



LISTED ENTITIES – ALARM STATE, MEASURES TAKEN BY THE CNMV AND IN THE REAL DECRETO LEY 8/2020 UPDATED BY THE REAL DECRETO LEY 11/2020.

2nd April, 2020

I. CNMV

i. Temporary prohibition for the creation or increase of net short positions

Following the measures taken on Thursday 13th March, the Comisión Nacional de Mercados de Valores (“CNMV”), on the 16th March decided to temporarily prohibit the creation or increase of net short positions over shares of Spanish entities listed in Spanish trading centers (Bolsas de Valores and Mercado Alternativo Bursátil (MAB)), of which the CNMV is in charge.

The prohibition takes effect as from 17th March, and until 17th April, both dates included, and could be extended for additional periods, not longer than three months, if the circumstances giving rise to the prohibition were maintained, or be lifted at any moment without exhausting the term established, if it were necessary.

The prohibition affects any transaction over shares or related to the indexes, including cash transactions, derivatives in organized markets or OTC derivatives, which shall create a net short position or increase a preexisting one, even if it is in the intraday market.

ii. Recommendations in relation to General Meetings

The CNMV considers that in the current circumstances, and

according to the rules on corporate law, it is reasonable to as much as possible stimulate the assistance of shareholders to the general meetings through representation rather than in person. It is also considered reasonable that the use of remote assistance mechanisms and distance voting be maximized, including videoconference or telematic connections in real time or any other channel provided for in the bylaws or in the regulations of the general meeting. If these methods are available and may be effective, it could also be viable to have a completely telematic general meeting.

The CNMV understands that in the current situation the greatest margin of adaptability is to be recognized to the board of directors of listed entities, to decide and design measures and solutions that may contribute to the preservation of the people’s health and avoid the spread of the virus, even if the same are not expressly provided for in the bylaws, the regulations of the general meeting or in the calls made, as long as it effectively ensures the stakeholders’ exercise of their information, presence, and voting rights and a balanced treatment between those that are in the same situation.

For example, allowing to assist through the use of the phone or videoconference channels is considered for those directors and any other people who are obliged to be present in a general meeting who, for health reasons or actual restrictions to movement, may not be present in person.

II. ESMA obliges to communicate the net short positions of 0.1% over listed shares

The European Security and Markets Authority (“ESMA”) on 16th March decided to temporarily request those investors owning net short positions on shares listed in regulated markets in the European Union (“EU”), to inform the corresponding national authority, the CNMV in Spain, when their position reaches a 0.1% of the share capital of the listed entity, if such amount is acquired after this decision.

Reducing the minimum limit of the investments to be communicated is considered by ESMA to be a preventive measure that, in the exceptional circumstances consequence of the COVID-19, is key for the national authorities to monitor the evolution of the markets. The measure may serve as a base for the most rigorous actions that may be necessary to ensure the functioning of the EU markets, the financial stability, and the protection of investors.

ESMA also considers that the current circumstances are a serious threat for the trust on the EU markets and that the measures taken are appropriate and proportional to respond to the current threat level for the financial markets in the EU.

III. Real Decreto Ley 8/2020 (following the modifications in Real Decreto Ley 11/2020)

i. Suspension of the direct foreign investments in Spain’s Liberalization Regime

The final fourth disposition of the Real Decreto Ley 8/2020, introduces article 7 bis in Law 19/2003, of 4th July, on the legal regime of the capital movement and the economical overseas transactions, following the modifications carried out under the final third disposition in the Real Decreto Ley 11/2020, which suspend the liberalization regime for direct foreign investments in Spain in relation to investments carried out by residents in countries outside the EU and the European Free Trade Association.

This liberalization regime is suspended when the investor holds a participation of or over 10% in the share capital of a Spanish entity or when, as a consequence to a corporate transaction, the investor effectively participates in the management and control of such entity, if one of the following occur:

- a) The transaction is carried out by residents from outside the EU or the European Free Trade Association.
- b) The transaction is carried out by residents in countries in the EU or in the European Free Trade Association, whose real ownership corresponds to residents outside the EU or the European Free Trade Association. It shall be understood that such real ownership exists when the final owners own or control, directly or indirectly, a percentage over 25% of the share capital or the voting rights of the investor, or when through other means, exercise direct or indirect control over the investor.

