

Decree No. 1,399 of November 13, 2014 was published in Official Gazette No. 6,154 of November 19, 2014. Through said Decree, the President of the Republic issued the Decree with the Status, Value, and Force of Public Contracting Law (the “Decree-Law”). Following are the most relevant changes made with respect to the Public Contracting Law of year 2010 (the “Repealed Law”):

- 1) The Decree-Law broadens the scope of application and includes (i) communes, communal councils, and grassroots organizations of the Popular Power when they handle public funds; (ii) socioproductive associations; and (iii) any other form of popular organization when they handle public funds.
- 2) The Decree-Law excludes from the application of the same the contracting made with the following purposes: (i) execution of works, acquisition of goods, and provision of services in the frame of the performance of obligations undertaken under international agreements between the Republic and other States or in the frame of contracts or agreements executed with international agencies; (ii) contracting with companies organized in the frame of international agreements; (iii) labor services; (iv) lease of real property, including financial leasing; and (v) sports, artistic, literary, scientific, or academic sponsorship.
- 3) The Decree-Law, in relation to the Repealed Law, increases the number of contracts excluded only from the application of the methods for selection of contractors and includes: (i) acquisition of livestock; (ii) acquisition of goods, provision of services, and execution of works, provided or executed directly among the persons/entities subject to the application of the Decree-Law; (iii) acquisition of goods, provision of services, and execution of works entrusted to the agencies and entities of the Public Administration; (iv) acquisition of goods, provision of services and execution of works intended for the security and defense of the State, relating to the intelligence and counter-intelligence operations carried out by the State’s security agencies and entities, both in the country and abroad and intended for border protection activities and movement of military units in the event of preparation, training or internal or external conflict; (v) acquisition of goods, services, food products, and medicines declared to be essential products, provided that there exist conditions of scarcity in the country, due to lack of production or insufficient production, previously certified by the competent authority; among others.
- 4) The Decree-Law establishes that all notices to be given in the performance of the same, regardless of the type of procedure involved, are to be given by electronic means, provided that the addressee of the notice has previously accepted such condition and they must be published in the contracting party’s web page. In the case of unilateral rescission due to contractor’s breach and decisions derived from an administrative procedure that affect subjective rights, the notices must also be published in the web page of the National Service of Contracting (Servicio Nacional de Contrataciones - “SNC”). The event that occurs first, as it may be verified, will be taken as the date of the notice. If duly justified technical reasons render impossible the use of electronic means, notice may be given in accordance with the provisions of the Law that regulates administrative proceedings.
- 5) No administrative appeals may be filed after a decision has been issued by the highest authority of the SNC.

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- 6) Communes, communal councils, and any other grassroots organization of the Popular Power, if they handle resources assigned by the agencies and entities of the Public Administration, will apply the contracting procedures in order to promote preferably the participation of persons and community-based organizations of their surroundings or location.
- 7) In relation to the Social Responsibility Commitment (Compromiso de Responsabilidad Social - "CRS"), the Decree-Law establishes that the CRS will be applicable in the cases of offers the total amount of which, including taxes, exceeds 2,500 Tax Units ("T.U.") and it will be of 3% of the amount of the contract. The CRS to be established will be applied to requests and social projects, determined on the basis of the information about the needs of the social environment received by the contracting agency or entity, and will be included in the lists of conditions or in the general contracting conditions. The CRS must be made before the administrative closing of the contract. The CRS received by means of money contributions will be deposited in the Social Responsibility Fund to be created as a patrimony separate from and independent of the National Treasury, under the direct administration and supervision of the President of the Republic or the authority indicated by him. The contribution corresponding to the CRS may in no case be used to attend to requirements that are part of the obligations and competence established in the Operating Plans of the agencies and entities of the Public Administration.
- 8) With respect to the National Registry of Contractors (Registro Nacional de Contratistas- "RNC"), the Decree-Law establishes that the potential offerors, in order to contract with the State and with the grassroots organizations of the Popular Power, when they handle public funds, must be registered with the RNC, in the terms and conditions established by the SNC to that end. In order to enter into contracts with the State, natural and legal persons with no domicile in the country must have the registration required, which will be processed by them or by the contracting parties.
- 9) In order to present offers in all of the methods governed by the Decree-Law the estimated amount of which exceeds 4,000 T.U. for goods and services and 5,000 T.U. for execution of works, the interested parties must be qualified by the RNC and not be disqualified for contracting with the public sector. This qualification will be valid for one year and for the renewal of the same the compliance with requirements established by the SNC will be necessary. The SNC will issue the rules to regulate the procedure for qualification and updating before the RNC.
- 10) The Decree-Law establishes that the following cases are excepted from the qualification of the RNC: (i) when the amount of the contract does not exceed 4,000 T.U. for goods and services and 5,000 T.U. for execution of works, entrusted to the same contractor and within the same fiscal year; (ii) the case of small economic agents, suppliers of food or products declared to be essential products, and contractors that provide highly specialized services of occasional use; (iii) any of the events established in the procedures excluded from the method for selection of contractors; (iv) the agencies and entities of the Public Administration that participate in the methods for selection of contractors; (v) parties interested in participating in the internationally announced public tendering method; (vi) natural and legal persons with no domicile or affiliates in Venezuela that participate in restricted tenderings or in price consultation or that are part of

consortia, alliances or conglomerates that participate in any method for selection of contractors; (vii) natural and legal persons with no domicile or affiliates in Venezuela that might be selected by reason of any of the cases of direct contracting prescribed in the Decree-Law, and (viii) those selected through price consultation in the execution of exceptional plans.

