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# Table of contents

Constitutional Law .....	1
Organizing a Company .....	4
Industry Location .....	7
Requirements for Registration and Permits .....	9
Tax System .....	19
Foreign Investments .....	32
Intellectual Property .....	38
Mergers and Acquisitions .....	41
Banks .....	44
Securities Market .....	46
Foreign Exchange Control in Venezuela .....	49
Relevant Aspects of the Law on Insurance Activities .....	53
Telecommunications .....	55
Electronic Commerce & Data Privacy .....	58
Foreign Trade .....	62
Energy and Natural Resources .....	69
Environmental Law .....	92
Labor Legislation .....	95
Immigration Laws and Practices .....	98
Price Regulation .....	101
Consumer Protection .....	106
Competition Regulation .....	109
Dispute Resolution .....	112
Criminal Law .....	115
Human Rights .....	118
Science, Technology and Innovation .....	121



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# Constitutional Law

Probably no other area of law has had a more dramatic impact on the operation of the Venezuelan legal system, and on the daily life of Venezuelan citizens, than constitutional law. The reason is the perception by the Venezuelan society at large of the significance of the constitution and the significance of the legislation which has been implemented based on the constitution.

True to its constitutional tradition, in December 1999, Venezuela approved its 27th Constitution. The first Venezuelan Constitution, which dates back to 1811, was only the world's fourth constitution. Since then, there have been 26 other constitutions in force in Venezuela. The political instability associated with the continuing change of constitutions led one political leader of the 19th century to affirm that in Venezuela, "the Constitution is a little yellow book that serves any purpose." Since 1961, the constitution has fathered a number of legal achievements. It also had a major impact on business planning in Venezuela.

On 15 August 2007, the President of the Republic officially presented his proposal for the reform of several articles of the 1999 Constitution. The reforms included in the proposal were intended to create a socialist republic. Some of the major changes included: 1) a reorganization of the political-territorial division of the republic which sanctions the presidential control over elected state officials through an unelected people's power; 2) the elimination of the state's prohibition to fund political associations; 3) the reduction of daytime work hours to six hours; 4) a decrease in the voting age from 18 to 16; 5) the abolishment of limits on re-election for presidential terms in office; and 6) the reduction of the Venezuelan Central Bank's power over monetary matters, giving control to the executive branch.

Further, the proposed changes included a redefinition of the constitution's economic freedom clause whereby social security benefits would be expanded and additional power granted to the State for "the cooperative construction of a Socialist Economy," and the reform of property rights which adds the concept of social and collective property.

According to the results announced by the national electoral board, the proposal was narrowly defeated on 2 December 2007 and, thus, the 1999 Constitution remained intact. However, the Constitution was later amended by a constitutional referendum held on 15 February 2009. This amendment eliminated restrictions on the re-election of the president, governors, mayors, members of the national assembly and members of the state legislatures.

Venezuela is a democratic republic, divided into twenty-three states, one capital district, the federal dependencies, the federal territories and some three hundred municipalities. It is a federal state with several limitations on the powers of the states and municipalities. The main legislative powers lie with the national government and thus are centralized in the capital, the city of Caracas, which is the seat of the government.

The national government consists of a legislative, an executive, a judicial, a citizen's, and an electoral branch. The states and the municipalities only have a legislative and an executive branch.

The national legislative branch or national assembly is composed of representatives who are elected every five years by secret ballot. Their powers are not restricted to the approval of laws, but also encompass the control of the public administration. The main political parties are represented in the national assembly.



The state and municipal legislatures exercise basically the same powers at a local level. The ordinances enacted by the municipal governments may have a decisive influence on the structuring of business within a given municipality. At times, through special laws, i.e., enabling laws, the national assembly has temporarily empowered the President of the Republic to enact laws on different matters. The main political actors are the members of the executive branch of the government, which is made up of the president of the republic, the executive vice-president of the republic, and the ministers. Together, they act as the full cabinet. The president of the republic is elected every six years by secret and direct ballot. The president can be re-elected immediately, to an additional term. Among the main powers and duties of the president of the republic are to enact extraordinary measures in economic, financial or other relevant matters whenever the public interest so requires, and he or she has been authorized to do so by special law; to issue regulations on the laws; to administer national public finances; to execute contracts in the national interest as permitted by the constitution; to declare states of exception and to order the restriction of constitutional guarantees.

States of exception are circumstances of a social, economic, political, natural or ecological nature, which seriously affect the security of the nation and its institutions and citizens, in the face of which the powers available to cope with such events are insufficient. In such cases, the constitutional guarantees may be temporarily restricted, with the exception of those relating to the right to life, the prohibition against holding anybody incommunicado, the prohibition against torture, the right to due process, information and other intangible human rights. The decree declaring a state of exception must be submitted to the national assembly for consideration and approval, and for a ruling by the Constitutional Chamber of the Supreme Court of Justice regarding its constitutionality. The decree must comply with the requirements, principles and guarantees established in the International Pact on Civil and Political Rights and the American Convention on Human Rights. The vice president of the republic is appointed by the president. Among the main duties of the vice president of the republic are to cooperate with the president of the republic in directing the actions of the government and to coordinate the national public administration in accordance with the president's instructions.

At the local level, the executive power is vested in state governors and in mayors, who are elected every four years by secret and direct ballot.

