death in which the beneficiary is a natural or legal person, non-Andorran or non-resident, in accordance with the provisions of this Law, the acquisition will be valid and effective, although subsequent declaration to the Foreign Investment Register is mandatory.

4. The direct investments that foreign credit or financial institutions wish to make in Andorran non-financial entities may not directly or indirectly exceed the percentage of participation in the share capital established in the regulations governing the financial system in force.

5. Once the authorisation has been obtained, in accordance with the provisions of this article, the following are subject to prior administrative authorisation:

a) the modification of the corporate purpose -provided that it is not a simple clarification or accessory or auxiliary development-;

auxiliary development;

b) the increase in the share capital - provided that it is not charged to voluntary reserves; and

c) the increase in the percentage of foreign participation - provided that the foreign participation in its capital or voting rights is equal to or greater than fifty percent (50%) -.

## Chapter Three. Portfolio investments

### Article 11. Definition

Portfolio investments are investments that are intended to be made through the subscription of securities representing loans, except those that are considered direct investments, issued by resident individuals or legal persons, private or public, Andorran, of shares or preferred shares that do not include the right to vote and of shares or shares in investment undertakings regulated in the regulations of the financial system.

### Article 12. Regime

Portfolio investments are free and are not subject to the obligation to apply for prior authorisation or to the formalisation and declaration duties provided for in this Law.

However, prior authorisation from the ministry responsible for foreign investment is required to subscribe to shares in a collective investment undertaking governed by Andorran law when the following requirements are cumulatively met:

- that at least 50 per cent of its assets are made up of shares in Andorran companies and/or real estate located in the Principality of Andorra or by rights in rem over them, excluding those of guarantee; - That the percentage of foreign participation in the collective investment undertaking is equal to or greater than 50 per cent.

Likewise, the participation in the collective investment undertaking will be classified as foreign investment if, after being acquired, the aforementioned percentages are reached.

For this reason, and in any case, the management entities of collective investment undertakings that make it possible to achieve the above percentages must always obtain authorisation from the competent ministry to set them up.

The transfer due to death of investments in portfolios that are not free requires subsequent declaration to the Foreign Investment Register.

## Chapter Four. Investments in real estate

### Article 13. Definition

1. Investments in real estate are investments that are intended to be made through the acquisition of property and other rights in rem over real estate, urban or real estate development and administrative concessions that involve private use of real estate located in the territory of the Principality of Andorra.

2. Investment, direct or in portfolio, whose ultimate purpose is the acquisition of property and other rights in rem over real estate, urban or real estate development, administrative concessions that involve private use of real estate located in the territory of the Principality of Andorra is considered to be investment in real estate.

In any case, any foreign investment made in favour of or through legal persons in which 50 per cent or more of their assets or stocks, directly or indirectly, are made up of properties located in the Principality of Andorra, is considered to be investment in real estate.

### Article 14. Regime

1. Investments in real estate that the natural or legal persons, listed in Article 1.1 a), b), d), e) and f) wish to make are subject to prior authorisation from the Ministry responsible for foreign investment.

2. Investments in real estate that legal persons of foreign nationality, including public entities of foreign sovereignty, defined in Article 1.1.c, wish to make are also subject to prior authorisation from the Ministry responsible for foreign investment, provided that these are necessarily linked to the development of the activity of the legal entity.

3. Investments in real estate that the entities defined in article 1.1.c) wish to make may not be authorised if they are engaged in the acquisition or construction of real estate for the purpose of marketing them, excluding the rental of homes for habitual and permanent residence and provided that the ownership is maintained for a minimum of ten years.

4. In accordance with this Law, in acquisitions due to death of real estate by a non-resident natural or legal person, the transfer is valid and effective, although it requires subsequent declaration to the Foreign Investment Register within a period of no more than 3 months.

## Chapter Five. Other forms of investment

### Article 15. Definition

Other forms of investment are investments that are intended to be made using any other form not provided for in the previous chapters, such as by participating in joint account contracts, foundations, cooperatives or communities of property.

