

March, 2020

STATE OF CATASTROPHE IS DECLARED IN CHILE

Below, please find a summary of the main consequences of the “State of Catastrophe” decreed by H.E. the President of the Republic of Chile:

I. Background

On 18 March 2020, H.E., the President of the Republic of Chile, Mr. Sebastián Piñera, issued a state of constitutional exception, the “State of Catastrophe”. Said state of exception shall affect the entire national territory and will begin at 00.00 hours of Thursday 19 March 2020. To begin with, it will be in force and effect for 90 days. The measure is aimed at preventing dissemination of and infection/contagion by COVID-19 virus.

As of the coming hours, the specific measures to be adopted by the President will be disclosed, within those vested on him by the Political Constitution of the Republic and by Constitutional Organic Law No. 18,415 that governs states of constitutional exception. So, the instructions and measures set out herein may vary as the number of cases of COVID-19 patients increases in Chile.

II. General guidelines of the State of Catastrophe as per constitutional regulation and Constitutional Organic Law No. 18,415 governing states of constitutional exception (hereinafter, the “LOC”, from the Spanish *Ley Orgánica Constitucional*).

The President may delegate the powers and authorities vested on him by the Chilean Political Constitution (hereinafter, the “Constitution”) and the LOC on “Chiefs of Zone” to be appointed for each of the country’s administrative regions.

Chiefs of Zone will be autonomous and may issue restrictive measures that can differ from one administrative region to another in the country.

Among the measures the Constitution and the LOC allow is the restriction of free circulation and transit, the establishment of curfews, ensuring quarantine compliance, protecting national borders, ordering the stockpiling and reserves of food, controlling entry and exit of goods, and even limiting ownership rights.

Below, we refer in greater detail to those measures which application could turn out to be paramount.



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1. Requisition of goods and limitations to ownership rights.
 - a. In case of requisition, the authority shall first make a detailed inventory of the goods, setting record of the state in which they are. A copy of this inventory shall be furnished within 48 hours to whomever were in possession of the goods at the time of requisition.
 - b. In case of limitations being placed on ownership rights, it will suffice for the authorities to notify the party affected, leaving with such party a copy of the document instructing such limitation.
 - c. In both cases, damages compensations apply against the State, for direct damages caused as a result of the measure. The amount of that compensation and the way in which it ought to be paid shall be jointly determined by the authority ordering the requisition and the affected party. Said agreement shall be approved, within the following 10 days, by the corresponding governmental authorities of the Ministry for Internal Affairs for the area where the measure was applied.

Upon lack of agreement on the matter, the party affected may file a claim, within 30 days, before an Ordinary Court of Law for Civil Matters with jurisdiction. The Court shall, in such a case, be the one to determine the final amount of the compensation, which shall be paid in cash and as a lump sum.

The action to file for the foregoing compensation is subject to statute of limitations within a year from the date the state of exception comes to an end.

1. The authority may order the stockpiling, storage or creation of reserves for foods, items and goods required for the care and survival of the population in the zone, and to control the entry and exit of such goods.
2. The authority is empowered to decide on the distribution or use, free-of-charge or for a charge, of the foregoing goods aimed at the maintenance and survival of the population in the affected area.

This measure may be interpreted as the authority's power to decide on the delivery or sale of certain goods (staples or, in this case, health or sanitary items) at a set price (or free-of-charge) and/or in specific quantities per recipient. The latter in order to avoid the risk of shortages, thus securing maintenance and survival of the population.

3. Controlling the entry to and exit from the zone declared in state of emergency and transit within it.
4. Establishing conditions under which meetings may be held in public places.
5. Passing measures aimed at protecting artwork and utilities, mining, industrial and other hubs.

III. *Other matters of interest*

Bill of Law banning and penalizing price increases because of the sanitary alert.

On Tuesday 17 March 2020, a bill was filed before the Lower Chamber and once approved, it was forwarded to the Senate on Wednesday 18 March 2020. Said Bill proposes the creation of article 94 bis in the Code of Health Law banning and penalizing, in case of epidemics or pandemics declared as sanitary alert by the health authorities, the increase of prices for the following items:

1. Pharmaceutical products, food and medical devices that help in the prevention and treatment of the sicknesses associated to said alert;
Products that directly or indirectly help prevent the sanitary alert or pandemic;
2. Products aimed at personal, household or environmental hygiene. Said prohibition would be applied to labs, drugstores, pharmaceutical shops, and other
3. establishments selling or commercializing these items. The health authority shall determine, via a grounded resolution, the complete list of the items subject to this measure.

This ban would only be in force during the sanitary alert, pandemic or epidemic.

Breaching this ban shall be penalized with fines of between 50 U.T.M and 1,000 U.T.M. If it were to take place once the state of constitutional exception has been declared, or once the public disaster resulting in the State of Catastrophe has taken place, the foregoing fines may be doubled, plus requisition of the items involved.

A first interim article is proposed that states that prices of medication, food and medical devices shall be taken back in time to those prior to the sanitary alert.

A second interim article is also proposed to enable the health authorities to establish a maximum number of critical products to be bought in the establishments set forth in new article 94 bis of the Health Code.

This rule must be looked into by the Senate, where it might undergo some amendments.

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