The national judicial branch is vested in a Supreme Court of Justice and several lower level courts. There are 32 justices at the Supreme Court, and it functions in seven chambers: Civil, Criminal, Social, Political-Administrative, Constitutional, Electoral and en banc. The Constitutional Chamber is currently composed of seven justices and each of the other divisions is composed of five justices. The justices of the Supreme Court are elected by the national assembly for a single term of 12 years. Constitutional control is exercised by the Supreme Court mainly through its Constitutional Chamber. Interpretations established by the Constitutional Chamber concerning the contents or scope of constitutional rules and principles are binding on the other chambers of the Supreme Court as well as on all other courts of the republic. The Constitutional Chamber, as the highest instance on constitutional matters, has been very active in defining the scope of the provisions of the Constitution. The Constitutional Chamber also has the power to review final decisions issued by other Supreme Court chambers. Both the Constitutional and the Political-Administrative Chambers have played a major role in exercising strict control of the constitutionality and legality of the acts of the public administration. These chambers are also entrusted with protecting all constitutional rights. The protection of such rights has been increased by way of a procedural remedy known as amparo constitucional (constitutional action for the protection of civil rights). This constitutional remedy is one of the causes of the enhanced significance of constitutional law in Venezuela.



The National Citizen's Branch of the government is exercised by the republic's Ethics Council, made up of the public defender, the prosecutor general and the comptroller of the republic. Among the main duties of the Citizen's Branch are to prevent, investigate and punish acts that undermine public ethics and administrative morals to ensure sound management and the legality of the use of public patrimony, and the observance and application of the principle of legality in all of the state's administrative activities. The Public Defender's Office is charged with the promotion, defense and oversight of the rights and guarantees established in the constitution and international treaties on human rights, in addition to defending the legitimate, collective and diffuse interests of the citizens.

The power of the National Electoral Branch is vested in a National Electoral Council as a governing body, and several subordinate entities. The main duty of the Electoral Branch is to guarantee the equality, reliability, impartiality, transparency and efficiency of electoral processes in Venezuela.

Nowadays, it is unconceivable to understand Venezuela's daily life without looking at the constitution.



# Organizing a Company

Industrial and commercial activities in Venezuela may be carried out in virtually any form, ranging from an individual entrepreneur to all forms of legal entities. Regardless of the form adopted, formalities must be complied with in order to establish a company in Venezuela. Furthermore, in order for companies to carry out any sort of economic activity, they must be registered with the Sole Registry of Persons that Develop Economic Activities (Registro Único de Personas que Desarrollan Actividades Económicas - RUPDAE) which is carried by the National Superintendence for the Defense of the Socioeconomic Rights (Superintendencia Nacional para la Defensa de los Derechos Socioeconómicos - SUNDDE). The following are specific formalities for various forms.

## 1. Corporation (Sociedad Anónima or Compañía Anónima)

A corporation is a legal entity preferred by commercial enterprises to carry out their projects because its obligations are backed by a stated capital, and the shareholders' liability is limited to the amount of their capital contributions.

Any name available in the Commercial Registry may be used for a corporation. The words Sociedad Anónima or Compañía Anónima, or the corresponding initials "S.A." or "C.A." must be added to the desired name of the company. In order to use the name, it must first be reserved in the commercial registry.

Although the initial amount of the capital stock of a corporation is unlimited, it must be subscribed to in full, and at least 20 percent thereof paid in upon incorporation. The capital stock of a corporation must be represented by nominative shares. At least two shareholders, individuals or legal persons, must sign the Articles of Incorporation to form a corporation. The company's Articles of Incorporation are generally drafted with sufficient scope for them to also serve as the company's bylaws. The single document comprising the Articles of Incorporation and bylaws must be submitted to the Commercial Registry, together with the bank deposit slips evidencing the payment, in whole or in part, of the par value of the shares, and in the case of foreign investors, the documents evidencing the transfer of foreign exchange or the importation of goods into the country. Furthermore, the Commercial Registry could request additional documents, such as the working or business visa of the foreign directors and/or officers being appointed. Once registered with the Commercial Registry, the Articles of Incorporation must be published in a local daily newspaper. After this, the company is validly incorporated.

The law does not expressly provide for the establishment of preferential rights to subscribe to new shares resulting from a capital increase or for a right of first refusal in the event of a sale of shares. Normally, companies with two or more shareholders include provisions governing preferential rights in the Articles of Incorporation.

The supreme authority and control of the corporation is vested in the Shareholders' Meeting, which has the power to appoint the administrators and/or members of the Board of Directors of the company. The administrators have the powers assigned to them by the Articles of Incorporation and need not be shareholders of the company.

The profits of the company are distributed pursuant to a resolution adopted by the Shareholders' Meeting or the Board of Directors. At least 5 percent of the net profits of the company must be set aside annually to constitute a legal reserve.



## 2. Limited Liability Company (Sociedad de Responsabilidad Limitada)

The limited liability company (“S.R.L.”) is an entity whose capital is divided into participations denominated quotas. Under no circumstance may the quotas be represented by shares or marketable securities. The incorporation of limited liability companies is subject to the same rules as corporations. Any name available in the Commercial Registry may be used, and the words Sociedad de Responsabilidad Limitada or the corresponding initials “S.R.L.” must be added.

