EXCHANGE AGREEMENT No. 1

The new Exchange Agreement No. 1 (EA1), entered into by the National Executive and the Venezuelan Central Bank (VCB), was published in Official Gazette No. 6.405 Extraordinary of 9/7/2018. Find below some of its most significant provisions:

Purpose of EA1.-

EA1 (art. 1) states that its purpose is to establish the free convertibility of currency in all of the national territory, in order to favor the development of the economic activity in an orderly exchange market, based on:

a) centralization by the VCB of the purchase and sale of foreign currency of the public sector and of the exporting activity of the private sector;
b) provision of a solid base that provides security to the regime of obligations in foreign currency;
c) the benefit of a single fluctuating reference market rate of exchange, resulting from the transactions of purchase-sale of foreign currency made by private parties with the intermediation of authorized exchange operators;
d) strengthening of the regime of accounts in foreign currency in the national financial system; and
e) relaxation of the foreign exchange regime of the private sector in order to favor the foreign investments, the exporting activity and the tourist activity as generators of income in foreign currency.

Free convertibility.-

EA1 provides that it reestablishes the free convertibility of foreign currency in all of the national territory, that restrictions on exchange transactions cease, and that the VCB will only centralize the purchase and sale of foreign currency of the public sector and of the exporting activity (arts. 2 and 6), in the terms prescribed in the Agreement.

Regime of obligations in foreign currency.-

EA1 expressly ratifies the provision of art. 128 of the Law of the VCB to the effect that obligations in foreign currency, when the foreign currency has been established as currency of account, may be paid in foreign currency or in bolivars, at the rate of exchange in effect on the date of payment and when the foreign currency has been established as currency of payment, payment must be made in foreign currency, even if the currency has been agreed under the effectiveness of exchange restrictions; only if payment in foreign currency has been agreed prior to the establishment of exchange restrictions, and provided that such restrictions prevent debtor from making payment in the currency agreed, the obligation will be deemed to be modified to currency of account. (art. 8).

Foreign Exchange Market System (SMC).-

The purchase and sale of foreign currency by natural and legal persons of the private sector will be subject to the terms in which such transactions have been agreed, in the frame of the provisions of EA1 (art. 10). The transactions of purchase and sale of foreign currency will be made by using the facilities of the Foreign Exchange Market System (*Sistema de Mercado Cambiario* - SMC) (art. 11).

The SMC is a system of purchase and sale of foreign currency under the regulation and administration of the VCB (art. 17), in which demanders and offerors participate without restrictions (art. 11) with quotations of supply and demand in any foreign currency (art. 13), made through the universal banks as authorized exchange operators (art. 11), and with the following characteristics:

- The SMC will operate in an automated, orderly and transparent manner, without the participants knowing the quotations of supply and demand during the process of quotation and crossing of the transactions (art. 11)

- At the closing of each act, the SMC will carry out the process for matching the quotations, by crossing the supply quotations with the best demand quotations recorded and will provide the information to the banks in order for them to proceed with the payment of the results of the quotations on the relevant value date (art. 18).

- The payment of the balances in foreign currency will be made in accounts in foreign currency opened with the national financial system (art. 18).

- The difference in bolivars between the demand and supply quotations recorded in the SMC and those crossed in the same will be for the benefit of the SMC (art. 18).

- The rate of exchange for purchase and sale of foreign currency in the SMC will freely fluctuate as per demand and supply. The VCB will publish in its web page the weighted average rate of exchange of the transactions made in the SMC, which will be the market reference rate of exchange for all purposes (art. 9). The reference rate of exchange reduced by 0.25% will be applicable in the cases of the rate of exchange for purchase.

- In order to guarantee the existence and availability of funds in bolivars and in foreign currency that bear the positions offered or demanded in the SMC, the banks must implement a preventive freezing of funds at the time of the quotation (art. 15)

- The VCB may make purchase and sale transactions in the SMC and it may sell foreign currency as per the availability determined by its Board of Directors, taking into account the levels of international reserves, the cash flow in foreign currency and the monetary, credit, and exchange conditions BCV (art. 4)

Retail exchange market.-

The EA1 also provides for a retail exchange market for the purchase and sale of foreign currency in amounts equal to or lower than 8,500 Euros or its equivalent in another foreign currency, open to natural and legal persons, through universal banks and brokerage houses, at the reference rate of exchange for purchase of the day preceding the date of the transaction and at the same rate of exchange increased by 1% for sales (arts. 19, 20, and 21).

