

Reform of the Foreign Exchange Crime Law



Decree Law Nr. 2167 issued by the President of the Bolivarian Republic of Venezuela was published in Official Gazette Nr 6.210 of December 30, 2015. Through this Gazette it was dictated the Decree Law of **Foreign Exchange Crime Law**, (hereinafter, “Law of Foreign Exchange Crime Law” or “the Law”).

Validity

The Law of Foreign Exchange Crime Law came into effect at the moment of its publication in Official Gazette, completely repealing the Decree Law of Foreign Exchange Crime Law published in Official Gazette Nr. 6150 on November 18, 2014.

In the following section, we highlighted those changes we considered the most relevant in the Reform of the Law of Foreign Exchange Crime Law:

1. The currencies from public estate are now submitted to the regulations and restrictions to the Law of the Foreign Exchange Crime Law.

Production Certificates System

2. Sector Vice-Presidency with competency in the economic area, in coordination with the Vice-Presidency of the Republic will develop regulations for the creation and administration of Production Certificate system whose granting must be mandatory to file currency requests to **import** specific supplies, services, goods or any other productive component.

Said system must be centralized, implemented and executed by the National Center for Foreign Trade (hereinafter **CENCOEX**).

This regulation will be able to set special guidelines of mandatory compliance regarding the following:

- a. Setting of minimal commercialization quotes for the public sector.
- b. Agreements or conventions for currency use with specific obligations.
- c. Methods of refund or indemnities to the Republic in case of not complying with contractual guidelines.
- d. Any other aspect that allows the most efficient administration of granted currency.

Alternative currency market

3. The Public Sector Banks are now added to the alternative currency market to perform as foreign currency providers.

Administrative Authorities of the Exchange Regime

4. CENCOEX will not authorize currency to honor an already outdated rendered service or previous commitments that an individual had incurred without being previously approved, only in those cases which CENCOEX will consider of national interest, previous reason statement provided.
5. Through the Law, it is introduced the concept of competence of administrative authorities on matters of inspection, oversight and anticorruption of the Exchange regime and sanctioning attributions regarding exchange matters.

Obligations to declare

6. Administrative Rulings which CENCOEX use to regulate rules, standards, conditions and other aspects related to the obligation to declare. They will be able to set specific regulations, addressing specifics of economic sectors, activities or geographic locations
7. It is added to these regulations mandatory declaration made by individuals or legal entities to CENCOEX about currency operations performed in the country in conformity with the means, terms and opportunities that said institution provides.
8. **Importers** must state in the Bill of Lading or Customs Declaration the origin of the obtained currency.
9. It is mandatory for individuals and legal entities that trade goods or provide services to use a fixed public announcement to inform which of their

products were purchased through CENCOEX authorized currency. It is a competence of the Superintendence for the Protection of Social Economic Rights (SUNDDE for its acronym in Spanish) to oversight this duty.

10. **Exporters** of goods and services will be compelled to declare to the Central Bank of Venezuela and CENCOEX, through an authorized exchange operator, the amounts in foreign currency and the characteristics of every export operation when said operation surpasses an amount of ten thousand United States Dollars (10,000.00 USD) or its equivalent in any other currency.

Exception to declare

11. The period in which there is an exception to declare currency acquired by individuals non-resident in the country changed from one hundred and eighty (180) to ninety (90) continuous days. This exception period is also applicable for companies submitted to special regimes in conformity with the Law of Regions for the Social and Productive Development of the Nation or the instruments issued to develop the Nation.

Foreign Exchange Crimes

12. A new felony is established for those who promote, commercialize or set prices of goods and services using as a reference an exchange rate different than that established by the foreign exchange regulation or set for a foreign exchange operation, imprisonment from seven (7) to (12) years and a fine of two hundred percent (200 %) of the difference set by the offender for the currency whose value correspond to the operation.

13. Imprisonment from ten (10) to fifteen (15) years for those who spread false or fraud information regarding the applicable exchange rate of the Bolivarian Republic of Venezuela, in a direct or indirect manner, electronically, through TV, radio, or any kind of communication, writing, signals, images and sounds. It will be considered as false or fraudulent information if it opposed or disrupted the applicable rates set by the Executive and Central Bank of Venezuela.
14. The standard amount is increased in all sanctionatory fines, from half a tax unit (0, 5 T.U) per every USD involved to ten tax units (10 T.U) per every USD involved in the corresponding amount. For the felony related to currency acquisition through deceiving methods the fine was increased to twelve tax units (12 T.U) for every USD involved in said felony.
15. In all foreign exchange related felonies, imprisonment years were increased as follow:
 - a. Presenting false or forged documents. Three (3) to five (5) years.
 - b. Acquiring currency through deceiving methods. Four (4) to eight (8) years.
 - c. Deviation of currency use. Three (3) to seven (7) years.
 - d. Promoting exchange crimes: four (4) to eight (8) years.

Penalty for not complying with mandatory currency refund

16. It is hereby modified and established that those who do not comply with the refund order within thirty (30) business days which follow the corresponding date or the refund order remains extended for other thirty (30) business days will be punished with imprisonment of two (2) to six (6) years and a fine equivalent to ten (10) tax units (T.U) when the amount to be refunded surpasses ten thousand United States Dollars (10,000.00 USD) or its equivalent in any other currency. The previous amount for this penalty was of fifty thousand United States Dollars (50,000.00 USD)

Exceptional currency refund

17. It was added the exceptional refund, in which the Ruler will establish when the currency refund is of impossible execution, then it will be made in Bolivars plus fifteen tax units (15 T.U)

Recurrence

18. It is established that those who relapse in a felony established by Law, will be submitted to the imprisonment time plus a corresponding fourth of said sanction. The offender will not be given the mechanisms administered by the exchange agreement authorities for the same period.

Statute of limitations

19. It is established that the administrative sanctions and penalties regarding the Foreign Exchange Crime Law do not expire.

Currency Approval for Residents

20. The Law clearly states that approval for electronic and credit cards is a benefit

only granted to Venezuelans, permanent residents of the Venezuelan territory.

Seizure

21. It is established that goods acquired through felonies established in the Law will be seized when these goods involved currency authorized or granted through the competent authorities and mechanisms.

Administrative infraction. Non-Compliance of the Refund

22. The sanction for those who do not comply with the refund order within the thirty (30) business days after the corresponding date will be fined an amount equivalent of ten tax units (10 T.U) valid to the liquidation time. It applies when the amount to be refunded is less or equal to ten thousand United States Dollars (USD 10.000,00) or its equivalent in any other currency

Approval of Currency through violation of regulation

23. The sanction for those who were granted currency through violation of the exchange regulations will be fined with the equivalent amount of ten tax units (10 T.U)

Administrative Recurrence – RUSAD Suspension

24. It is established that anyone who relapses in committing any of the wrongful acts set in this Law will be fined double the amount corresponding to the act committed and it will be suspended of Registry of Users of the Foreign Exchange Administration System.

Administrative Procedures

25. Finally, procedures subjects are adjusted for administrative wrongful acts, eliminating the dispositions of the repealed previous Law.

26. From the publication of this Law, the administrative procedures under way, which are ruled by the repealed standards must fully comply except of those with more convenient guidelines for the involved individuals.

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