The capital of limited liability companies cannot be less than VEB20 and not more than VEB2,000. The capital must be totally subscribed to and at least 50 percent thereof must be paid in if the payment is in cash, and 100 percent if in kind. The capital is divided into quotas which are fractions of equal amounts of not less than VEB1 and which must always be multiples of VEB1. The transfer of quotas may be subject to specific restrictions which make this type of entity helpful for US income tax planning purposes.

The quota holders are jointly and severally liable for a term of five years for the veracity of the value assigned to contributions in kind in the articles of incorporation. Each quota holder has one vote for each quota owned. The profits of the company are distributed among the quota holders at the end of the fiscal year pursuant to a resolution adopted by the Quota holders’ Meeting or the Board of Directors.

The management is subject to the same rules for corporations. The administrators are jointly and severally liable both to the company and to third parties for violations of the law and the Articles of Incorporation, as well as for any other infringement while in office.

## 3. General Partnership (Sociedad en Nombre Colectivo)

A general partnership is an organization of persons whose obligations are guaranteed by the unlimited liability of the partners. Although the liability of the partners is unlimited, it is of a subsidiary nature, as no action can be taken against any of them personally without first having exhausted remedies against the partnership. The formalities for the organization of a general partnership are governed by the same rules as those for corporations and limited liability companies, although the Articles of Incorporation are simple and only an extract thereof must be registered and published.

## 4. Simple Limited Partnership (Sociedad en Comandita Simple)

In the case of a simple limited partnership, the company’s obligations are guaranteed by the unlimited joint and several liability of one or more general partners, as well as by the limited liability of the limited partners. The limited partnership is formed in the same manner as a general partnership, and partners whose liability is unlimited are subject to the same rules as the partners in a general partnership. Partners with limited liability are liable for the partnership’s obligations only up to the amount of their capital contributions and they are prohibited from managing the partnership.

## 5. Stock Limited Partnership (Sociedad en Comandita por Acciones)

This limited partnership is one in which the ownership of the limited partners is divided into shares. The rules applicable to limited partners are essentially the same as those applicable to corporations and the rules applicable to the general partners are essentially the same as those applicable to general partnerships.



## 6. Branches

Establishing a branch of a foreign company in Venezuela is a simple process. The documents required are the Articles of Incorporation and bylaws of the company; an abstract of the corporate law of the country or state where the company is incorporated; a resolution of the Board of Directors of the company authorizing the establishment of the branch and stating the capital to be assigned to the branch, and a general power of attorney authorizing a person in Venezuela to carry out the steps necessary to establish the branch. The above documents must be duly legalized or apostilled and translated into Spanish by a Venezuelan certified public translator, registered and published.



# Industry Location

## 1. Free Zones

Locating an industry in the Paraguaná and Atuja free zones has the advantage that imports and exports are free of import duties, national taxes and other restrictions. Free zones are regulated by the Law on Free Zones of Venezuela and the Regulations of the Law on Free Zones of Venezuela.

The - Free Zones Regulations provide the procedure and requirements to (i) promote and establish industrial, commercial and services of the free zones in Venezuela, (ii) expand or reduce existing free zones, and (iii) obtain an authorization as an industrial, commercial or services user in a given duty-free zone.

The free zones only apply to legal entities engaged in the production and commerce of goods for export or, to the provision of services related to international trade.

Goods originating and coming from abroad that enter through the Free Zones will not incur in import duties or internal taxes, including any customs service fee. Such goods could be exported, re-exported, re-issued or shipped abroad without being subject to any taxes or other limitations. Goods produced in the duty-free zones are not required to bear any legend. However, all such goods must adjust to the provisions set forth in the Venezuelan legal system regarding the marking and packaging of products.

The entry of goods produced in the free zones into the rest of the national territory has no preference over goods coming from abroad. There are categories of goods and a mechanism for determining the import duties pertaining to each category of goods imported from -free zone to the rest of the national territory.

## 2. Free Ports

Locating an industry in the State of Nueva Esparta and Santa Elena de Uairen free ports has the advantage that goods that enter the country through this free ports are free of import duties and internal taxes, tax on cigarettes and, the taxes set forth in the Law on Tax on Alcohol and Alcohol-Related Products. These free ports are regulated by the Free Port Law of the State of Nueva Esparta and the Free Port Law of Santa Elena de Uairen.

Under this system, all customs operations covered by the Customs Law and its regulations can be made. Also, all kinds of goods and tradable goods, regardless of their origin and source, are allowed to enter, with the exception of those that, for reasons of health, rules on narcotics and psychotropic substances, and security and defense, are affected by the customs tariff. Such goods could be sent to the rest of the national territory, but in such instance they must comply with all applicable requirements to ordinary imports. They can also be sent, with no type of restrictions, to other zones that have preferential treatments, such as duty-free zones, free zones, tax free warehouses, customs warehouses, etc.

## 3. Duty-Free Zones

Locating an industry in the State of Merida and in the State of Falcon (Paraguaná Peninsula) has the advantage that goods brought into the Duty-Free Zone of the State of Merida will not

generate import duties or internal taxes, or any customs service fees. They are not subject to customs or para-customs duties, except for those of a sanitary nature.

