

Legal update

Venezuela regulates new DICOM system on auctions of foreign currency as part of the exchange control regime

June 2017

Currency exchange control

In Special Official Gazette No. 6.300 of May 19, 2017, the following were published: Exchange Agreement No. 38, which establishes the new foreign currency system at the supplementary floating market exchange rate (DICOM), which operates in the form of auctions of foreign currency, and Resolution No. 17-05-01, which creates and regulates the Committee of Foreign Currency Auctions (the Committee). For its part, in Official Gazette No. 41.155 of May 22, 2017, Rule No. 001 of the Committee establishing the general rules for the auctions of foreign currency conducted through the new DICOM system was published.

The new DICOM system allows the sale and purchase of foreign currency (typically, United States dollars) in exchange for local currency, through auctions of foreign currency administered, regulated and directed by the Committee, which is a new internal instrumentality of the Central Bank of Venezuela (BCV).

Participants in the new DICOM system

Individuals, legal entities of the private sector and the BCV can participate in the new DICOM system as offering parties (sellers) or bidding parties (purchasers) of foreign currency.

For their part, the Economic and Social Development Bank (BANDES), Petróleos de Venezuela, S.A. (PDVSA), the affiliates of PDVSA, and the mixed companies dedicated to the oil industry, as well as any instrumentality or entity of the public sector authorized to that effect by the National Executive, can participate in the new DICOM system as offering parties (sellers) of foreign currency only.

To participate in the new DICOM system, the respective person must electronically register with the system and provide certain information, make a sworn statement as to the origin and destination of the funds, hold a demand or term account denominated in foreign currency with a universal bank organized or domiciled in Venezuela and authorized to operate as such under Venezuelan banking legislation (a Local Account in Foreign Currency), and be up to date with the national tax and social security obligations.

Requirements and limitations to participate in the new DICOM system

Each auction of foreign currency is announced by means of a call issued by the Committee. Such call determines the particular requirements and conditions to be met in order to participate in the auction, such as identification, documentary and compliance requirements for the participants, the date of the auction, the cut-off date and time for the submission of offers or bids to participate in the auction, the minimum amounts of those offers and bids to participate in the auction, the date of awards of foreign currency, and the value or settlement date for awarded foreign currency. The Committee must call auctions at least once per week and the calls must be made two banking days prior to the date of the auction.

The new DICOM system has limitations on the maximum amount of foreign currency purchases made through it. Individuals can purchase up to a maximum of US\$500 per calendar quarter. Legal entities in the private sector can purchase an amount equal to 30% of the average monthly gross income declared for income tax purposes in the immediately preceding fiscal year provided that such amount does not exceed US\$400,000 per month. By way of exception, legal entities in the private sector can purchase foreign currency up to a maximum of US\$9,600,000 (which would be equal to, for instance, US\$800,000 per month) provided that such increased maximum amount be requested by the respective person and the request be authorized by an ad-hoc committee appointed by the Committee. On the contrary, said system has no limitations on the maximum amount of foreign currency sales.

To participate in an auction of foreign currency, the bidding parties (purchasers) of foreign currency must submit their bids in terms of price and amount, and the offering parties (sellers) of foreign currency must submit their offers in terms of amount, electronically through the system, and indicate the validity term for their bids and offers (which can be no less than seven days nor greater than 30 days). Every bid and offer validly submitted as of the cut-off date and time for the submission of offers or bids to participate in the auction is incorporated into the auction and cannot be waived or withdrawn as of that moment.

The persons who wish to participate in the new DICOM system must ensure the existence and availability of the funds in foreign currency or in local currency, as applicable, that support their offers and bids being incorporated into the respective auction of foreign currency.

Individuals and legal entities who wish to sell foreign currency for an amount of US\$10,000 or less can sell such foreign currency to the BCV, through the authorized exchange operators, at the exchange rate of the new DICOM system then in force and effect.

