

LAW OF THE EXCHANGE REGIME AND ITS UNLAWFUL ACTS

Decree No. 2.167, whereby the President of the Republic issued the Decree with the Status, Value and Force of Law of the Exchange Regime and its Unlawful Acts, was published in Official Gazette No. 6.210 Extraordinary, dated December 30, 2015 (the “Decree-Law”). The purpose of the Decree-Law is to regulate the terms and conditions under which the entities with competence over the regime of administration of foreign currency exercise the powers conferred on them, the fundamental parameters for the participation of private parties and public entities in the acquisition of foreign currency, and the events that constitute unlawful acts or violations in this area and their respective penalties.

Following are the most significant changes contained in the Decree-Law with respect to the law that formerly regulated this matter:

- a) Creation of a System of Production Certificates (the “System”), the obtainment of which will be obligatory in order to request foreign currency intended for the importation of specific consumable supplies, services, capital goods, or any other productive component; The System must be centralized, implemented, and executed by the National Center of Foreign Commerce (*Centro Nacional de Comercio Exterior* - “CENCOEX”). The System must be developed by the sectorial vice-presidency with competence over the economic area, in coordination with the Vice-presidency of the Republic, in a period of time not exceeding six (6) months after publication of the Decree-Law in the Official Gazette.
- b) The National Executive may issue sectorial regulations for expediting or simplifying the formalities established for the obtainment of foreign currency at CENCOEX. Under exceptional and justified circumstances the filing of non-essential requirements may be relaxed, exempted, or postponed.
- c) The natural or legal persons requiring foreign currency may acquire the same through transactions in foreign currency offered also by banks of the State (in addition to the persons and entities formerly established: natural and legal persons of the private sector; *Petróleos de Venezuela S.A.* (“PDVSA”), and the Venezuelan Central Bank (“VCB”). By way of exception, public entities other than PDVSA and the BCV may take part as offerors of foreign currency, with the prior authorization of the Ministry of the Popular Power with competence over Finance matters, in accordance with the instructions issued by the President of the Republic in this connection.
- d) CENCOEX will not authorize foreign currency for performance of obligations already extinguished or commitments that may have been previously undertaken by the requesting party without having the relevant prior authorization, except in the cases in which CENCOEX, through a previous reasoned act, may allow exceptions for reasons of national interest.
- e) CENCOEX, one of the administrative authorities of the regime of administration of foreign currency, will have the procedural prerogatives that the Decree with the Status, Value, and Force of Organic Law of the Attorney General’s Office confers on the Republic.
- f) The natural or legal persons must inform CENCOEX of the exchange transactions carried out in the country, according to the means, terms, and time established by said entity.
- g) The exporters of goods or services are bound to declare to the VCB and to CENCOEX, through an authorized exchange operator, the amounts in foreign currency and characteristics of each export

transaction when the amount of the same exceeds USD 10,000.00 or its equivalent in another foreign currency (formerly, they were bound to declare to the VCB only).