Goods which come from abroad or from other customs territories needed in order to provide tourism services which are brought in under the System for the Paraguaná Free Investment Zone, are free of import duties and are not subject to the payment of customs service charges. The duty-free zones are regulated by the Law of the Free Cultural, Scientific and Technological Zone of the State of Merida and the Law for the Creation and System of the Free Zone for the development of Tourism Investment in Paraguaná Peninsula, State of Falcon. Goods and services that have been legally acquired in the Merida Duty-Free Zone may be sent freely to the rest of the national territory, provided that their value does not exceed the amount set by the rules for duty-free zones or free ports of the country.

#### 4. Special Economic Zones

Locating an industry in the zone of Paraguaná or the border-crossing zone of Ureña-San Antonio confers a series of advantages and fiscal benefits to Venezuelan and foreigners alike. The benefits include income tax exemption up to 100% to all business that operate in these zones, provided that certain percentages of the production is destined for export; also, all the tools, goods, and materials that are destined for the productive process of the enterprises are free of import duties or internal taxes, or any customs service fees. The National Executive may bestow additional benefits to the companies that invest in infrastructure that contributes to the development of the zones. Finally, the President may grant special exonerations for the goods and services produced in the Special Economic Zones and the goods and materials that come from abroad.

To benefit from the advantages conferred by the Special Economic Zones, the companies must fulfill with the Integral Development Plan and the specific installation covenant, and meet certain general conditions such as keeping their savings and investments in the National Public Banking System; send semiannual reports of the operations to the Management Council of the respective Special Economic Zone; the foreign currency generated by the export of goods must be managed by the National Public Banking System, which will provide attractive financial products (these amounts may be exonerated of taxes according to Venezuelan legislation); the companies must comply with the Venezuelan labor and social security regulations, among others.

The Special Economic Zone of Paraguaná's benefits are limited to companies that specialize in technological, informatics, and telecommunication fields, also for technologies that focus in energy saving; all business schemes that have oil related, touristic and fishing potential will have benefits.

Meanwhile, the Special Economic border-crossing Zone of Ureña-San Antonio's benefits are focused for productive and commercial activities in the textile, footwear, saddlery, agricultural, automotive, and metalworking sectors.

The Special Economic Zone of Paraguaná and the Special Economic border-crossing Zone of Ureña-San Antonio's extension are specified by Decrees No. 1.495 and 1.496 (both published in Official Gazette No. 40.554 dated December 3, 2014), respectively.



# Requirements for Registration and Permits

## 1. License for Business Activities

The License for Business Activities (also known as the Municipal Business License) is an authorization to carry out commercial activities of industry, trade, services or similar nature within the jurisdiction of a municipality. This license must be obtained prior to the installation of the business establishment or the beginning of its activities. Defaulting on the obligation to obtain the license is penalized in accordance with the applicable municipal ordinance, which penalties go from fines to the closure of the business establishment. The rules regulating the Municipal Business Tax, which is a tax on commercial activities of industry, trade, services or similar nature carried out within a municipal jurisdiction, vary depending on the municipality; therefore, in each case, it is essential to refer to the applicable ordinances of the municipality where the activity is carried out.

## 2. Construction Permit

Construction and urban planning projects require prior authorization granted by the Engineering Office of the municipality where the project will be carried out. To obtain this permit, an application accompanied by the title deed to the land where the construction will take place, and a copy of the drawings and receipts for utilities and sewage system must be submitted. The municipality must decide on the application within 30 calendar days of the filing of the application for buildings, and within 90 calendar days of the application for urban development projects.

## 3. Certificate of Occupancy or Habitability Permit

The municipality grants this permit once the construction is completed and there is evidence that all legal requirements have been met. To obtain this permit, it is necessary to submit an application accompanied by the construction permit, a certificate of completion of the construction and the final drawings.

## 4. Land Use Conformity "Conformidad de uso" (Fitness for a particular purpose)

This is a certificate granted by the municipality evidencing that the use of the business establishment is appropriate for the zone or area where it is located. In order to obtain this approval, a written request must be submitted together with the construction permit, the certificate of occupancy, the title deed to the property or lease agreement, and the construction drawings, among other documents.

## 5. Safety Certificate

This certificate is issued by the Fire Department or Fire Brigade of the location of the construction site to evidence that the project meets the requirements and standards for fire prevention and protection. To obtain this certificate, it is necessary to submit an application form accompanied by copies of the construction project that includes safety systems and any other documents that may be requested by the Fire Department or Fire Brigade.



## 6. National Registry of Companies and Business Establishments

The purpose of the National Registry of Companies and Business Establishments of the Ministry of the People's Power for Labor and Social Security is to consolidate and concentrate data on labor and social security matters for all companies or business establishments in the country. The registration is made electronically through the website of the Ministry of the People's Power for Labor and Social Security ([www.mintra.gov.ve](http://www.mintra.gov.ve)).

## 7. National Registration System for Contractors

The selection of contractors to sell goods, execute works or provide services to government agencies, autonomous institutes or companies in which the republic or its agencies hold more than 50 percent of the shares is made through contracting procedures provided for in the Law on Public Contracting. These procedures include open bids, closed bids, price inquiries and, by exception, the direct awarding of contracts. The potential bidder for contracting with the State must be registered with the National Contractors' Register. For this registration to take effect, the interested parties must access the online National Contractors' Registration System (RNC System) in the website of the National Contractors' Register ("RNC") (<http://www.snc.gob.ve>), and provide all the general, legal, specialization and financial data of the contractor. The legal information refers to the proper incorporation and operation of the contractor. The information on specialization refers to the capacity, qualifications, experience, and technical and human resources of the contractor. The financial information refers to the capacity and financial position of the contractor, which must allow the contractor to perform any agreement to be entered into. Upon completion of the information required in the RNC website, the contractor must go to any auxiliary registry office with the documents required by the National Contracting Services and the forms issued by the RNC system. The RNC will issue a certificate to the company, which must be updated each year; otherwise, the contractor will be suspended and must re-submit the application.