### Article 16. Regime

To make investments that qualify as other forms of investment, prior authorisation from the ministry

to make investments that qualify as other forms of investment, prior authorisation from the ministry responsible for foreign investment is required. The requirement of prior authorisation is replaced by subsequent declaration to the Register of Foreign Investments in the case of acquisitions due to death.

## **Chapter Six. Powers and authorisation procedure**

### **Article 17. Competent body**

It is the responsibility of the Ministry responsible for foreign investment to grant authorisation, or to deny authorisation, to carry out foreign investments in the Principality of Andorra which, in accordance with the provisions of this Law, are subject to prior authorisation from the Ministry itself.

### **Article 18. Procedure**

1. Applications for foreign investment authorisation must be submitted to the Government.

The Government determines by regulation the procedure for processing the application for prior authorisation for foreign investment and the documentation that must accompany it.

2. In the case of direct investments referred to in section 4 of article 10, it is mandatory that the ministry responsible for foreign investment, before taking a decision, obtain a report from the Andorran Financial Authority (AFA).

3. The Ministry responsible for foreign investment shall issue a reasoned decision on the application for foreign investment authorisation within a maximum period of two months, unless it decides to extend the decision due to the investigation of the case. In any case, this extension may not exceed half of the initial period, and must be expressly communicated to the interested party.

Once the resolution period indicated above, including that of the extension, has elapsed without an express resolution having been adopted, the authorisation shall be deemed to have been denied.

4. In all matters not specifically provided for in this Law, the Administration Code shall apply.

### **Article 19. Materialization**

Authorised foreign 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 materialised, the authorisation shall be deemed to have expired, unless a single extension is obtained, under the conditions determined by regulation.

## **Chapter Seven. Formalization and registration**

### **Article 20. Formalisation**

Except in cases where this Law does not require prior authorisation from the Ministry responsible for foreign investment or subsequent declaration, all foreign investments must be formalised in a public document authorised by an Andorran notary, and, in order to authorise it, the notary must require investors, where appropriate, to provide documents proving that they have complied with the requirements of the regulations on foreign investment in the Principality. in order to incorporate them into the matrix.

### **Article 21. Declaration and registration**

Except in cases where this Law does not require subsequent declaration to the Foreign Investment Register, the notaries who authorise the public document in which it is formalised are obliged to declare the foreign investments and their settlement to the Foreign Investment Register within a maximum period of fifteen days from the issuance of the public document. This declaration must be made using the official form and is mandatory regardless of whether the foreign investment requires prior authorisation from the ministry responsible for foreign investment.

## **Chapter eight. The Register of Foreign Investments**

### **Article 22. Organization and functions**

The Foreign Investment Register is the body of the Administration responsible for carrying out the registration functions established in this Law and in the regulations that develop it, and depends on the Ministry responsible for foreign investment.

## **First additional provision**

1. Article 5(1)(a) of Law 6/2008 of 15 May 2008 on the exercise of liberal professions and professional colleges and associations is amended to read as follows:

"a) Nationality or residence requirements: having Andorran nationality or accrediting effective and permanent residence in the Principality.

Authorisations for the exercise of a liberal profession in the Principality of Andorra by natural persons with effective and permanent residence in Andorra and who do not have Andorran nationality are subject to reciprocity treatment that allows the effective exercise of the liberal profession to Andorran nationals in the applicant's state of origin."

2. The second additional provision, Temporary need for qualified professionals, of Law 6/2008, of 15 May, on the exercise of liberal professions and professional colleges and associations, is amended to read as follows:

"Authorisations for liberal professionals of non-Andorran

Authorisations for liberal professionals of non-Andorran

nationality The Government, by means of special authorisation by decree, may grant authorisations for the exercise of the liberal professions to foreigners who do not meet the requirement of effective and permanent residence, or the principle of reciprocity, established in Article 5, taking into account criteria of experience, qualification, and/or professional and business reputation of the liberal professionals concerned, and also in accordance with the sectoral needs of the Principality."

