

## Legal update

### Venezuela regulates new system for transactions in foreign currency as part of the exchange control regime, and unifies the official exchange rate at the DICOM exchange rate

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**May 2018**

#### **Currency exchange control**

In Official Gazette No. 41.329 of January 26, 2018, as corrected in Official Gazette No. 41.340 of February 18, 2018, Exchange Agreement No. 39, which establishes a new system for transactions in foreign currency, was published. Exchange Agreement No. 39 regulates three types of transactions: (a) auctions of foreign currency, conducted through the new system at the supplementary floating market exchange rate (DICOM), (b) direct sales of foreign currency, and (c) transactions involving the negotiation in local currency of securities denominated in foreign currency issued by private sector issuers.

Additionally, it unifies the official exchange rate, applicable to private and public sector persons, at the DICOM exchange rate referenced below.

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#### **Auctions of foreign currency through the new DICOM system**

The new DICOM system allows the sale and purchase of foreign currency (typically, euros) in exchange for local currency, through auctions of foreign currency administered, regulated and directed by the Committee of Foreign Currency Auctions (the Committee), which is an internal specialized body within the Central Bank of Venezuela (BCV).

This new DICOM system is regulated by the above-mentioned Exchange Agreement No. 39, but also by Exchange Agreement No. 38, published in Special Official Gazette No. 6300 of May 19, 2017 (in a very limited manner, since the same was almost wholly abrogated), Resolution No. 17-05-01 issued by BCV, which creates and regulates the Committee, published in Special Official Gazette No. 6300 of May 19, 2017, and Rule No. 001 issued by the Committee establishing the general rules for the auctions of foreign currency conducted through the DICOM, published in Official Gazette No. 41.155 of May 22, 2017.

#### **Participants in the new DICOM system**

Individuals and legal entities of the private sector can participate in the new DICOM system as offering parties (sellers) or bidding parties (purchasers) of foreign currency. On the other hand, public sector legal entities cannot participate in such system.

In order 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 obligations and the social security.

### **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 €420 or its equivalent in any other foreign currency per calendar quarter. Private sector legal entities can purchase a monthly amount equal to 30% of the average monthly gross income declared for income tax purposes in the immediately preceding fiscal year, provided such amount does not exceed €340,000 or its equivalent in any other foreign currency per month. On the other hand, said system has no limitations on the maximum amount of the sales of foreign currency.

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, which support their offers and bids being incorporated into the respective auction of foreign currency.

### **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 a floating exchange rate system, based on an American auction type, where the offer (sale) and demand (purchase) bids of foreign currency are technologically matched.

The Committee has discretion to determine the methodology for the award of the foreign currency under the new DICOM system. In this respect, even though the rules regulate this matter in a tangential and unclear manner, in the past the Committee has indicated that the award of foreign currency will start by awarding foreign currency to the purchaser-bidders of foreign currency who have submitted bids for the highest admissible exchange rate and thereafter to the other purchaser-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 purchasing-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 in the auctions must hold, prior to its participation, this type of account denominated in foreign currency.

### **DICOM exchange rate**

The BCV publishes 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 at which a bid for the purchase of foreign currency was submitted in the auction by a legal entity (as opposed to by an individual) 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.

### **Direct sales of foreign currency**

Individuals and legal entities who wish to sell foreign currency for an amount of €8,500 or its equivalent in any other foreign currency, or less, can sell such foreign currency directly to the authorized exchange operators (which are, essentially, universal banks incorporated or domiciled in Venezuela and authorized to act in such capacity by the exchange control governmental authorities), at the DICOM exchange rate in force and effect as of the date of such sale, without having to resort for that purpose to the auctions of foreign currency conducted through the new DICOM system.

For purposes of these direct sales of foreign currency, the relevant person must indicate the origin and destination of the funds and comply with the rules issued by the BCV and the prudential rules issued by the Office of the Superintendent of Institutions of the Banking Sector (SUDEBAN).

### **Transactions involving the negotiation in bolivars of securities denominated in foreign currency issued by issuers of the private sector**

Individuals and legal entities can sell and purchase foreign currency indirectly from any other individual or legal entity (except for the persons indicated below, as regards the purchase of foreign currency) through the negotiation in bolivars of securities denominated in foreign currency issued by any private sector issuer, whether domestic or foreign, which is listed in a regulated market and is subject to public offering.

The only exception to the above broad base of participants is that institutions from the banking, insurance and securities market sectors, savings funds, trusts, and reciprocal guarantee and venture capital entities and funds, cannot participate in those transactions as purchasers (indirectly) of foreign currency.

In order to conduct that negotiation in bolivars, individuals and legal entities must transact through a securities broker, regardless of whether the same is a member of a stock exchange or not, regulated by the securities market legislation or through the Bicentennial State Stock Exchange (an instrumentality of the Ministry of the People’s Power for Economy and Finance (Ministry of Finance)) (BPVB), and the actual transaction of negotiation in bolivars of the referenced securities denominated in foreign currency must be conducted by means of the BPVB.

Securities brokers, regardless of whether they are members of a stock exchange or not, must warrant the existence of the positions in securities or of the funds subject to the transactions referred here. For this purpose, they will require from their respective clients the temporary custody over the positions to be negotiated under those transactions.

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

The reference “implied exchange rate” of these transactions is as follows: (a) in the case of sales of the referenced securities, the DICOM exchange rate in force and effect on the date of the respective sale transaction, applied on the market value of the negotiated security or on the value that the parties freely agree to give to the security in the event the same has no market value, and (b) in the case of purchases of the referenced securities, the exchange rate indicated in (a) reduced by 0.25%.

The operational aspects of these transactions are subject to the rules of the Office of the National Superintendent of Securities (SUNAVAL), which will establish the types and terms of authorized transactions, the mechanics for the settlement thereof, and the mechanisms for monitoring and control thereof. For its part, the technological platform for the

processing of these transactions is subject to the operational rules of the BPVB, issued with the prior authorization of SUNAVAL and the prior approval of the Ministry of Finance and the BCV.

### **Participation of the BCV and the Ministry of Finance**

The BCV and the Ministry of 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 purchasing bids for foreign currency from all economic sectors and the transparency in the process of formation of 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.

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