Also, all natural and legal persons without a domicile within the country must be registered with the RNC if they wish to enter into contracts with the State.

The registrants have to notify the RNC about: (i) any amendment to their Articles of Incorporation/Bylaws; (ii) the modification of their capital stock, (iii) the duration of the company, (iv) any change or substitution of representatives, (v) any appointing act, (vi) the revocation of attorneys-in fact, and (vii) in general, any other data or information that represents any interest to the proper legal qualification of the company. Until such notice is not made, the modifications will not take effect regarding the procedures under the Law on Public Contracting.

In another matter, in order to present offers in the selection terms set forth in the Public Contracting Law, the estimated amounts of which exceed four thousand Tax Units (4.000 U.T) for good and services and five thousand Tax Units (5.000 U.T) for the execution of projects, the interested party must be qualified by the RNC and not be disqualified for contracting with the public sector. This qualification is only valid for one (1) year. The Public Contracting Law establishes certain exceptions to qualification.

## 8. Registry of Social Production Companies of Petróleos De Venezuela ("Reps")

Venezuela's major state owned entity, Petróleos de Venezuela, S.A. ("PDVSA") has a Program of Social Production Companies ("EPS Program") in place for the purpose of creating and



strengthening social awareness within the Venezuelan productive sector and to assist with the implementation of new forms of social and ethical relationships with the community.

The EPS Program provides for the creation of a register named Social Production Company Register of PDVSA (“REPS”), wherein all companies interested in being providers of goods or services to PDVSA must be registered. In order to be a PDVSA provider, in addition to being registered with the RNC, the registration with the REPS is an essential requirement. The REPS is an internal system of PDVSA, for the purpose of receiving, organizing and centralizing information of companies that join the EPS Program. This system coexists with PDVSA’s Contractor Subsidiary Register.

The associations or units of social and participative economy (i.e., cooperatives, non-profit associations) and commercial companies may register with the REPS. For this purpose, the associations must adopt the model of Social Production Companies (“EPS”) and the commercial companies may adopt the model of Promoters of Social Production Companies (“Promoters of EPS”).

The current regulations do not contain a sole definition of EPS and Promoters of EPS. However, in the EPS Program, PDVSA defines the EPS as “the units for the production of goods, works and services related to the petroleum sector, created under the pertinent legal figure, with the characteristic of distributing their profits in equal shares among their associates; this condition must be stated in the Articles of Incorporation/Bylaws.”

Promoters of EPS are defined as “economic entities engaged in the production of goods, works and services in relation to the petroleum sector, in line with state policies, which voluntarily participate in the EPS Program, leveraging and encouraging the creation, development and participation of EPSs in the country’s economic activities, related to its productive process.”

The EPSs and the Promoters of EPSs assume the commitment to carry out the social responsibility commitment stipulated in the EPS Program for each of these models, in accordance with the specifications of the agreement to be entered into with PDVSA within the framework of a contracting process. Consequently, the EPSs and the Promoters of EPSs will only execute such commitments in relation to the execution of agreements with PDVSA.

The social commitments established by the EPSs are: (i) participating in community projects by means of contributions to the PDVSA’s Social Fund or by providing goods and services that will depend on the nature of the goods, works or services to be contracted with the contracting entity, which will be specified in the pertinent contracting terms and conditions; and (ii) contributing with the development of production, distribution and community service companies known as Community Productive Units (“UPC”). UPCs are defined as a specific type of EPS engaged in the production of goods and services, this as a result of the knowledge they have of the fundamental human needs of the members of the communities in a way that is severally transparent and co-responsible, wherein voluntary coordination of the distribution activities is performed, decision-making is exercised in a substantially democratic way, and the energies and creative attitude of the community are developed.

The social commitments for the Promoters of EPSs are: (i) participating in PDVSA’s Social Fund, which is made up of the contributions provided by the companies registered with REPS that, having been awarded a given contract in a bidding process, have entered into the pertinent agreements with PDVSA. The contribution will be calculated based on a percentage of the amount contracted and will be stipulated in the relevant contracting terms and conditions according to the range established by the Board of Directors of PDVSA every six months; (ii) submitting a social tender in the contracting process, a concept based on the need to execute



a social project that will depend on the nature of the goods, works or services to be contracted with the contracting entity and will be specified in the pertinent contracting terms and conditions of the tender; (iii) developing and accompanying small businesses and EPSs, which includes the support of the development of systems and technologies and the implementation of permanent programs that encourage the insertion of these companies into the productive system; (iv) entering into consortia with medium-sized companies and EPSs, to technologically strengthen them, thus allowing the increase of the national value added and a greater integration in the solution of needs linked to the petroleum sector's operating areas; and (v) contributing with the development of production, distribution and community service companies (UPCs).

To formalize the registration with REPS, the EPSs and Promoters of EPSs must complete the registration application forms and submit the required documents at any of the EPS Registration Offices (petroleum sector) nationwide, as shown on PDVSA's web page (<http://www.pdvsa.com>).

