Alert

Compensation following the requisition of property or rights of individuals due to the state of alert

March 2020

On March 6th, we set out to analyse the legal contingencies that companies should take into account in relation to Covid-19 and subsequently, we also analysed the measures adopted by the Government through the enactment of Royal Decree 463/2020 of March 14 (hereinafter, RD 463/2020).

Now, and in view of the powers of the Government during the state of alert, it is appropriate to consider when the requisitions of goods and rights of individuals are appropriate and, if necessary, how to process the relevant compensation

Article 8 of RD 463/2020 expressly provides that the authorities may agree, on their own initiative or at the request of the autonomous communities or local authorities, to the temporary requisitioning of all types of goods necessary for the fulfilment of the purposes set out in the aforementioned regulation, in particular for the provision of security services or critical and essential operators. When the requisition is agreed *ex officio*, it is required to previously inform the corresponding regional or local administration.

The same precept, in its second section, it provides that in the same terms, the performance of obligatory personal services essential for the achievement of the aims of this royal decree may be imposed.

Therefore, this is not an arbitrary and unjustified power of the authorities, but rather the requisitions must respond to the objectives of RD 463/2020 and, if the requisition is *ex officio*, it must be communicated in advance to the corresponding local or regional entity.

This is legally supported by the Organic Law 4/1981, of 1st June, specifically its article 11 b), where it is specifically foreseen that the decree of declaration of the state of alarm (for what we are now dealing with, the RD 463/2020) allows the practice of temporary requisitions of all types of goods and to impose obligatory personal benefits.

In these cases, the individual is entitled to receive compensation for the damage caused and in this sense article three of the Organic Law 4/1981 is pronounced. However, no other mention is made in this regard, so we are faced with a scenario of regulatory absence regarding time limits, processes of quantification or determination of compensation.

Consequently, we must resort to the Law of December 16, 1954, on compulsory purchase (hereinafter, LEF), specifically Chapter II of Title IV. Its article 120 states that when, due to serious reasons of public order or security as well as epidemics, the individual damaged as a result of the requisition is entitled to be compensated in accordance with the rules relating to damage to the temporary occupation of property and to the fair value of the furniture, the proceedings must be initiated at the request of the injured party.

Therefore, we refer to Articles 108 and following of the LEF, relating to temporary occupations. Article 112 of the legal body states that, **whenever it is possible to evaluate the compensation in advance**, the Administration tries to reach an agreement with the owner on the amount of compensation. The interested party will have a period of 10 days to answer plainly and simply if he accepts or refuses the expressed offer.

If the offer is expressly accepted, or the individual does not make a statement within the 10-day period, the amount offered will be paid or deposited without any subsequent claim.

If the offer proposed by the Administration is rejected, the parties shall submit their appraisals, which shall be founded, to the Provincial Expropriation Jury, which shall rule on the enforceability of the decision within 10 days. A contentious appeal will be possible against it within 2 months, also in accordance with Article 34 of the LEF.

In the event **it is not possible to determine the compensation in advance**, an attempt will be made to reach an agreement to fix a lump sum sufficient to cover the amount of the compensation. In the event of disagreement, as well as to determine the final amount at the time, the parties will also proceed to raise their assessments to the Provincial Expropriation Jury, which will be founded, and will also have to resolve the matter within 10 days in an enforceable manner. As in the previous case, a contentious appeal may be lodged against it within 2 months, in accordance with Article 34 of the LEF.

Finally, we must also take the requirement of the two following requirements into account:

- The damage must be effective, economically assessed and individualized in relation to a person or group of persons.

- The right to claim prescribes after one year from the event that caused it.

Once the claim has been presented by the individual, the administration has a period of 4 months to resolve it - in the event of administrative silence, the complaint is understood to be rejected. From this moment, the individual has 6 months to appeal, if he considers it, the appropriate administrative appeal –without prejudice to the jurisprudential criteria set out in Constitutional Court Decision No 52/2014 of 10 April 2014, which states that the time limit for filing in cases of administrative silence is considered to be undefined. If the Administration notifies a specific decision, the period for filing the contentious-administrative appeal will be 2 months.

For more information please contact:

José Luis Aguilar
joseluis.aguilar@AndersenTaxLegal.es

Jose María Rebollo
josemaría.rebollo@AndersenTaxLegal.es