

Reform of the Organic Law of Fair Prices



On November 12, 2015, Official Communication was published in Official Gazette N° 40.787. The purpose of this Official Communication was to correct, due to material error, the Decree N° 2092 dictated by the President of the Bolivarian Republic of Venezuela, which contained the Decree-Law of Fair Prices published in Extraordinary Official Gazette N° 6202 on November 8, 2015.

Official Gazette of the Bolivarian Republic of Venezuela Nr. 40.787 of November 12, 2015.

The aforementioned decree became effective upon publication in Official Gazette ("Reform of the Law of Fair Prices").

The relevant aspects of the Reform of the Law of Fair Prices are as follows:

1. It establishes the standards to determine prices of goods and services, profit margins, commercialization mechanisms and controls that must be exerted to guarantee access to people of goods and services at fair prices.
2. It aggregates an exception to its application regarding those subjects

- which in an expressed manner are made an exception by the President of the Republic on the occasion of regional development plans or treaties or agreements validly subscribed by the Republic.
3. It establishes that the Superintendence for the Protection of Social-Economic Rights (SUNDDE, for its acronym in Spanish) will coordinate with the foreign exchange administration entity the oversight regarding sale, availability and setting of goods and services which involved foreign currency. Additionally, all facts and/or documents, which SUNDDE is familiar with, on occasion of the exertion of its roles of inspection and scrutiny, might be used by the foreign exchange administration as well as other authorities or entities in exercise of functions of investigation, inspection or scrutiny even when the corresponding process matter was not referred of the competences granted to SUNDDE
 4. SUNDDE will be competent to set the criteria and standards to establish the Maximum Retail Price, of the producer or importer and wholesale or retail level.
 5. It introduces the policy of fair prices that is addressed to goods and services to be commercialized nationwide and establishes that SUNDDE will set the prices of said goods and services. Fair prices policies will comprehend at least the following categories: a. the fair price, that can be only set by the Superintendence b. the maximum retail price will be determined by the producer or the importer of the good or the service renderer, it might also be determined and set in office by SUNDDE. Both price modalities will constitute categories of the highest price that could be assigned to goods and services in regards to those that could be determined or set.
 6. It establishes that when some of the subjects regulated by the Reform of the Law of Fair Prices must incorporate new goods and services in addition to those previously informed to SUNDDE, it will have to follow the procedure that SUNDDE establishes to determine the fair price of the good and service before its distribution and commercialization nationwide.
 7. It modifies the frequency for the determination of the maximum profit margin, establishing that said margin can be modified periodically and not yearly as established by the eliminated law. Additionally SUNDDE will determine progressively profit margins of the added value in each link of the commercialization chain.
 8. It makes sure that SUNDDE will inform the competent entity on foreign exchange matters when is presumed that any of the subjects of application has incurred in any of the violations listed in the foreign exchange matter.
 9. It typifies new aggravating circumstances of the fine to be imposed, such as: a. social, economic, food, health impact, among others, b. the high levels of income of the offender, c. the volume of goods involved in the offense.
 10. It typifies new aggravating circumstances of the violations, such as: a. when the felony is committed through fraudulent or fictitious operations and b. when the felony is committed taking advantage of the regulated prices set by SUNDDE.

11. It typifies the sanction for infringement of formalities which comprises shutdown of warehouses, deposits or premises for a period of 48 hours or a fine between 500 and 15000 Tax Units.
12. It eliminates the generic infringements and includes the infringements for violation of individual rights. In that manner it establishes a fine from 500 to 30,000 Tax Units for those who violate, undermine, ignore or prevent people from exerting any of the rights comprised in said article. Additionally, when special taxpayers determined by the tax administration incur in this type of infringement, fines will be calculated based from 12% to 20% of the annual net income of the offender, depending on aggravating circumstances in the conduct of the economic offender agent. In case of recurrence, the fine will increase to 40%. The calculation of the annual net income will correspond to the previous fiscal year to when the fine was imposed.
13. It establishes a significant increase for all penalties concerning felonies related to the regulation of fair prices. These penalties could vary from 3 to 10 years in prison and in case of extraction contraband 14 to 18 years of prison. In case of felonies related to sale of expired food or goods, overstocking and boycott, it incorporates fines for recurrence up to 40% of the annual net income of the offender taking into account the previous fiscal year.
14. When it is about the determination of typified felonies and its related procedure is started through the participation of police or military or judicial assistants, said proceedings will be sent to the Public Ministry in order to be processed by the Judicial Power being the proceeding authority
- to escalate to SUNNDE at the same moment of such circumstance.
15. Regarding the execution of the fine, SUNNDE will enforce compliance of the imposed fees adopting any measures required including attachment of assets, prohibition of transferring, burden or any other measure that leads to complying the decision. Likewise, it will be able to charge judicially the fines not paid by the application subjects through the brief procedure established in the law that regulates the issues related to administrative litigation.

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