Finally, it is worth noting that the Law on Public Contracting sets forth a general definition of what should be understood as "Commitment to Social Responsibility" and in this regard provides that these are all of the agreements that bidders establish in their tenders, to address at least one of the social requirements in relation to the: (i) execution of social community development projects; (ii) creation of new permanent jobs; (iii) productive members of the community; (iv) sale of goods at thrifty prices or at cost; (v) contributions in cash or in kind to social programs determined by the state or non-profit organizations, and (vi) any other that satisfies the priority requirements of the social environment of the contracting agency or entity.

#### 9. Sole Registry of Persons that Develop Economic Activities

According to the Organic Law of Fair Prices, published in the Special Official Gazette No. 6,202 dated November 8, 2015, the persons subject to such Law must be registered with the Sole Registry of Persons that Develop Economic Activities ("RUPDAE") as an essential requirement to engage in economic and commercial activities in Venezuela. The RUPDAE is under the control of the National Superintendence for the Defense of Socio-economic Rights ("SUNDDE"). The SUNDDE shall issue the rules regarding the organization, operation, requirements, duties, procedures, and use of information of the RUPDAE.

#### 10. Integral Management System for Industries and Trade

The Integral Management System for Industries and Commerce ("SIGESIC") is a registry managed by the Ministry of People's Power for Industry pursuant to Resolution No. 062 published in the Official Gazette No. 39.904 dated April 17, 2012 ("Resolution No. 0627"). According to Resolution No. 057, individuals and corporate entities (public or private), that perform any type of economic activity within the country that implies added value, the sale of goods, the rendering of services either with profit or non-profit purposes must be registered with the SIGESIC (the "Subjects"), and provide information pursuant to the Resolution. The purpose of the SIGESIC is to (i) establish the requirements and mechanisms that must be met by the Subjects to perform their activities, and (ii) provide for a data platform that may be used by the Ministry of People's Power for Industry to facilitate the procedures that must be undertaken by the Subjects, and also to adopt industrial policies.



## 11. Registration of Foreign Investment

All foreign capital investments in Venezuela that comply with the requirements set forth in the Venezuelan legislation must be registered with the National Center for Foreign Trade (“Cencoex”). The rights conferred to foreign investors pursuant to the Venezuelan legislation in force will come into effect from the time in which the Foreign Investment Registration is granted. Basically, they consist on the rights to remit dividends and repatriate capital, pursuant to the applicable laws and regulations on exchange control currently in force in Venezuela. To register the investment, the foreign investor must submit with Cencoex evidence of the entry of foreign currency or physical or tangible goods or technological contributions, as a contribution to the capital stock of the company. Once the investment is registered, the investor must update the investment each year and notify Cencoex of any amendments regarding the investment.

## 12. The Venezuelan Social Security Institute (“IVSS”), the National Institute for Socialist Training and Education (“INCES”), the Mandatory Housing Savings Fund (“FAOV”) and the National Registry Of Companies and Business Establishments (“RNE”)

In general (there may be a few exceptions that may apply on a case-by-case basis), companies must register with the Venezuelan Social Security Institute (“IVSS”), the National Institute for Socialist Training and Education (“INCES”), the Mandatory Housing Savings Fund (“FAOV”) and the National Registry of Labor Entities (“RNET”) -this latter National Registry referred to earlier in this document-. Failure to comply with these obligations leads to fines and potential liabilities, and may prevent the granting of the Labor Solvency, which is an essential document for various activities including, among others, participating in bids and entering into agreements with the public sector, and acquiring foreign currency from the Venezuelan exchange control authorities under the exchange controls currently in force in Venezuela.

### (a) Social Security (“IVSS”)

Employers must register with the IVSS prior to beginning their activities. Employers must also enroll their workers with the IVSS within three business days after the date each worker starts to work for the company. The employer and the workers must contribute to the IVSS. The employer must withhold the workers’ contributions and pay them over to the IVSS. All contributions are traditionally calculated as a percentage of the worker’s normal salary (the law in force temporarily stipulates that the contributions must be a percentage of the worker’s monthly income, but the IVSS so far appears to continue collecting them based on normal salary). The taxable base cannot exceed the equivalent to five urban minimum monthly salaries. For benefits related to pension and health, workers pay 4 percent and the employers pay between 9 and 11 percent (although it may be argued that the percentage applicable to the employers should be different or higher), depending on the degree of risk involved in the company’s activities.

### (b) Fund for Education and Learning Program

The INCES was created through a special law. The financing sources for the INCES include: (i) a contribution by the employer equivalent to 2 percent of the normal salary paid to its workers. This contribution is mandatory for industrial or commercial companies, for all the associations whose purpose is the provision of services or professional advice, provided they are not owned by the republic, states or municipalities and provided they have five or more workers; and (ii) a contribution equivalent to 0.5 percent of profit sharing, Christmas or year-end bonuses paid to



the workers in the private sector. The employer must withhold this latter contribution from the relevant amounts paid to its workers.

The Law of the INCES also imposes the obligation to employ and train or reinforce the training of a certain number of adolescents.

#### *Employment Payment System (formerly “Unemployment Insurance”)*

All the contributions to the Employment Payment System must be calculated as a percentage of the worker’s normal salary earned in the preceding month, and the taxable base for this contribution cannot exceed the equivalent to 10 minimum urban monthly salaries. Employers must contribute an amount equal to 2 percent and the workers must contribute 0.5 percent. The contributions are due on a monthly basis. The employer must withhold, when paying the normal salary, the amount pertaining to the worker’s contribution.

