

Legal update

Venezuelan president declares state of emergency

May 2016
Public Law

On May 13, 2016, the Office of the President of the Republic published Decree No. 2,323 in Extraordinary Official Gazette No. 6,227, declaring a 'State of Exception and Economic Emergency' (the Economic Emergency Decree).

Declaration of a State of Exception and Economic Emergency

According to the State of Exception and Economic Emergency Decree and pursuant to Articles 337, 338 and 339 of the Constitution, the State of Exception and Economic Emergency is declared throughout the nation due to the extraordinary social, economic, political and ecological circumstances that are seriously affecting the national economy, constitutional order, social peace, national security, public institutions and citizens. The State of Exception and Economic Emergency Decree enables the executive to take appropriate exceptional and extraordinary measures to guarantee that citizens fully enjoy their rights, to preserve domestic order, ensure timely access to basic goods and services and mitigate the impact of natural circumstances that have affected power generation, access to food and other essentials.

List of measures the executive may take under State of Exception and Economic Emergency Decree:

- Adopt the measures necessary for the public sector to secure the support of the private productive sector in the production, marketing and distribution of inputs and goods and to fight "*bachaqueo*,"* hoarding, usury, boycott, fraudulent alternation of prices, extraction smuggling and other economic crimes.
- Design and implement exceptional mechanisms for the supply of inputs, machinery, seeds, credit and everything related to agricultural development and the national livestock sector.
- Allow the Bolivarian National Armed Forces and Local Supply and Distribution Committees (CLAPs) to intervene in the distribution and marketing of food and basic necessities.
- Authorization for expenditures by the president and the cabinet not provided for in the budget law.
- Approve and sign contracts that are in the public interest to obtain financial resources, technical advice and strategic use of resources for economic development without permits or approvals from other authorities.
- Establish priority items for state procurement, or categories thereof, and foreign exchange allocation for their purchase.
- Decide on the temporary and exceptional suspension of sanctions against senior government and other officials, when such sanctions could impede the continuity of the implementation of economic measures.

- Establish staple foods and goods production, marketing and distribution assessment, monitoring and control policies.
- Assign monitoring and organization functions to the CLAPs, community councils and other Communal Power organizations, so that together with the armed forces, national police, state and municipal police corps, they maintain public order and ensure the security and sovereignty of the country.
- Authorize the competent ministers to adopt measures to ensure the sale of regulated products according to timing schedules that respond to the particular characteristics of the area or region.
- Plan, coordinate and implement the urgent national and international procurement of goods or supplies essential to the health and feeding of citizens and upholding of basic services throughout the country, within the framework of trade or cooperation agreements by the exceptional application of expedited contracting mechanisms.
- Implement the necessary measures to counter weather events, such as the adjustment of working hours in the public and private sectors.
- Take necessary and urgent measures to re-establish and maintain the state power sources.
- Enact measures to protect forest areas to prevent deforestation, logging and burning.
- Adopt measures and implement special public security plans to ensure the maintenance of public order in the face of destabilizing actions seeking to interrupt the internal life of the country or its international relations and enable important progress in restoring peace, national security and control of the police over criminal conduct.
- Instruct the Foreign Ministry to audit and inspect agreements signed by citizens and/or legal persons with foreign entities for the execution of projects in the country agencies, and order the suspension of the financing of such agreements when their use is presumed to be for political or destabilizing purposes.
- The decree similarly provides the possibility for the president to enact other measures of social, economic, political and legal order, if deemed appropriate.

Possible provision of maximum limits for the entry or exit of Venezuelan legal tender

The ministry with jurisdiction over banking and finance may implement the necessary coordination with the Central Bank of Venezuela to establish maximum limits for entry or exit of Venezuelan legal tender in cash, as well as commercial or financial operations and transactions, and may restrict such operations to the use of electronic media that are duly authorized in the country.

Possible temporary suspension of licenses to carry firearms

Licenses to carry firearms in the country could be temporarily suspended. This measure shall not apply to the state security forces and national armed forces.

Sovereignty and national defense

In order to strengthen the maintenance of social peace and public order, the competent authorities shall coordinate and implement measures to guarantee the sovereignty and national defense.

Strengthening the fight against crime and procedural efficiency

The judiciary and the public prosecutor shall undertake the activities within their powers to ensure strict implementation of the Constitution and the law to reinforce the fight against crime and accelerate the processing of cases.

Referral to the National Assembly – for consideration and approval

The State of Exception and Economic Emergency Decree was submitted to the National Assembly for consideration and approval in accordance with Article 339 of the Constitution and Article 26 of the Organic Law governing States of Emergency, and in its special session of May 17, 2016, the assembly denied approval of the decree.

On the same date the National Assembly approved an agreement denouncing the fact that the State of Exception and Economic Emergency Decree deepens the serious alteration of the constitutional and democratic order being suffered by Venezuela.

Referral to the Constitutional Chamber of the Supreme Court - constitutionality

Similarly, the State of Exception and Economic Emergency Decree was referred to the Constitutional Chamber of the Supreme Court for a ruling on its constitutionality, in accordance with Article 339 of the Constitution and 31 of the Law Governing States of Emergency.

On May 19, 2016, the Chamber issued Ruling No. 411, declaring the constitutionality of this decree and stating that it was issued in compliance with the Constitution, the Organic Law on States of Exception and other legal instruments, preserving human rights and protecting the Constitution, the State, its Institutions and the People. It also declared that it entered into force as of the date it was issued and that its legal and constitutional legitimacy, validity, effectiveness and efficiency irrevocably remains intact, as provided in the Constitution of the Bolivarian Republic of Venezuela.

Validity

This State of Exception and Economic Emergency Decree is valid for 60 days from May 13, 2016, and may be extended for 60 days more.

In this regard, it should be noted that decree No. 2,184 declaring an economic emergency throughout the national territory, was published in Extraordinary Official Gazette No. 6,214 of January 14, 2016, also in accordance with Articles 337, 338 and 339 of the Constitution, for a period of 60 days, extendable for 60 days more.

Luis Ernesto Andueza
Ana Carolina Serpa

***"Bachaqueo"* comes from the word "*bachaco*," which means a large, red, all-devouring ant and is used to refer to the illegal trafficking of price-controlled staples by persons who queue up, usually for hours and often days, to purchase low-priced goods and later resell them at a substantial profit.

For further information, please contact one of the following lawyers:

| | | | |
|-------------------------------|---------|------------------|--|
| > Luis Ernesto Andueza | Caracas | +58 212.276.0007 | luis.andueza@nortonrosefulbright.com |
| > Ana Carolina Serpa | Caracas | +58 212.276.0028 | anacarolina.serpa@nortonrosefulbright.com |

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss Verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.