- h) The non-resident natural persons that are in a situation of transit or tourism in the national territory, who stay in the country for a period equal to or shorter than 90 calendar days (formerly, such period was to be shorter than 180 calendar days), and the companies organized or to be organized in order to develop any of the activities to which the Organic Hydrocarbons Law refers, within the limits and requirements prescribed in the relevant exchange agreement, as well as those subject to special regimes according to the Law of Regionalization for Socio-Productive Development of Homeland or the instruments issued to develop the same, are exempt from the obligation to declare the foreign currency acquired.
- i) In addition to the foreign-exchange-related unlawful acts already existing, such as: (i) filing of false or forged documents or information; (ii) acquisition of foreign currency by deceit; (iii) deviation of use of foreign currency; (iv) promotion of foreign-exchange-related unlawful acts; (v) aggravating circumstance for the use of electronic, financial means or specialized knowledge; (vi) commission of an unlawful act by providers of service at public agencies and entities (those providing services at the agencies, entities of the Public Administration and at the exchange operators); (vii) failure to refund; the following were included as new foreign-exchange-related unlawful acts: (a) use of a non-official rate of exchange to establish prices; and (b) dissemination of false information about the rate of exchange (both unlawful acts are penalized with imprisonment and fine (only in the first case).
 - i. The use of a non-official rate of exchange in order to establish prices refers to those who promote, commercialize or determine the prices of goods and services using as a reference a rate of exchange other than the rates of exchange permitted by the exchange rules or fixed for the relevant transaction by the exchange administration.
 - ii. The dissemination of false information about the rate of exchange includes those who directly or indirectly participate in the making of any deceit or artifice with the purpose of disseminating via electronic means, television, radio or communication of any type whatsoever, texts, signals, images or sounds, false or fraudulent information referred to the rate of exchange applicable to the foreign currency in the Bolivarian Republic of Venezuela. An information referred to the applicable rate of exchange will be understood to be false or fraudulent when it conflicts with or distorts the values applicable to the rate of exchange fixed by the National Executive and the VCB.
- j) Those who being bound to refund the foreign currency to the VCB, in the terms and conditions established in the Decree-Law, in the foreign exchange rules in force, or in the contracts or agreements executed with the exchange administration, fail to carry out the order to refund within a period of 30 business days following the corresponding date (formerly, 15 business days) or the date when the decision ordering the refund becomes final, extendible for other 30 days, will be penalized. However, according to the Decree-Law the criminal penalties for failure to perform the obligation to refund, will be imposed solely in the cases when the amount to be refunded exceeds USD. 10,000.00 or its equivalent in another foreign currency (formerly, the amounts were to exceed USD 50,000.00).
- k) In the cases in which the refund of foreign currency is impossible, the Judge may establish the refund of the foreign currency in bolivars, ordering the payment of 15 Tax Units ("T.U."), as in effect at the time of the conviction, per each dollar of the United States of America or its equivalent in another foreign currency of the amount corresponding to the foreign currency requested.
- l) Any person who, after being convicted, commits again a punishable act established in the Decree-Law will be penalized with the relevant penalty increased by one fourth, according to the rules of the Criminal Code. Likewise, after the repetition of the act has been determined, the violator may not access the mechanisms administered by the competent authorities of the foreign currency administration regime for a period equal to that of the relevant penalty.