#### *Housing and Habitat Benefit System*

Workers and employers must contribute to the Housing and Habitat Benefit System. The employer must contribute an amount equivalent to 2 percent of the worker’s salary and must withhold and pay an amount equal to 1 percent of the worker’s salary as the worker’s contribution.

#### *Occupational Health and Safety Benefits System*

This system is regulated by the Organic Law on Occupational Prevention, Conditions and Environment of 2005 (“LOPCYMAT”). According to LOPCYMAT, under certain conditions, employers must contribute between 0.75 percent and 10 percent of their workers’ salaries, depending on the risk involved in their activities. Currently, this contribution is not being collected because the Social Security Treasury has not been created. In our view, this contribution should be calculated on the basis of the worker’s normal salary, which cannot exceed, for this purpose, the equivalent to 10 minimum monthly salaries.

#### *Solvency Certificates*

IVSS, INCES and BANAVIH issue a clearance or solvency certificate to companies that are up-to-date regarding compliance with their obligations before said entities. These certificates are essential requirements for the companies to obtain their Labor Solvency that is granted through the RNET. The Labor Solvency also certifies the compliance before the Labor Inspector Office and the National Institute of Prevention, Health and Labor Security (“INPSASEL”). The Labor Solvency is an administrative document issued by the Ministry of the People’s Power for the Protection of the Social Process of Work (through the RNET’s website) certifying that the company honors the labor and union rights of its workers. As stated above, the Labor Solvency is an essential requirement, among other purposes, to enter into contracts with public sector entities and to be eligible to purchase foreign currency from the exchange control administration at the official exchange rate.

#### (c) Sole Tax Information Registry (“RIF”)

Legal entities, individuals and entities without legal capacity, whether domiciled or not, that are or may be subject to the payment of Venezuelan income tax or other federal taxes administered by the National Integrated Customs and Tax Administration Service (“Revenue Service”) by virtue of their assets or activities, are required to obtain a RIF. Even if the legal entities and individuals are not subject to federal taxes, they are required to obtain a RIF, if they must carry out formalities before any entity or body of the Venezuelan Public Administration. Taxpayers



must apply for registration with the RIF through the Website: [www.seniat.gob.ve](http://www.seniat.gob.ve) within 30 business days from their incorporation or commencement of activities and file some documents with the Revenue Service to complete the procedure. Once registration is completed, the taxpayer is given a number that must be indicated on all of its receipts, bills, invoices and contracts. It must also be indicated in all communications to Venezuelan governmental offices (federal, state or municipal); in its accounting books, trademarks, labels, packaging and printed advertising, and in such other documents required by the Revenue Service. The RIF must be updated at least every three years.

Until 2013, the Revenue Service issued a certificate of registration with the RIF. Nowadays there is an electronic certificate that the taxpayer must print from the Revenue Service's Website. The certificates issued by the Revenue Service prior to July 25, 2013 will remain in force for three years.

### 13. Health Registration

A health registration is required in order to import, manufacture, store, market and sell products for human or animal consumption. The health registration is mandatory for national and foreign products marketed in Venezuela or used in the manufacture of other products.

Health registrations for products used by humans are issued by the Ministry of the People's Power for Health. The requirements, procedures and time frames to obtain health registrations may vary depending on the nature of the products. The Ministry registers pharmaceutical preparations, biological products, natural products, medical devices, cosmetics and foodstuffs.

### 14. Environmental Permits

The Ministry of the People's Power of Ecosocialism and Waters (the "MPPEA") is the agency empowered to authorize any activity capable of degrading the environment. Companies that carry out this type of activities must be registered with a special registry system kept by said Ministry. Failure to comply with the requirements established may be subject to both administrative and criminal penalties. The criminal liability may be extended to the directors of the relevant companies.

### 15. Permits Required to Install and Operate Projects that Damage the Environment

The Organic Law for the Organization of the Territory of 1983 (the "OLTD"), provides that all persons interested in developing programs or projects that involve the occupation of a certain territory (the "Interested Parties") must obtain a permit called "authorization for the occupation of the territory."

The procedure for obtaining such authorization is as follows: The Interested Parties must submit a letter of intent to the MPPEA, which, in turn, will have 30 calendar days to establish the methodology applicable to the program or project. The methodology is established pursuant to the characteristics and potential effects of the program or project, and to the specific environmental conditions that will be affected. It may consist of preparing and submitting an environmental impact study (the "EIS"), a specific environmental evaluation (the "SEA") or documents required for said evaluation.

The MPPEA will require an EIS for activities related to mining, hydrocarbon exploration or production, forestry, agro-industry, power generation, industry, transportation, waste disposal,



development of tourism infrastructure or residential works, development of other infrastructure works and other activities that require an EIS pursuant to the letter of intent's technical evaluation.

The MPPEA may order that a SEA be submitted for activities that do not call for an EIS, but are subject to environmental assessment pursuant to the analysis of the relevant letter of intent. If the programs or projects have a minimum environmental impact and, therefore, do not require an EIS or a SEA, the MPPEA will issue a resolution setting forth the documents that the Interested Party must submit in order to obtain the relevant approval or authorization. The EIS, SEA or the specific documents must be submitted when filing the application for approval or authorization to occupy the territory.

