

Legal update

New rules in Venezuela on bank accounts in foreign currency for public national companies

April 2017
Corporate

Within the framework of the National Economic Emergency Decree, the President of the Republic passed Decree N° 2.777 (the Decree, Official Gazette of the Bolivarian Republic of Venezuela N° 41.119 of March 22, 2017) whereby the President established, as a general rule, that all public national companies shall hold all of their bank accounts in foreign currency in the Venezuelan Central Bank (BCV) and/or in the Economic and Social Development Bank of Venezuela (BANDES).

Purpose

The purpose of the Decree is to implement measures that generate additional sources of foreign currency for the Bolivarian Republic of Venezuela by establishing, as a general rule, that public national companies shall hold all of their bank accounts in foreign currency in the BCV and/or in BANDES.

Consequently, such public national companies shall not hold bank accounts in foreign currency in Venezuela or abroad, in any financial institution other than BCV and/or BANDES, unless expressly authorized for such purposes by the President of the Republic.

In addition to the above, the public national companies referred to in the Decree shall not withhold any amount or percentage of foreign currency obtained from their export activities, nor shall they use such foreign currency to carry out any payments, without the President's authorization.

Scope of application

The Decree applies to national public companies, but it sets forth that it is not applicable to: (i) Petróleos de Venezuela, S.A. (PDVSA); (ii) affiliates of PDVSA; and (iii) mixed companies to which the President grants express exemption.

Creation of the Foreign Currency Productive Fund

The Decree creates the Foreign Currency Productive Fund (FCPF) as a separate source of foreign currency. The FCPF shall be created and funded with the income resulting from export activities, services or with the income resulting from any other source of profits, carried out or received by decentralized entities with commercial purposes, whose capital stock is more than 50% owned by the Republic or by any other decentralized entity (except for PDVSA, its affiliates and the mixed companies that are expressly exempted by the President of the Republic).

The FCPF shall functionally operate in the National Development Fund (FONDEN). Use of the funds constituting the FCPF shall be authorized by the President of the Republic or by the person he appoints for such purposes. Such authorization may be granted in the following cases:

- **Revolving Productive Fund:** In cases in which the entities to which the Decree refers to, duly justify the need to comply with operational expenses in foreign currency, based on their operational particularities, in order to guarantee their operations. This authorization may only be requested when this fund has been exhausted and has yielded at least by 70%. These requests may only be made by such entities through a commission consisting of the Executive Vice-president, Vice-president of the Planning Sector, Vice-president of the Economic Sector and FONDEN's President (the Commission).
- **Special Investment Plan:** In the context of the Bolivarian Economic Agenda, in cases in which a situation arises that requires, with justification, the incorporation of expenses in foreign currency, which were not foreseen in the investment plan.

Migration

Within 60 days from the publication of the Decree in Official Gazette, the public national companies referred to therein shall carry out the migration of their foreign currency from the bank accounts in Venezuela or abroad to the BCV and/or BANDES.

Within 15 days from the publication of the Decree in the Official Gazette, the public national companies shall provide to the Executive Vice-president a list with all foreign currency bank accounts they hold, as well as the amounts available in such accounts, together with the corresponding updated bank statements.

Complementary regulation

The Commission is responsible for issuing the complementary regulation necessary to implement the Decree.

The National Executive will determine the financial mechanisms through which the entities to which the Decree refers to will receive the bolivars resulting from the foreign currency exchange operations.

Effective date

The Decree became effective as of March 22, 2017, which was the date of its publishing in the Official Gazette of the Bolivarian Republic of Venezuela.

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