



ABOGADOS

**ARAOZ & RUEDA**

**COVID-19 SPECIAL  
ADMINISTRATIVE AND  
REGULATED SECTORS**

STATE OF ALARM AND OWNERSHIP RIGHTS

Spain is under the alarm state declared by the **RD 463/2020, of March 14th**. This situation is guaranteed by article 55 of the Constitution and the development provided by the Organic Law 4/1981, of 1 June, together with those of emergency and siege.

The current state of alarm is **the second in Spain after the enactment of the Spanish Constitution**. The previous one was established by RD 1673/2010, for the regulation of the essential public service of air transport, that is, the air traffic controllers' strike, but with a much more limited scope.

## 1. Respect for ownership rights:

The Organic Law 4/1981, provides, as it is currently the case, the statement of the alarm state for **situations of health crisis (article 4) and this may have an impact, not only on mobility, but also on the assumption of duties by civil servants and on the property**.

Accordingly, nowadays, we are hearing about the seizure, commandeering and sequestration of several materials or areas. However, in case any doubt arises, it should be remembered that the alarm state has no effect by itself on the right to private property enshrined in article 33 of the Spanish Constitution, **even though private property may be requisitioned and occupied**.

According with the third paragraph of article 33, *"[a]ny person may be removed from his goods and rights except for a justified **cause of public purpose or social interest**, by means of the corresponding damage compensation and in accordance with the provisions of the law"*.

## 2. Alarm state, seizures and temporary occupations:

It is within this idea of justified cause that the Spanish Constitution includes in order to remove ownership rights, that the alarm state should be considered. In its legislative development, it is foreseen **the possibility of seizure of goods, imposing mandatory personal benefits and/or the occupation and the intervention of facilities of any nature except for private residences** (article 11).

However, requisitions and occupations of goods, although possible and valid, **do not mean that their owner is not entitled to compensation**. The regulations on this subject are very limited, requiring the use of the 1954 Forced Expropriation Act and its 1957 Regulations.

The expropriation regulations stipulate wartime requirements, but also for other damage scenarios as in the present case due to an epidemic. The rule requires, in any case, compensation, although without the need to observe the formalities prior to occupation or property removal.

In the case of occupancy of lands, buildings or factory premises, **the rule is to try to reach a prior agreement with the owner**. However, given the current situation of emergency, this

does not seem likely. Nevertheless, if there was a previous assessment, it is important to consider that, if the owner does not agree with it, it must be expressly refused within the following 10 days in order to preserve the possibility of litigation at the Provincial Court.

The valuation by occupation **should include the appreciation of the income that the owner ceases to receive for the rents due during the occupation, together with the damages caused in the property**, or the expenses that it implies to restore it to its original state. The value of the land can never be exceeded. In the event of removal of movable property or rights, or injury to them, the valuation will be carried out in accordance with the general rules of property valuation.

It is clear that for these valuations, both for occupation and for seizure of property and their dispute, the inventories and balance sheets, and, in general, the accounting of the company in question and the profits arising, for example, from the operation of the property in question, will be of great importance.

Finally, and very importantly, it **should be noted that the right to claim is time-barred after one year from the event that motivated it**. The law states that if a complaint is submitted, it will be understood to have been refused after four months without a resolution from the Administration. Thereafter, or from the notification of the express resolution, as the case may be, the period for the appropriate administrative appeal will begin to run.

To conclude, even though under the alarm state goods and spaces may be seized, the concerned individual will have the right to be compensated for it, even if it is convenient to remember this and request it and, if necessary, have to go to court.



A B O G A D O S

---

# ARAOZ & RUEDA

As the impact of COVID-19 continues to evolve, Araoz & Rueda is available to assist in helping companies manage the different legal implications of the outbreak.

Please contact us to get more information about the legal implications affecting your company in this challenging time.

## Corporate

Alejandro Fernández de Araoz (araoz@araozyrueda.com)  
Pedro Rueda (rueda@araozyrueda.com)  
Israel de Diego (diego@araozyrueda.com)

## Corporate/Energy

Francisco Solchaga (solchaga@araozyrueda.com)  
Laura Vintanel (vintanel@araozyrueda.com)

## Banking & Finance

Rafael Bazán (bazan@araozyrueda.com)

## Tax

Javier Prieto (prieto@araozyrueda.com)

## Labour

Alfonso Suárez (suarez@araozyrueda.com)

## Litigation

Eduardo de León (leon@araozyrueda.com)

## Real Estate

Jesús Conde (conde@araozyrueda.com)

## Competition/EU Law – IP & IT

Ainhoa Veiga (veiga@araozyrueda.com )

## Or call us on:

+ 34 91 319 02 33