- 11) The contracting parties must send to the RNC information about the actions or performance of the contractor within 5 business days following the notification of the results of the performance of the contracts for acquisition of goods, provision of services, or execution of works. In the cases of contract rescission, regardless of the amount of the contract, the evolution of the performance of the contractor is to be obligatorily sent to the SNC.
- 12) The Decree-Law creates the State Contracting National Registry (Registro Nacional de Contrataciones del Estado), an administrative section of the SNC that has the purpose of guaranteeing and maintaining a State contracting information system in order to provide information to any interested party. Its functions include: (i) to consolidate the collection of information of the annual purchase program; (ii) to consolidate the information referred to the application of the temporary measures in force; and (iii) to publish in the SNC's web page the calls for participating in public tenderings and internationally announced public tenderings, among others.
- 13) The Decree-Law creates the Directorate of Training in Public Contracting (Dirección de Capacitación en Contrataciones Públicas), an administrative section of the SNC that has the purpose of coordinating, supervising, and executing the activities of training in public contracting and in related matters, designed by the SNC for the strengthening of the activities of the Public Administration in the contracting process.
- 14) For all contractor selection processes established in the Decree-Law, the contracting party must prepare the base budget of the contracting, the total amount of which, including taxes, will be informed to the participants in the list of conditions or in the contracting conditions. The cost structure of the same may be kept in secrecy. In the preparation of the base budget, the contracting parties must consider the regulations existing for the prices of materials or consumable supplies established in the law that governs fair prices and other related provisions. The base budget must be part of the list of conditions or contracting conditions and it may be established as a criterion for rejection of offers.
- 15) The offerors must bind themselves to maintain their offers during the period of time indicated in the list of conditions or contracting conditions. The contracting parties may request a guarantee for the maintenance of the offers until the execution of the contract. The amount or form of calculation of this guarantee will be established by the regulations to the Decree-Law.
- 16) The content of the list of conditions indicated in the Repealed Law remains, including the sworn statements to the effect that (i) the place where the work is to be executed or where the service is to be provided is known, if necessary; (ii) there are no obligations to and demandable by the contracting party and (iii) in the formation and organization of the contractor there are no natural persons participating as partners,

members, or administrators of any company, partnership or group that is disqualified according to the Decree-Law. Otherwise, the commitment to remedy such situation in a period of time to be fixed as per the contracting conditions must be declared.

- 17) The Decree-Law extends the periods of time for filing the statement of will or offer in each of the contracting methods. Such periods of time are established as follows: (i) public tendering, 7 business days for goods, 9 business days for services, and 11 business days for works; (ii) internationally announced public tendering, 21 business days; (iii) restricted tendering, 5 business days for goods, 6 business days for services, and 7 business days for works, and (iv) price consultation, 4 business days for goods, 5 business days for services, and 6 business days for works.
- 18) The Decree-Law includes 7 new causes for rejection of offers. They are: (i) the offer corresponds to offerors disqualified from the public tendering method, under the procedure of simultaneous opening of qualification documents and offer; (ii) the offer is not accompanied by the documentation required in the list of conditions or in the contracting conditions; (iii) the offer is not accompanied by the guarantees required or such guarantees are not sufficient; (iv) the period of validity is shorter than the period required; (v) the cost structure presented is not reasonable and renders impossible the performance of the contract; the prices of the materials and consumable supplies differ from those established in the existing regulations or in the rules that regulate fair prices and other related provisions; (vi) in the formation and organization of the contractor there are persons who participate as partners, members, or administrators of any company, partnership or group that is disqualified according to the Decree-Law, or such situation has not been modified or no commitment has been made to modify the same in the period of time indicated by the contracting party; and (vii) any other cause established in the list of conditions or in the contracting conditions.
- 19) The Decree-Law modifies the amounts required for the public tendering or internationally announced public tendering methods. Such amounts are established as follows: (i) acquisition of goods: When the awarding to be made is for an estimated amount exceeding 20,000 T.U., (ii) provision of services: When the awarding to be made is for an estimated amount exceeding 30,000 T.U., and (iii) execution of works: When the awarding to be made is for an estimated amount exceeding 50,000 T.U.
- 20) The Decree-Law modifies the amounts required for the restricted tendering method. Such amounts are established as follows: (i) acquisition of goods: When the estimated price of the contract to be awarded exceeds 5,000 U.T and up to 20,000 T.U., (ii) provision of services: When the estimated price of the contract to be awarded exceeds 10,000 T.U and up to 30,000 T.U., and (iii) execution of works: When the estimated price of the contract to be awarded exceeds 20,000 T.U. and up to 50,000 T.U.
- 21) The Decree-Law modifies the amounts require for the price consultation method. Such amounts are established as follows: When the estimated price of the contract to be awarded does not exceed 5,000 T.U., (ii) provision of services: When the estimated price of the contract to be awarded does not exceed 10,000



T.U., and (iii) execution of works: When the estimated price of the contract to be awarded does not exceed 20,000 T.U.

