

Public Appropriation Law

Law 13/22 of 25 May – the Public Appropriation Law – came into force on 26 May. This new law establishes the legal rules applicable to public appropriation and it expressly repeals Law 3/76 of 3 March, which regulates the economic policy and resistance, and Law 1/82 of 2 February, which regulates the powers of the Council of Ministers regarding nationalisations and confiscations. Moreover, the new law applies to processes that are currently underway.

Public appropriation is defined as the act of the State by which property, whether movable or immovable, is transferred from the ownership of private individuals or legal entities into public ownership.

Under this law, the transfer of property to the State is carried out by (i) public appropriation through nationalisation, (ii) voluntary handing over of property and, (iii) a judicial declaration of transfer of property from private legal ownership in to the legal ownership of the State. In effect, movable and immovable property, and shareholdings, may be subject to public appropriation, either in full or in part. This can happen whenever the safeguarding of the national interest is at stake or whenever there has been fraudulent use of public assets or resources to form or increase the private assets of a public agent or third party.

The public appropriation decision is exceptional in character and is subject to fundamental principles such as respect for private property, proportionality, equality, and to the duty to provide reasons.

The procedures established for each of the forms of public appropriation are:

- **Public appropriation by way of nationalisation** – this is operated by an act of the President of the Republic, as Holder of the Executive Power, by means of which the reason for the nationalisation and the underlying national interest must be specified. The owners of the targeted property have the right to fair compensation, which is defined by means of an independent valuation report – prepared by valuers appointed in equal numbers by the State and by the owner of the property to be nationalised – and after the owners have been heard. Nevertheless, the payment of compensation will be suspended while any administrative or judicial proceedings relating to the nationalised property are in progress against the former owners. The right to compensation will then be extinguished when it is proved, by a final and unappealable decision, that the appropriated property was acquired in an illegal manner. However, bona fide third parties will still be entitled to compensation.

THE TRANSFER OF PROPERTY TO THE STATE IS CARRIED OUT BY (I) PUBLIC APPROPRIATION THROUGH NATIONALISATION, (II) VOLUNTARY HANDING OVER OF PROPERTY AND, (III) A JUDICIAL DECLARATION OF TRANSFER OF PROPERTY FROM PRIVATE LEGAL OWNERSHIP IN TO THE LEGAL OWNERSHIP OF THE STATE

In the case of legal persons, contractual rights and obligations will be protected, especially those arising from employment contracts.

- **Public appropriation by way of voluntary handover of property** – those involved in asset recovery proceedings can voluntarily hand over the property involved in the proceedings and, consequently, a certified and notarised declaration will be drawn up, subject to judicial ratification. The voluntary handover of property does not extinguish any criminal proceedings, or proceedings of any other nature, relating to the property handed over, but it does operate as a mitigating circumstance under the terms of the criminal law.

- **Public appropriation by judicial declaration of transfer of property to the State** – this is requested by the Public Prosecutor’s Office, in criminal proceedings, for which purpose (i) there must be proven urgency in view of the possibility of deterioration or devaluation of the property in the short term, and (ii) sufficient evidence of fraudulent use of public assets or resources. The decision must be issued within 20 days and it can be appealed against with merely devolutive effect, heard and judged as an appeal lodged against the decision that puts an end to the case. If it is proven that the property was acquired in a legal way, the State is obliged to compensate the owners within a reasonable period of time. Finally, the provisions of the nationalisation rules will apply on a subsidiary level to this form of appropriation, with the necessary adaptations. ■

THE PAYMENT OF COMPENSATION WILL BE SUSPENDED WHILE ANY ADMINISTRATIVE OR JUDICIAL PROCEEDINGS RELATING TO THE NATIONALISED PROPERTY ARE IN PROGRESS AGAINST THE FORMER OWNERS. THE RIGHT TO COMPENSATION WILL THEN BE EXTINGUISHED WHEN IT IS PROVED, BY A FINAL AND UNAPPEALABLE DECISION, THAT THE APPROPRIATED PROPERTY WAS ACQUIRED IN AN ILLEGAL MANNER. HOWEVER, BONA FIDE THIRD PARTIES WILL STILL BE ENTITLED TO COMPENSATION.