Additionally, the amount under which the transactions of direct foreign investment may be exempted from this preauthorization regime may be established through additional regulation.

This limitation affects investments in sectors related to the public order, the public security and specifically, to the following:

- a. Key infrastructure (including energy, transportation, water, health, communications, media channels, data treatment and storage, aerospace, defense, polls or finance);
- b. Key technologies (including artificial intelligence, robotics, semiconductors, cybersecurity, defense, storage of quantum and nuclear energy, as well as

- nanotechnologies and biotechnologies);
- c. Supply of fundamental consumables, particularly energy or those referred to raw material or food security;
- d. Sectors with access to sensitive information, in particular personal data; and
- e. Media channels.

The regulation also establishes the suspension when the investors are directly or indirectly participating in a third country or if it has carried out investments in sectors related to the security, public order or health in another member state. The suspension will also be established in case a government increases the limitations to other sectors not considered in the previous paragraphs but that may affect the public order, public health and security sectors.

This disposition entails returning to the need of an authorization of investments by the government prior to the acquisition of a participation over 10% of the share capital of the relevant entity. Also, once the term for the notification and decision over the notified investment, no decision has been communicated, the authorization shall be understood as denied.

ii. Simplified transitional regime for the authorization

In this regard, the second transitory disposition of the Real Decreto Ley 11/2020 establishes a simplified regime for the processing of the authorization of transactions in course and those of reduced amounts:

1. The request for a prior administrative authorization for investment transactions included in article 7 bis described below shall be the ones to follow the simplified proceeding established in section 2 of such disposition:

- a) Those cases where, by any means accepted by law, the preexistence of an agreement between the parties or a binding offer in which the price had been set, determined or determinable, before the entry into force of the Real Decreto-ley 8/2020 may be evidenced;
- b) Those transactions with a price of one million euros or greater, and of less than five million euros, until the regulation developing article 7 bis enters into force.

2. The requests shall be addressed to the Dirección General de Comercio Internacional e Inversiones, which shall decide upon them prior report of the Junta de Inversiones Exteriores, applying the simplified processing of the proceeding established in article 96 of the Law 39/2015, of 1st October, on the Common Administrative Proceeding of the Public Administrations.

Transitorily, it shall be understood that transactions with a price under one million euros shall be exempt from obtaining this prior authorization.

iii. Extraordinary measures applicable to the functioning of the governing bodies of listed entities

In line with the CNMV’s recommendations cited in paragraph I above, the Real Decreto-ley 8/2020, following the modifications established in the third final disposition of Real Decreto Ley 11/2020, establishes a series of extraordinary measures which shall be applicable during year 2020 to entities listed in regulated markets in the EU intending to ease the functioning of the governing bodies of such companies, including, among others, the following:

1. New terms

- a. **Six months** from the closing of the financial year to publish and present the annual financial and audit report before the CNMV;
- b. **Four months**, additional to the prior term established, for the publishing of the

- intermediate management declaration and the bi-annual financial report;
- c. The ordinary general meeting shall be held within the first **ten months** of the financial year.

2. Holding of general meetings

- a. The assistance through telematic channels and the distance voting shall be scheduled, as well as the holding of the general meeting in any place of the country, or, if the general meeting has already been called, it may provide any of these measures in a complimentary announcement;
- b. In case the measures established by the public authorities did not allow for the holding of the general meeting in the place established in the call:
 - i. If the general meeting was validly constituted in such place, it may be decided by the general meeting to continue the holding on the same date at a different place within the same province, granting a reasonable time for the move of those assisting;
 - ii. If the general meeting could not be held, its holding may be announced with the same

agenda and the same publishing requirements that the one not held, with, at least five days prior notice to the date for the holding.

In this case, the management body may, in the complimentary announcement, decide that the holding of the general meeting be exclusively telematics under certain conditions.

The regulation also provides that the listed entities may apply any of the measures included in Real Decreto-ley 8/2020; and the new proposal, its justification by the management board and the auditor's report shall be made public, as soon as they are approved, as information complimentary to the annual accounts in the entities and CNMV's website or as privileged information, as the case may be.



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