- 22) In order to access direct contracting, the events established in the Decree-Law are the same as those of the Repealed Law. However, it includes 2 additional events: (i) contracting with socioproductive organizations created in the frame of the law that governs the communal economic system or organized communities, through the awarding of projects to further the development of the same and (ii) contracting with joint companies or conglomerates created in the frame of the law that promotes and regulates the new joint associative forms between the State and community's private initiative, always provided that the advantages of the contracting are established on the basis of the principles that regulate the rules of creation of these joint associative forms.
- 23) Formerly, direct contracting was not allowed to have the approval of the contracting commission. Now, direct contracting in excess of 5,000 T.U., for the acquisition of goods, 10,000 T.U., for the provision of services, and 20,000 T.U. for the execution of works, must have the opinion of the contracting commission of the contracting unit. Said opinion will not have an approving or binding character for the decision to be adopted.
- 24) The Decree-Law modifies the percentage of the amount of the Faithful Performance Bond, which may not be lower than 20% of the amount of the contract, including taxes.
- 25) The contracting party may request from the beneficiaries of the awarding such other guarantees, different from those prescribed in the Decree-Law, as are necessary to answer for the performance of the contracts, indicating them in the list of conditions or general contracting conditions.
- 26) The Decree-Law establishes that the contracting parties must designate the persons responsible for the verification of the performance of the obligations undertaken in the acquisition of goods and provision of services, indicating their powers.
- 27) The Decree-Law establishes the following forms of termination of the contract: (i) performance of the purpose of the contract; (ii) unilateral rescission due to a cause beyond the contractor's control; (iii) termination by mutual agreement and (iv) rescission due to a cause attributable to contractor.
- 28) The Decree-Law establishes that the contracting party may at any time rescind the contract, even without contractor's breach, through a reasoned act duly notified to the contractor and to the guarantors. In this case, the contracting party will pay the contractor the items and amounts established in the Regulations to the Decree-Law.
- 29) The Decree-Law establishes that the following events will be considered to be violations made by private parties: (i) when the contract is rescinded due to contractor's breach or any other cause attributable to contractor; (ii) when contractor breaches any other legal obligation or obligation assumed to the contracting

party due to causes attributable to the contractor, even if such breach does not entail the termination of the contract; (iii) when the private parties provide or present false information or documentation to the contracting parties or the SNC; (iv) when the offerors withdraw offers during their period of validity; (v) when the private parties are beneficiaries of the award and they do not execute the contract within the period of time established; and (vi) when the private parties are liable for bad faith practices or use fraudulent practices in the formalities and processes regulated by the Decree-Law.

- 30) With respect to the penalties for private parties, the Decree-Law establishes that the contracting party, after carrying out the steps of the relevant administrative procedure that determines any of the events that give rise to penalties, will apply a fine of 300 T.U. for the benefit of the SNC. The SNC will proceed to disqualify the penalized violator from contracting with the State as follows: (i) 3 years if the contract is rescinded for breach under the Decree-Law; (ii) 3 years if due to reasons attributable to contractor, contractor breaches any other obligation prescribed in the rules regulating public contracting or assumed to the contracting party, even if such breach does not entail the rescission of the contract; (iii) 3 years if false information or documentation is provided or presented to the contracting parties by the private parties; (iv) 6 months when offers are withdrawn during their period of validity; (v) 2 years when the private parties are beneficiaries of the award and they do not execute the contract within the period of time established, due to causes attributable to the offeror, and (vi) 4 years when the private parties are liable for bad faith practices or use fraudulent practices in the formalities and processes regulated by the Decree-Law.
- 31) The violators' disqualification from contracting with the State will be effective through the suspension from the registration with the RNC and may be extended to natural persons participating as partners, members or administrators within the formation and organization of the disqualified parties. The SNC, after receiving the contracting party's decision, will proceed to notify contractor in order for the same to claim in a period of 5 business days what he/it considers pertinent in relation to the application of the disqualification.
- 32) The temporary provisions determine that (i) the SNC will have a period of 6 months to adapt its automated system (extendible for equal periods); (ii) the SNC will have a period of 6 months to establish all matters concerning the certification of the members of the contracting commissions (extendible for equal periods) and (iii) the provisions that regulate the Social Responsibility Commitment established in the Regulations to the Public Contracting Law, published in Official Gazette No. 39,181 of May 19, 2009 will remain effective until the decree that regulates the operation of the handling of the Social Responsibility Fund is issued.
- 33) The Decree-Law repeals the Public Contracting Law published in Official Gazette No. 39,503 of September 06, 2010.