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## Client Alert | Administrative and Public Law, Real Estate

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Italy

### “Cura Italia” Decree: requisition of real estate property

April 2020

The method adopted in South Korea to stem the spread of the COVID-19 virus shows that, among other measures, it is necessary to ensure the isolation - until the end of the emergency - of people tested positive with mild symptoms, people in quarantine who may infect family members as well as the numerous workers exposed daily to the risk of infection (such as doctors and nurses).

It is therefore necessary to have facilities available which, while ensuring isolation conditions, are such as to allow assistance to the aforesaid persons as prescribed by health authorities.

For such reason, Decree Law No. 18 of 17 March 2020 (the “**Cura Italia Decree**”) entrusts **Prefects**, on proposal of the Civil Protection Department and after hearing the Land Prevention Department, with the power to, *inter alia*, requisition **real estate** property **for use**<sup>1</sup>.

#### 1. What is requisition?

Requisition is an extraordinary and urgent pre-ordained measure aimed at remedying situations that cannot otherwise be solved by ordinary measures.

#### What properties can be requisitioned for use by Prefects?

Prefects may requisition for use:

- **hotel facilities** or
- other real estate that is equally fit for purpose.

<sup>1</sup> For anything not otherwise specified, please refer to the considerations above concerning the characteristics of requisition for use.



The Prefect's order must be grounded on the need to temporarily dispose of real estate property to meet unavoidable needs related to the COVID-19 health emergency. The hotel facilities and real estate properties requisitioned as above can indeed be used **to accommodate people under health surveillance and fiduciary isolation or permanence at home and the related indemnity procedures**, if, after discharging patients in the acute phase, it is not possible for them to be confined to their homes.

It follows that, under the *Cura Italia* Decree, only the hotels and buildings that meet the minimum structural requirements to ensure the health surveillance of COVID-19 patients can be requisitioned and, moreover, such requisition is only allowed for the use of such properties (i.e. for a limited time) and not for acquisition of title therein.

**Therefore, the owners of hotels and properties that can potentially be requisitioned might immediately start checks on their compliance with the minimum structural requirements required by the legislation in force on requisition. This is because, in the "post-quarantine" period, ready-for-use properties may be required - immediately.**

## 2. What allowances are provided for requisition for use?

For requisition of real estate, a sum of money will be paid as a requisition **allowance**<sup>2</sup>.

The requisition **allowance** is awarded in the same decree of the Prefect, who for the purposes of the estimate shall consult the Revenue Agency, **in a corresponding amount, for each month or fraction of a month of actual duration of the requisition, at 0.42%** of the current market value of the requisitioned property or of similar property.

Therefore, the current market value, and not the market value of the property as at 31 December 2019 (as provided for the requisition of personal property and health facilities), shall be considered as the basis for measuring 0.42%

## 3. What is the timeframe for the payment of the above-mentioned allowances?

The *Cura Italia* Decree specifies the timeframe for the payment of the said allowance, providing as follows:

- if the order for requisition for use does not set out a shorter period for return<sup>3</sup>, the allowance paid to the owner is **provisionally** awarded having regard to the number of months or fraction of months elapsing between the date of the order and the end of the emergency (including any extension)<sup>4</sup>;

<sup>2</sup> In case of the owner's refusal to receive it, the allowance will be made available to the owner by means of an offer, including a non-official one, and then paid as soon as accepted.

<sup>3</sup> If no deadline is set out, requisition shall be deemed to be ordered until 31 July 2020 or until such time as the duration of the state of emergency is further extended.

<sup>4</sup> And again, within the limits set forth in paragraph 2 of the same Article 6 of the *Cura Italia* Decree.



- in case of **extension of the requisition**, the difference between the allowance already paid and that due for the further period shall be paid to the owner within 30 days of the expiry of the term originally set out.

#### 4. What judicial protection is available against the Prefect's orders?

Article 6 of Decree-Law No 18/2020 provides that *"in case of challenge, including in court, the enforceability of the requisition orders referred to in this article cannot be suspended, as provided for by Article 458 of Legislative Decree No. 66 of 15 March 2010"*, Code of Military Organisation.

In this way, the legislator intended to give the requisitions for use and property governed by Article 6 of the *Cura Italia* Decree a value similar to requisitions in times of war, general mobilisation or serious international crisis. The main consequence of such equalisation is that the enforceability of the requisition measures in question cannot even be affected in the event of a challenge in court.

#### 5. Are there any other terms to arrange requisition?

Although the *Cura Italia* Decree only regulates cases of requisition imposed by orders of the Prefect, the private individuals concerned may, also in consideration of the weak jurisdictional protection mentioned above, start a different procedure.

More specifically, the owners of hotels or buildings that meet the structural requirements mentioned above, may propose to the Prefect to sign supplementary requisition agreements, pursuant to Article 11, paragraph 1 of Law No. 241 of 7 August 1990.

Said provision reads:

*"Upholding the observations and proposals submitted pursuant to Article 10, the administration concerned may enter, without prejudice to the rights of third parties, and in any case in the pursuit of the public interest, into agreements with interested parties in order to determine the discretionary content of the final measure or in substitution thereof"*.

Above-mentioned Article 10 provides as follows:

*"The parties referred to in Article 7 and those acting under Article 9 have the right: a) to examine of the procedural documents, without prejudice to the provision of Article 24; (b) to submit written briefs and documents, which the administration shall assess insofar as they are relevant to the subject-matter of the proceedings"*.

As part of the requisition procedure, therefore, the private parties concerned may propose the execution of a supplementary agreement with a content negotiable with the authority involved.

The reference to Article 10 for the applicability of the supplementary agreement indeed gives a specific value to the administrative power to enter into an agreement with the parties concerned, enhancing the value of their contribution.



It is considered, however, that the agreement can only be supplementary to the requisition order and can in no way replace it, as such method can only be adopted “in the cases provided for by law”.

Said agreement has a binding nature, without prejudice to the public administration's right to withdraw for reasons of public interest (Article 11, paragraph 4, of Law No. 241 of 7 August 1990).

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