Market of securities in foreign currency issued by the private sector.-

EA1 provides for a market of transactions of negotiation in national currency of securities in foreign currency issued by national or foreign private entities listed in regulated markets and subject to public offering. This market will be regulated by the rules to be issued by the National Securities Superintendence (*Superintendencia Nacional de Valores* - SUNAVAL). The transactions may only be made through the Stock Exchange, with the intermediation of brokerage and securities houses and the Bicentenaria Stock Exchange (*Bolsa Pública de Valores Bicentenaria*), at the reference rate of exchange for sale and at the same rate of exchange reduced by 0.25% for purchase, calculated on the market value of the negotiated security or on the value freely agreed by the parties if the security has no reference value in the market. The payments of balances in foreign currency resulting from transactions in this market will be made in accounts in foreign currency with the national financial system. Brokerage and securities houses must guarantee the existence of the positions offered by requiring of the clients the temporary custody of the securities to be negotiated (arts. 25, 26, 28, and 30).

Bank accounts in foreign currency with the national financial system.-

It is established that the natural persons residing in the country and the legal persons domiciled or not domiciled in Venezuela may have funds in foreign currency in accounts with universal and microfinancial banks, which can be operated through transfers, checks, and debit instructions for payment of consumptions and withdrawals with credit/debit cards abroad, with no limitations other than those derived from the policy to prevent capital legitimation and terrorism financing and with no requirements other than those established for accounts in national currency and no minimum amount for opening the accounts (arts. 32 and 33).

Mandatory sale of foreign currency of the Public Sector.-

The foreign currency obtained by the Republic, PDVSA, PEQUIVEN, mixed companies of the hydrocarbon, gas, and petrochemical sectors and entities engaged in the activities of exploitation of gold and other strategic minerals will be subject to mandatory sale to the VCB, except for the foreign currency that they may keep and administer according to EA1 (arts. 39 through 55).

Mandatory sale of foreign currency derived from exports.-

The natural and private legal persons engaged in the exportation of goods and services may keep and administer up to 80% of the foreign currency received for the exportation made, in order to cover the expenses and payments to be covered by reason of their activities and the rest of the foreign currency will be subject to mandatory sale to the VCB at the rate of exchange for purchase. The invoicing and payment for the exporting activity must be made and received exclusively in foreign currency, except for the transactions processed under the ALADI and SUCRE regimes (arts. 57 and 58).

Regime for providers of tourist services.-

The providers of tourist services of boarding and transportation may keep up to 80% of the foreign currency received for their services and they must sell the remainder to the VCB at the rate of exchange for purchase. Travel and tourism agencies may keep up to 10% of the remaining balance of the payment received from international visitors or tourists after making payment to the providers of tourist services of boarding and transportation; the remainder will be subject to mandatory sale to the VCB at the rate of exchange for purchase (arts. 73 through 76).

Rate of exchange for recording liabilities in foreign currency.-

The liabilities in foreign currency on account of foreign private debt to any foreign creditor will be recorded at the rate of exchange in effect at the time in which such financial transactions are agreed. Likewise, the accounting valuation and recording of the obligations in foreign currency associated with requests for acquisition of foreign currency processed under the regulated regime will remain at the rate of exchange used for such purpose at the time of its recording and valuation (art. 83).

Tax provisions.-

The conversion of foreign currency for the determination of the taxable base of tax obligations deriving from customs operations will be made at the reference rate of exchange in effect on the date of payment of the tax obligation. The tax obligations prescribed in special laws, as well as the rates, commissions, surcharges, and public prices fixed in foreign currency may be paid alternatively in the relevant foreign currency or in its equivalent in another foreign currency, or in bolivars, at the reference rate of exchange of the date of the transaction (arts. 84 and 86).

Repealing Provision.-

EA1 became effective on the date of its publication in the Official Gazette, September 7, 2018. It expressly repeals the provisions that were in effect or regulated suspended systems, contained in Exchange Agreements Nos. 1, 4, 5, 6, 9, 10, 11, 13, 18, 20, 23, 26, 27, 28, 30, 31, 34, 36, 37, and 39, as well as any other provision conflicting with the provisions of EA1. Together with the recent repeal of the Law of the Foreign Exchange Regime and Its Unlawful Acts on August 2, this EA1 completes the dismantling of the foreign exchange regime existing prior to the effectiveness of EA1.

In order to access EA1, please click here: http://www.traviesoevans.com/memos/GO-6405-CC1.pdf

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