

August 6, 2018

FLASH REPORT
FOREIGN-EXCHANGE SYSTEM

FOREIGN-EXCHANGE SYSTEM AND CRIMES ACT REPEALED

INSTRUMENT

A Constituent Decree (hereinafter the “Decree”), issued by the National Constituent Assembly, was published in Official Gazette of the Bolivarian Republic of Venezuela No. 41,452, dated August 2, 2018 (put into circulation on August 6, 2018). This Decree has repealed:

- 1) Decree No. 2,167 Enacting the Foreign-Exchange System and Crimes Act (the “Act”). The Decree does not identify the act being repealed; nevertheless, the one currently in force is No. 2,167, dated December 29, 2015, published in Official Gazette of the Bolivarian Republic of Venezuela Special Issue No. 6,210 dated December 30, 2015;
- 2) Article 138 of the Decree Enacting the Law Governing the Central Bank of Venezuela, only insofar as the activity of negotiating and dealing with foreign currency in the country is concerned; and
- 3) All regulatory provisions to the extent that they are contrary to the provisions of this Decree.

The Decree became effective on August 2, 2018.

REASONS

The following are among the main reasons for issuing this Decree:

- The government’s interest in providing Venezuelans with a new framework in which private parties may carry out foreign-exchange transactions, using their own foreign currency from legitimate sources.

- The aim of offering private parties –both individuals and corporations—whether national or foreign, full guarantees for the purpose of having them participate in the country's model for social and economic development.

EFFECTS OF THE DECREE

It repeals the rules and regulations that determined actions considered foreign-exchange crimes or administrative offenses, as well as the fines or penalties applicable in those cases.

This leaves an exchange control system that is based on decrees, foreign-exchange agreements, instructives and instructions by the Central Bank of Venezuela (BCV) and foreign-exchange authorities setting the guidelines for centralizing the management of foreign exchange in the BCV.

In our opinion, the elimination of this Act means a more liberal system for transactions involving foreign exchange, from legitimate sources, between private parties (individuals and corporations); it will not, however, affect the Supplementary Exchange Rate (DICOM) system that determines the methods to be used to obtain foreign exchange at the official rate by means of auctions organized by the BCV.

Neither will it have any effect on the provisions found in the foreign-exchange agreements concerning imports and exports of goods and the obligations involved in those transactions.

NO RETROACTIVE BENEFITS

Given that the economic crimes covered in Articles 21 and 23 of the repealed Act involve damages to the public treasury, and with a view to ensuring that they do not go unpunished, the Decree stipulates an exception to the principle of retroactive application of a more favorable law for serious cases that occurred up to the date of publication of this Decree in the Official Gazette of the Bolivarian Republic of Venezuela.

Note: The crimes described in Articles 21 and 23 of the Act are those involving the purchase of official-rate foreign exchange by deceitful methods and the use of official-rate foreign exchange for other purposes, respectively.

Civil liability for any foreign-exchange crimes committed under the repealed Act also remains unchanged.

EASING OF PENALTIES

The Decree stipulates that the penalties for crimes covered by the above-mentioned Articles 21 and 23 in the repealed Act are to be reduced by two thirds when, in all, the transactions carried out by the party who broke the law total less the ten thousand U.S. dollars (US\$10,000) or the equivalent in another currency.

SPECIAL NOTE:

Lastly, it is important to point out that this Decree was issued by the National Constituent Assembly, a body whose legitimacy has not been recognized by some countries, thus giving rise to a dilemma for individuals or corporations from those countries regarding the legality of this Decree.

The above provides a summary of the main aspects of the Decree. Please do not hesitate to contact us if you have any questions or would like further details concerning any issue.

Yours truly,

BENSON, PÉREZ MATOS, ANTAKLY & WATTS

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