- m) The Decree-Law establishes that the foreign-exchange-related unlawful acts will be penalized with imprisonment ranging between 2 and 15 years, including fines ranging between 10 T.U. and 15 T.U., as in effect on the date of the conviction, per each dollar of the United States of America or its equivalent in another foreign currency of the amount corresponding to the relevant exchange transaction; except for the fine of the unlawful act committed for the use of a non-official rate of exchange in order to establish prices, which will result in 200% of the difference resulting from subtracting from the value of the foreign currency fixed by the violator, the value corresponding to the transaction, according to the applicable exchange rules.
- n) The administrative infringements prescribed remain. However, according to the Decree-Law the administrative penalties for failure to perform the obligation to refund will be imposed solely in the cases when the amount to be refunded exceeds USD. 10,000.00, or its equivalent in another foreign currency (formerly, the amounts were to exceed USD 50,000.00).
- o) The Decree-Law prescribes fines ranging between 200 and 500 T.U. (formerly, the fine ranged between 200 and 5,000 T.U.) for the administrative infringement corresponding to the failure to announce the origin of the foreign currency. The other administrative infringements will be penalized with fines ranging between 0.1 and 10 T.U., as in effect on the date of payment, per each dollar of the United States of America or its equivalent in another foreign currency of the amount corresponding to the relevant exchange transaction. However, in the event of faults of the representatives of legal persons, they will be subject to fines of double the equivalent in Bolívares of the amount of the exchange transaction. .
- p) The Prosecutor's Office will request from the Control Court an authorization to reduce the applicable penalty to half of the penalty established for the crime with which the informant is charged, in the cases of events resulting from organized crime or violent crimes in which the person charged efficaciously cooperates with the investigation, provides essential information for preventing the continuation of the crime or the commission of others, helps clarify the investigated event or connected events or provides useful information to prove the participation of other persons charged, provided that the penalty corresponding to the punishable act for which such person is being investigated, is lower than or equal to that of the acts the prosecution of which he facilitates or the continuation of which he prevents. The State will adopt the necessary measures to guarantee the physical integrity of the informant.
- q) The administrative infringements and the criminal action for the crimes to which the Decree-Law refers ARE NOT subject to the statute of limitations (formerly, the period of the statute of limitations was of 10 years as from the date of the infringement and in the case of continued or permanent infringements, as from the day when the event ceased to be continued or permanent).
- r) The property derived from the commission of the crimes established in the Decree-Law will be subject to confiscation, when said crimes involve foreign currency authorized or delivered through the mechanisms administered by the competent authorities of the regime of administration of foreign currency from the public property, which will be declared by the judge in the relevant judgment of conviction, specifically indicating the affected property.
- s) *Chapter VII Penalizing Procedure: Commencement, Procedural Steps, and Termination* contained in the Law of the Exchange Regime and its Unlawful Acts, published in November 2014, was deleted, except for article 34 referred to preventive measures.
- t) Also, 4 new articles are added related to: (i) repetition of administrative infringements; (ii) approval of foreign currency for Venezuelans who are residents; (iii) procedural steps of the file for determination of the infringements; (iv) formalities for application of penalties.
 - i. Those who after being notified of a final penalizing resolution commit any of the infringements established in the Decree-Law will be penalized with double the relevant fine and suspended from the Registry of Users of the Foreign Currency Administration System (*Registro de Usuarios del Sistema de Administración de Divisas - "RUSAD"*) for a period of 2 years, as from the date when the fine corresponding to the administrative penalty is paid (formerly, 1 year).

- ii. The approval of foreign currency for electronic consumptions and with credit cards is a benefit that may be granted solely to Venezuelans residing permanently in the country.
- iii. The competent authority for exchange matters will process upon its own initiative or after an oral or written denunciation the relevant file for the determination of the infringements to which the Decree-Law refers, which will contain the factual presumptions to be investigated, the pertinent legal grounds, and the juridical consequences if the events are verified. Said file will be sent to the agency or entity with competence over foreign exchange matters and with penalizing power, in order for the relevant procedure to begin. The terms, timing, and elements to be applied for processing the inquiry will be established by an administrative ruling issued to that end.
- iv. The timing, mechanisms, formalities, conditions, and terms for the application of penalties established in the Decree-Law will be regulated by the agency or entity with competence over foreign exchange matters and with penalizing power. The facts or circumstances of which the competent agency or entity becomes aware by reason of the exercise of its functions of inspection and auditing, as well as the documents to which it may have access because they are incorporated to the files of which such agency or entity takes cognizance, may be used by the administrative authority in charge of the determination and fixing of prices in the exercise of the functions of investigation, inspection or auditing.

The Decree-Law repeals the Decree with the Status, Value, and Force of Law of the Exchange Regime and its Unlawful Acts, published in Official Gazette No. 6.150 Extraordinary of November 18, 2014. Also, all regulatory provisions that conflict with the provisions of the Decree-Law are repealed.

The Temporary Provisions of the Decree-Law establish: (i) the administrative procedures in progress initiated under the effectiveness of former laws on the matter will be governed as to the content and as to the form by the provisions of the Decree-Law, except in the cases where there exist provisions that are more favorable to the persons involved; and (ii) after January 1, 2016, CENCOEX's personnel may be freely appointed and removed by virtue of the powers of the aforesaid public institute.

The Decree-Law entered into effect as from December 30, 2015.

In order to access the Decree-Law, please click [here](#).



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