Award and settlement of foreign currency and exchange rate of the transactions conducted through the new DICOM system

The auctions of foreign currency are conducted on the basis of an administered floating exchange rate system within variable bands determined and monitored by the Committee. In this respect, the Committee determines the high and low limits of the admissible exchange rate applicable to each particular auction at the respective call. Only the offers and bids submitted for an exchange rate within such high and low limits of the band are eligible to transact as part of the respective auction.

The Committee has discretion to determine the methodology for awarding foreign currency under the new DICOM system. In this respect, even though the rules regulate this matter in a tangential and unclear manner, the Committee has indicated that the award of foreign currency will start by awarding foreign currency to the bidders of foreign currency who have submitted bids for the highest admissible exchange rate allowed by the band and thereafter to the other bidders of foreign currency based on the exchange rate submitted in their bids from the highest to the lowest exchange rate, until the point where the foreign currency offered (and, therefore, the foreign currency that can be awarded) at the respective auction is exhausted. In addition, the system is designed so that at least 10% of the foreign currency offered at each auction is awarded to individuals.

The exchange rate applicable to each sale and purchase transaction of foreign currency conducted through the auctions can differ for each transaction since the same will be, for each such transaction, the exchange rate that the respective bidding party of foreign currency, to whom the foreign currency has been awarded, submitted in its bid.

The settlement of the foreign currency awarded through the auctions will be made by crediting them to a Local Account in Foreign Currency. Based on the foregoing, each participant at the auctions must hold, prior to its participation, this type of account denominated in foreign currency.

DICOM exchange rate

The BCV will publish on its website the exchange rate resulting from every auction of foreign currency, which may serve as a reference to: (a) persons who have not participated in the respective auction, (b) persons who have participated in the respective auction but to whom no foreign currency was awarded, and (c) persons who have participated in the respective auction and to whom foreign currency was awarded therein, but in the latter case for

purposes other than the sale and purchase transaction of foreign currency resulting from the award (such as for purposes of determining the basis for calculation of its cost structure).

This exchange rate will be the lowest exchange rate, admissible within the band, at which a bid for the purchase of foreign currency was submitted in the auction and was awarded foreign currency at the auction (which the rules refer to as the “marginal value of the awarded bids”). The exchange rate in force and effect at any given moment will be this exchange rate published by the BCV for the latest auction conducted as of the relevant moment.

Ordinary and contingency auctions

The auctions of foreign currency can be ordinary or contingency auctions. The ordinary auction is the one open to all economic sectors, in which offering parties and bidding parties can participate without any restrictions other than compliance with the conditions set forth in the respective call. The contingency auction is the one, which is automatically triggered whenever the ordinary auction cannot award all foreign currency bid for at an exchange rate within the high and low limits of the band because of an excess bid or offer of foreign currency, where priority in the participation is given to certain parties based on criteria relating to a previously determined economic sector, business activity, or product, or based on a random selection.

Participation of the BCV and the Ministry of Economy and Finance

The BCV and the Ministry of the People’s Power for Economy and Finance are empowered to conduct all joint actions that they may deem necessary to procure a proper balance of the currency exchange system and to generate appropriate conditions for its operation, taking into consideration the orderly attention of the bids for foreign currency from all economic sectors and the transparency in the process of establishing prices and exchange rates, and to avoid or neutralize any prejudicial effects on the financial system and the national economy originating from the violation of the exchange control rules.

Obligation of notification to the Committee about the use of own foreign currency for the payment of imports

Legal entities that use their own foreign currency, not purchased through the new DICOM system, to pay for imports of raw materials or of intermediate or finished goods intended for their production process, must notify the Committee about this for purposes of its registration and counting. The exchange rate applicable to such imports, for purposes of determining the cost structure, will be the exchange rate of the new DICOM system in force and effect as of the date of registration of such transaction with the system. The Committee will issue a certificate confirming this information.

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