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Legal update

Venezuela's New Currency Exchange Law

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Public Law

The Presidency of the Republic published in the Official Gazette No. 6,210 Extraordinary, dated December 30, 2015, Decree No. 2,167, with Rank, Value and Force of Law, against Exchange Control Violations (New Currency Exchange Law). This legislation repeals the Decree with Rank, Value and Force of Law against Exchange Control Violations (Repealed Currency Exchange Law) published in the Official Gazette No. 6150 Extraordinary, dated November 18, 2014, and all provisions in any other regulation that may conflict with the New Currency Exchange Law.

The New Currency Exchange Law provides a series of reforms, among which we would highlight the following:

Production certification system

The new New Currency Exchange Law provides that the Sectorial Vice Presidency, competent in the economic area, in coordination with the Vice Presidency of the Republic, will develop regulations for establishing and administrating a system of Production Certificates that must be obtained in order to request foreign currency for certain imports, services, capital goods or other productive components. The system must be centralized, implemented and executed by the National Foreign Trade Center (CENCOEX). This new system replaces the previous Certificate of No National Production.

No reimbursement of foreign currency for fulfilled obligations or those lacking approval

CENCOEX will not authorize foreign currency to meet a fulfilled obligation or commitment to purchase goods or services that the applicant may have undertaken in advance without the corresponding prior approval, except in those cases where CENCOEX, may consider making an exception for reasons of national interest.

Duty to inform of foreign currency exchange transactions

Under the New Currency Exchange Law, individuals or legal entities shall inform CENCOEX of the currency exchange transactions carried out in the country, pursuant to the means, terms and opportunity available to the referred institution.

Exports of goods and services

The New Currency Exchange Law includes the obligation to declare to CENCOEX, in addition to the Central Bank of Venezuela, the currency amounts and characteristics of each export that exceeds 10,000 US dollars (USD) or its equivalent in other currencies.

Submission of false information or forged documents

The New Currency Exchange Law provides increased punishment for this crime. The Repealed Currency Exchange Law provided a sanction of imprisonment of 1 to 3 years, and a fine equivalent to five-tenths of the tax unit (TU) in force as of the payment date, of each USD or its equivalent in another currency, of the total amount of the transaction. Meanwhile, the New Currency Exchange Law increased the term of imprisonment to 3 to 5 years, and the fine is now equivalent to 10 TU, in force at the time of conviction, of each USD or its equivalent in another currency, of the total amount of the transaction.

Acquisition of foreign currency through deception

Also with regard to this crime the New Currency Exchange Law provides for stricter sanctions. The Repealed Currency Exchange Law punished this crime with imprisonment of 3 to 7 years, and a fine equivalent to five-tenths of a TU in force as of the payment date, of each USD or its equivalent in another currency, of the total amount of the transaction. Now, the New Currency Exchange Law increased the imprisonment term to 4 to 8 years, and the fine is now equivalent to 12 TU in effect at the time of conviction for each USD or its equivalent in another currency, of the amount of the transaction.

Using an unofficial exchange rate for pricing

Under the New Currency Exchange Law those who promote, market, or determine prices of goods and services using as reference a different exchange rate than allowed by the exchange regulation or to the rate set for the exchange operation by the foreign exchange administration will be punished with imprisonment of 7 to 12 years and a fine of 200% of the difference obtained by subtracting the value the offender set for the currency, from the value calculated pursuant to the applicable exchange regulations.

“Deviation” (deceptive acquisition) of foreign currency

The New Currency Exchange Law provides increased punishment for this crime. Specifically, it provides for imprisonment terms of 3 to 7 years and a fine of 10 TU, effective at the time of conviction, for each USD or its equivalent in another currency, of the amount of the operation.

Spreading false information about the exchange rate

The New Currency Exchange Law provides that those who directly or indirectly engage in deception or contrivance for the purpose of disseminating through electronic, television, or radio communications any false or fraudulent information regarding the currency exchange rate applicable in Venezuela, shall be punished by imprisonment of 10 to 15 years. Information relating to the currency exchange rate applicable in Venezuela will be deemed false or misleading when it contradicts or distorts the applicable exchange rate values set by the national government and the Central Bank of Venezuela.

Promoting exchange violations

The New Currency Exchange Law provides stricter punishment for this crime. Specifically, it provides for imprisonment terms of 4 to 8 years and a fine of 10 TU, effective at the time of conviction, for each USD or its equivalent in another currency, of the amount of the operation.

Criminal penalty for failure to repatriate currency

The Repealed Currency Exchange Law provided that the failure was generated if the Repatriation Order was not complied with within 15 working days, or once it became final at the administrative offices. This period varies in the New Currency Exchange Law and becomes 30 business days under the same circumstances. Similarly, the New Currency Exchange Law provides increased punishment for this crime. Imprisonment is maintained at 2 to 6 years, but the fine of five-tenths of a TU is increased to 10 TU, effective on the date of payment for each USD or its equivalent in another currency, of the corresponding amount of the respective operation exchange. Finally, the Repealed Currency Exchange Law provided that this offense applied when the amount to be repatriated was greater than $USD50,000 and the New Currency Exchange Law provides that it applies when the amount to be repatriated exceeds $USD10,000.

Mode for exceptional repayment

The New Currency Exchange Law establishes the possibility of reimbursement in bolivars when reimbursement in foreign currency is impossible.

Informant

The New Currency Exchange Law provides that it will lower the penalty for any informant who helps prevent the continuation or perpetration of violent crime or crimes committed by organized crime.

Prescription

The Repealed Currency Exchange Law provided that imprisonment sentences, prescribed according to the Criminal Code rules. Now the New Currency Exchange Law provides for the non-prescription of administrative offenses and the prosecution of the offenses referred to in this decree.

Failure to disclose currency source

The New Currency Exchange Law reduces the administrative fine for this violation to an amount between 200 and 500 TU.

Sentencing process

The New Currency Exchange Law eliminates the chapter regarding the sentencing process. However, it is expected that with repeat offenders, double fines will apply as well as suspension from the User Registration System of the Foreign Exchange Administration (RUSAD). Moreover, it is expected that the opportunity, mechanisms, formalities, terms and conditions for applying sanctions established the New Currency Exchange Law, will be regulated by the body or entity competent for the inspection, supervision, and anti-corruption of the Foreign Exchange Administration regime and the sentencing authority on foreign exchange matters.

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