

Legal update

Venezuela revises law on fair prices

November 2015 Public Law

The Office of the President of the Republic published in the Official Gazette Special Issue N° 6.202 Decree No. 2.092, which is a Decree with the Rank, Value and Force of an Organic Law for Fair Prices (the New OLFP). This rule revokes the Decree with the Rank, Value and Force of an Organic Law for Fair Prices published in the Special Issue of the Official Gazette N° 6.156 dated November 19, 2014, as well as all provisions and rules that conflict with the New OLFP.

The New OLFP provides a series of modifications and additions among which, we can highlight the following:

Price modes

The New OLFP provides that the fair price policy shall encompass at least two categories: (i) Fair Price; and (ii) Maximum Selling Price to the Consumer. The Fair Price may be determined by the Pricing Superintendency (SUNDDE) and the Maximum Selling Price to the Consumer may be determined and set by the producer or importer of the good or by the service provider, but it may also be determined or set officially by the SUNDDE.

Maximum profit margin

No profit margin may exceed 30% of the cost structure of the good produced or the service provided.

Joint and several liability

The joint and several liability of directors, partners, administrators or any other individual linked to the commercial activity they represent is set forth for regulated subjects.

Criminal responsibility

The revoked law set forth that partners, directors, administrators, managers and supervising entities of the corporate entities were personally responsible if it could be proven that the crimes were committed with their knowledge or approval. However, the New OLFP includes operating personnel, social media, Web pages and other advertising media and it sets forth that the responsibility is both individual and joint and several, and it does not explain if it must be committed with their knowledge or approval.

Violations of the New OLFP

The following are violations of the New OLFP:

- Not complying with the obligation to mark prices by printing, labelling or writing visibly (non-erasable) on the package or container of the good or product.
- Re-marking the good or product with an increased price.
- Not complying with the obligation to register or update in the Sole Register of People Developing Economic Activities (RUPDAE).
- Not posting required notices or posters in matters related to currency exchange administration.
- Non-exhibition in visible places to the public of goods and accessibility of services offered for sale, according to their own published lists, promotions and offers.
- Non-exhibition of the sale price list to the public of goods and services.
- Holding promotions, contests, draws or raffles without the authorization of the SUNDDE.
- Not submitting the returns required by the SUNDDE or submitting them in an untimely or incomplete manner.
- Preventing or obstructing, by themselves or through other people, the exercise of the SUNDDE's powers.
- Failing to provide the necessary technical equipment, information applications or systems required by the SUNDDE to obtain information.
- Destroying or altering seals or locks placed by the SUNDDE, or carrying out any operation aimed at impairing the application of a step issued by the SUNDDE without a judicial or an administrative suspension, revocation or order.
- Failing to appear without a justification at the time fixed by the SUNDDE.

These offenses are punishable with fines of 500 to 10,000 tax units (TU) and the closing of stores, warehouses and establishments for 48 hours. Additionally, recidivism carries a fine of 15,000 TU notwithstanding the sanction of closing warehouses and establishments for up to 30 days.

Finally, it provides that once the existence of offenses for non-compliance with formalities is verified, it will immediately lead to the imposition of the sanction, and a payment form will be issued in cases where the penalty is a fine. The fine must be paid within three days counted from the date of its imposition.

Offences for violation of rights

In addition to the offenses for violation of individual rights regulated in the repealed law, the following assumptions are included:

- Access to the purchase of goods and services.
- Provision of services in an efficient, equitable and safe manner, thereby protecting their economic and social rights through appropriate technological means.
- A guarantee by the provider to fill deficiencies in the manufacture and operation of the good or product.

The penalty for these offenses is a fine of 500 to 30,000 TU. However, it is expected that for special taxpayers, infringements are calculated based on 12% to 20% of annual net income of the offender (of the fiscal year before the imposition of the fine). Depending on the aggravating circumstances and in the case of recurring offenders, the fine is increased by 40%.

For such offenses it is provided that an administrative sentencing procedure must be substantiated.

Crimes

Overall sanctions may vary (fines and prison terms) as well as the factual circumstances for some offenses. Also, the new offense of fraudulent price alteration is included.