## **Second additional provision**

Article 20 of Law 20/2007, of 18 October, on Public Limited Companies and Limited Liability, amended by Law 4/2008, of 15 May, is amended to read as follows:

"Article 20 Requirements

1. The business of transfer of shares and/or participations must be recorded in a public deed authorised by an Andorran notary.
2. The directors of the company must register the purchaser in the register of partners that all public limited companies and limited liability companies must keep."

## **Third additional provision**

Article 2 of the Law on Real Estate Property Transfers, of 15 December 2000, is amended to read as follows:

"Article 2 Provided that, in accordance with the specific regulations in force, foreigners require prior administrative authorisation to acquire real estate, such authorisation is a requirement for the validity of the acquisition."

## **Fourth additional provision**

1. Andorran banks must provide the Ministry in charge of Finance with the information it requires, individually and exceptionally, on the origin, destination and concept of the transactions linked to the investments regulated in this Law, in which they are involved.
2. Andorran banks must communicate to the Ministry of Finance on a quarterly basis information relating to capital movements on an aggregate basis and ordered by countries of origin and destination.
3. Andorran banks may not carry out any of the transactions referred to in Article 4 of this Law without first obtaining the information referred to in section 1, and all persons participating in the transactions are obliged to provide it.

## **Fifth additional provision. Tax on foreign investment**

A fee of 300 euros is created applicable to foreign investment applications, which accrues at the time of submission.

## **Transitional provision**

1. Individual investment situations prior to the entry into force of Law 2/2008, of 8 April, on foreign investment in the Principality of Andorra, as amended by Law 36/2008, of 18 December and Law 93/2010, of 16 December, are valid. In any case, they must be declared to the Foreign Investment Register.
2. Foreign investments formalised during the validity of Law 2/2008, of 8 April, on foreign investments in the Principality of Andorra, amended by Law 36/2008, of 18 December and by Law 93/2010, of 16 December, and which, in accordance with this Law, must be registered in the Foreign Investment Register have a period of one year to do so.
3. Investments by Andorran companies that, prior to the entry into force of Law 2/2008, of 8 April, on foreign investments in the Principality of Andorra, as amended by Law 36/2008, of 18 December and Law 93/2010, of 16 December, are considered to be foreign investments and, therefore, are subject to this Law. had a foreign participation in their capital, direct and indirect, of more than 50 per cent. In any case, they must be declared to the Foreign Investment Register within one year of the entry into force of this Law.
4. Declarations in the Foreign Investment Register that are made on the basis of this transitional provision shall be registered with the effective date corresponding to that of the respective acquisition.

## **Repealing provision**

Ordinance number 3 of Fomento, relating to commercial authorisations for foreigners, of 25 June 1976; Law 2/2008, of 8 April, on foreign investment in the Principality of Andorra; Law 36/2008, of 18 December, amending Law 2/2008, of 8 April, on foreign investment in the Principality of Andorra; Article 9 of Law 93/2010, of 16 December, on measures to promote economic and social activity, and to rationalise and optimise the Administration's resources, and any provision of equal or lower rank that is contrary to the provisions of this Law.

## **First final provision**

The Government shall approve the provisions for the implementation of this Law and, in particular, the

official forms for applying for authorisation and declaring in the Foreign Investment Register.

## **Second final provision**

Without prejudice to the provisions of this Law, as of the entry into force of the Law, the economic rights of foreign natural persons who wish to carry out an economic activity in the Principality of Andorra shall be acquired by obtaining residence in the Principality as defined in Article 1 of this Law.

## **Third final provision**

This Law will enter into force the day after it is published in the Official Gazette of the Principality of Andorra.

Casa de la Vall, 21 June 2012

Vicenç Mateu Zamora Síndic General We, the co-princes, sanction and promulgate it and order its publication in the Official Gazette of the Principality of Andorra.

François Hollande President of the French Republic Co-Prince of Andorra Joan Enric Vives Sicily Bishop of Urgell Co-Prince of Andorra