Venezuelan Currency Controls and Risks for U.S. Businesses

Background

Venezuela's foreign exchange (FX) regime is in flux. Since October 2013 the Venezuelan government (GBRV) has been promulgating new laws and regulations modifying its FX regime. The GBRV has implemented the new rules to varying degrees, creating uncertainty and confusion. This notice provides guidance to U.S. firms doing business with Venezuela, based on information available as of Tuesday, March 25, 2014.

The GBRV has maintained a strict regime of currency exchange controls since 2003. U.S. Embassy Caracas routinely receives inquiries from U.S. exporters experiencing delayed payment or non-payment by Venezuelan importers, as well as from U.S. firms with operations in Venezuela struggling to convert their local currency (bolivar) earnings into U.S. dollars to repatriate dividends to their U.S. home offices.

Foreign Exchange Mechanisms

Venezuelan law now sanctions three FX mechanisms to sell dollars to private-sector firms and individuals. From February 2003 to March 2014 the primary mechanism of Venezuela's FX regime was the Commission for the Administration of Foreign Exchange (*Comision para la administracion de divisas* (CADIVI)), which sold dollars to the private sector at the official exchange rate (currently 6.3 bolivars/dollar). The GBRV has eliminated CADIVI and folded its responsibilities into a new body, the National Center for Foreign Commerce (*Centro nacional de comercio exterior* (CENCOEX)).

CENCOEX oversees two of the GBRV's three FX mechanisms. The first mechanism, called simply CENCOEX, operates much as CADIVI did, selling dollars for imports of specific goods and services deemed national priorities, including: food, medicine and medical supplies, housing, education, overseas travel, airlines and civil aviation services, information technology (IT) and intellectual property (IPR), capital goods, and international investments. As with CADIVI, firms and individuals soliciting dollars from CENCOEX must register with the body and obtain supporting documentation from various GBRV ministries, e.g., certificates of non-national production of the proposed imports and statements of good standing with the tax authorities. Venezuelan law now provides, however, that CENCOEX dollar sales at the official exchange rate of 6.3 bolivars/dollar will be limited to the GBRV's highest priorities, including food, medicine, housing, and education. January 2014 FX regulations provide that CENCOEX sales to other priority sectors will utilize a weaker exchange rate, derived from the CENCOEX-operated complementary FX mechanism (see next paragraph).

CENCOEX convokes periodic dollar auctions through the second mechanism it oversees—the Complementary System of Foreign Exchange Administration (*Sistema complementario de administracion de divisas* (SICAD I))—for specific priority sectors it identifies on an ad hoc basis. More information on SICAD I is available here (in Spanish): SICAD I. Firms and individuals who wish to place bids for SICAD I dollars must separately register themselves for this system. The GBRV has said it would hold weekly SICAD I auctions for roughly $200 million, but thus far in 2014 the sales have been irregular and 5-10 times oversubscribed. SICAD I has sold dollars for 10-12 bolivars. (January 2014 FX regulations state that CENCOEX will sell dollars for certain priority sectors—such as aviation, overseas travel, IT, IPR, capital goods, international investments, and insurance—through CENCOEX's normal procedures, i.e., those like the former CADIVI, but use the prevailing exchange rate from the most recent SICAD I sale, instead of the official exchange rate, which such sectors were previously accorded.) The GBRV has said

CENCOEX will provide the private sector in 2014 a national FX budget of $42.7 billion dollars, with roughly 73 percent sold through CENCOEX proper and 27 percent through SICAD I auctions.

The GBRV has also promulgated laws and regulations to create a third FX mechanism, the Alternative Foreign Exchange System (*Sistema cambiario alternativo de divisas* (SICAD II)). The Venezuelan central bank (BCV) and finance ministry will jointly operate SICAD II. Regulations provide that state oil firm Petroleos de Venezuela, SA (PDVSA), the BCV, and other authorized public- and private-sector firms and individuals are authorized to offer for sale dollars or dollar-denominated bonds to Venezuelan firms, individuals, and local subsidiaries of multinational corporations. The regulations provide that SICAD II will operate daily, with no limitations on the dollar volumes to be sold or the exchange rates they might command. The regulations provide, however, that the BCV can "intervene" in SICAD II to prevent "erratic fluctuations" in the SICAD II exchange rate, raising questions among analysts regarding the mechanism's eventual flexibility. SICAD II participants will place offers and bids for FX transactions through Venezuelan banks and brokerages, acting as intermediaries, and the BCV will clear the trades and publish SICAD II's average exchange rate on a daily basis. Participants will need to identify themselves and provide account information to their bank or brokerage intermediary, but they need not register with the BCV or the finance ministry. More information on SICAD II is available here (in Spanish): SICAD II. Analysts' forecasts vary, predicting SICAD II might sell $30-50 million daily at 20-60 bolivars/dollar. It remains unclear whether PDVSA and other public-sector dollars sold through SICAD II will represent funds reallocated from, or in addition to, the CENCOEX $42.7 billion national FX budget for 2014.

Risks for U.S. Firms Doing Business with or in Venezuela

The GBRV has reduced its overall dollar sales to the private sector since 2012, and ongoing changes to the FX regime have created uncertainty and confusion. GBRV officials have also said publicly that Venezuela's FX mechanisms suffer from corruption. Venezuelan importers routinely do not receive dollars, despite good-faith efforts to acquire them through CENCOEX or SICAD I. Successful applicants under CENCOEX's predecessor, CADIVI, often waited 180-270 days to receive dollars, and some firms continue to wait, despite having had their applications approved. Foreign (including U.S.) investors in Venezuela have also struggled to convert their bolivar earnings into dollars, notwithstanding laws and regulations permitting earnings repatriation. CADIVI virtually ceased selling dollars for earnings repatriation in 2008, and CENCOEX has not honored such requests. Independent analysts have valued at roughly $25 billion CENCOEX's combined arrears to firms that received authorization to import goods or services, but have not received dollars, and firms that hold un-repatriated bolivar earnings. Details remain vague, but Venezuelan rule changes have indicated the GBRV might honor various CENCOEX arrears at the prevailing SICAD I exchange rate and other CENCOEX arrears at the eventual SICAD II exchange rate. In addition, independent Venezuelan media have reported that the GBRV has undertaken negotiations with some sectors to pay CENCOEX arrears at exchange rates weaker than the official 6.3 bolivars/dollar.

There is considerably greater Venezuelan demand for dollars than supply, so there will be Venezuelan importers that are unable to complete their transactions despite good-faith efforts. There is also a parallel, unofficial market for dollars. Venezuela's 2010 FX regime law criminalized the buying or selling, in Venezuela, of dollars in the parallel market, as well as the publication of a parallel exchange rate. Venezuela's new FX regime law does not expressly criminalize such conduct. Private websites outside of Venezuela publish the parallel exchange rate.