In any event, we note the following:

Speculation

The following are included as evidence of speculation:

- Transferring or selling goods or providing a service at a higher price than that stipulated by the SUNDDE, with the aim of obtaining a profit.
- Marketing goods or providing a service at a higher price than the price set as the Maximum Retail Price pursuant to the regulations issued for that purpose.
- Buying goods at a low price and then storing them, waiting for their price to increase in order to sell them at a higher price and thus make a profit.
- Taking advantage of the sale of goods being demanded by the population, by offering them at a higher price than that set by the SUNDDE, thus not complying with established profit margins.

The law maintains the sanctions of imprisonment of eight to 10 years and the possibility of temporary occupation of 180 days and a fine of 1,000 to 50,000 TU. Penalties apply to those who sell as well. Recidivism remains sanctioned by closure and suspension from the RUPDAE.

Similarly, if the offense concerns goods or products from the state supply system or obtained with currencies assigned by the state, maximum imprisonment terms and a doubling of fines will be applied, as well as the confiscation of the goods (it has been clarified that confiscation will occur pursuant to a court decision and when the offense is committed to the detriment of public property).

Hoarding

The penalties of imprisonment of eight to 10 years, and the temporary occupation of up to 180 days renewable only once, remain the same.

A provision is included establishing that for special taxpayers, the penalty is a fine of up to 20% calculated using the annual net income of the offender, in cases of aggravating circumstances. In case of recidivism, the fine increases by 40% of the value of the annual net income.

Similarly, the provision that states that if the offense is committed on goods or products from the state supply system or obtained with currencies assigned by the state remains the same, and establishes the application of maximum imprisonment penalties, a doubling of fines and confiscation.

Boycott

The new LOPJ provides as punishment for this crime, imprisonment of 12 to 15 years and the sanction of temporary occupation of up to 180 days renewable once. Recidivism is sanctioned with closure.

For special taxpayers, the penalty is a fine of up to 20% calculated using the value of the annual net income of the offender, in cases with aggravating circumstances. In case of recidivism, the fine increases by 40% of the annual net income.

Fraudulent Price Alteration

This is included as a new offense. Those who directly or indirectly, through deception and for profit, inform or apply, by any means, a different type of exchange than that set by the National Executive for the estimation of prices of goods and services in the country, shall be punished with imprisonment of eight to 10 years.

Administrative sanctioning proceeding

In general terms, the procedure is maintained with a series of inclusions. These are:

- If the facts are admitted at the hearing, the final order must be issued within a period of 10 days after the admission of the facts and this will put an end to the procedure.
- As for enforcing the decision the SUNDDE may order any measures it deems appropriate (lien, confiscation, etc.).
- Regarding the notification of sanctions, before fines had to be paid within 15 days counted from the notification; that period is now changed to three continuous days.

Luis Ernesto Andueza
Ana Carolina Serpa

For further information, please contact one of the following lawyers:

> Luis Ernesto Andueza	Caracas	+58 212.276.0007	luis.andueza@nortonrosefulbright.com
> Ana Carolina Serpa	Caracas	+58 212.276.0028	anacarolina.serpa@nortonrosefulbright.com

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa Inc and Norton Rose Fulbright US LLP are separate legal entities and all of them are members of Norton Rose Fulbright Verein, a Swiss verein. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

References to "Norton Rose Fulbright", "the law firm", and "legal practice" are to one or more of the Norton Rose Fulbright members or to one of their respective affiliates (together "Norton Rose Fulbright entity/entities"). No individual who is a member, partner, shareholder, director, employee or consultant of, in or to any Norton Rose Fulbright entity (whether or not such individual is described as a "partner") accepts or assumes responsibility, or has any liability, to any person in respect of this communication. Any reference to a partner or director is to a member, employee or consultant with equivalent standing and qualifications of the relevant Norton Rose Fulbright entity.

The purpose of this communication is to provide general information of a legal nature. It does not contain a full analysis of the law nor does it constitute an opinion of any Norton Rose Fulbright entity on the points of law discussed. You must take specific legal advice on any particular matter which concerns you. If you require any advice or further information, please speak to your usual contact at Norton Rose Fulbright.