The MPPEA should notify the Interested Party of the results of the analysis of the EIS, the SEA or submitted documents within 60 calendar days from the date of the application for approval or authorization to occupy the territory. In this approval or authorization, the MPPEA must determine the compatibility of the proposed activity with the area's physical, natural, social and economic potential and restrictions.

Once the authorization has been granted, the Interested Party must obtain an authorization to affect the respective renewable natural resource prior to starting their activities. To such end, all the documents set forth in the respective authorization must be filed with the MPPEA.

The authorization to affect renewable natural resources will set the conditions applicable to all the stages of the program or project. For this purpose, such authorization must comply with all the measures and conditions set forth in the authorization to occupy the territory.

## 16. Permits Required to Carry Out Damaging Activities

In order to lawfully carry out activities that generate liquid discharges, atmospheric discharges and/or solid wastes, the interested parties must obtain from the MPPEA certain registrations, authorizations and/or permits, as the case may be. These registrations, authorizations and/or permits are governed by various decrees that constitute supplementary regulations or technical regulations to the Organic Law of the Environment and the Criminal Law of the Environment. Additionally, there are certain permits or registries regulated in special laws.

## 17. Liquid Discharges and Gases and Particles Emissions

Parties responsible for activities that generate liquid discharges into rivers, lakes (such as the lakes of Maracaibo and Valencia) and/or sewage networks must adjust their discharges in order to comply with the quality parameters set forth in the Law on Quality of Waters and Air (the "LCAA") and the technical regulations. Companies whose discharges are not adjusted to these parameters may request authorization to comply with a gradual adjustment process, defined in an MPPEA-approved program or adaptation plan. Granting the authorization for these cases is at the MPPEA's discretion.

The discharge, injection, or infiltration of liquid discharges and gaseous emissions, are subject to the MPPEA's prior authorization. Said authorization shall specify, among others, the regime applicable to the control and prevention of the environmental contamination, pursuant to the LCAA.

Parties responsible for activities that emit gas and particles into the air must also obtain an authorization from the MPPEA. The air-quality limits for atmospheric contaminants are



established by decree and vary depending on whether the emission of contaminants already exists, or if it constitutes a new activity.

The MPPEA may authorize trial periods (which shall not exceed of one year) for the initial operation of industrial processes or, of equipment for the control of liquid discharges and gaseous emissions, pursuant to the LCAA. Furthermore, persons that intend to set up incinerators or treatment plants for liquid discharges or gaseous emissions shall obtain a certificate of conformity of use from the MPPEA.

Manufacturers, assemblers, or importers of automotive vehicles, shall obtain a conformity of the certificate of emissions to comply with the applicable emission limits, as established in the LCAA.

Additionally, any activity capable of generating air pollutant emissions must have a Sanitary Authorization for Activities Capable of Generating Air Pollutants issued by the competent health authority (Resolution No. 0132 from the Ministry of the People's Power for Health was published in Official Gazette No. 39,807)

## 18. Hazardous Wastes

Pursuant to the Constitution of the Bolivarian Republic of Venezuela, the entry of toxic and hazardous wastes into the country, as well as the manufacture and use of nuclear, chemical and biological weapons is expressly prohibited. Additionally, the Constitution provides that a special law shall regulate the use, handling, transportation and storage of toxic and hazardous substances. In pursuance of said constitutional provision, the Law of Hazardous Substances, Materials and Wastes became effective in February 2002 (the "LHSMW"). Among the main activities regulated by the LHSMW are the operations involving the handling of hazardous substances, materials and wastes, including their generation, use, gathering, storage, transportation, treatment and final disposal; and the activities of production, formulation, importation, exportation, distribution and marketing of pesticides for agricultural, industrial and domestic use.

The LHSMW sets forth that the National Executive will issue the provisions that will regulate these activities and that, in the meantime, the technical regulations contained in decrees and resolutions that are not inconsistent with the provisions of the law will remain in force. Since these provisions have not yet been issued, the technical regulations prior to the LHSMW remain in force. Pursuant to these technical regulations, parties responsible for executing activities that generate or require handling hazardous wastes must be registered with the MPPEA. This registration is considered a control mechanism to facilitate requests for information, assessments, inspections and samplings conducted by officers of both the MPPEA and the Ministry of the People's Power for Health. .

Additionally, by means of Resolution No. 000073, published in the Official Gazette No. 40.483 dated August 26, 2014, the requirements for the Authorization of Handlers of Hazardous Substances, Materials and Wastes and the Register of Generators of Hazardous Wastes, were established (the "Resolution"). The Resolution applies to individuals or corporate entities, either public or private, that handle hazardous substances, materials and wastes or perform activities that generate hazardous wastes.

According to the Resolution, persons that (i) handle or transport hazardous wastes; (ii) collect, store, transport, recover or treat hazardous wastes; and (iii) collect, temporarily store, transport, treat, eliminate or dispose of hazardous wastes, must be duly authorized by the MPPEA. In order to obtain the Authorization, the interested parties must elaborate their application in

compliance with the Organic Law of Administrative Procedures and file the documentation provided for under the Resolution.

The Resolution also provides for the requirements that must be met by persons performing activities that generate hazardous wastes for registering with the Register of Generators of Hazardous Wastes, kept by the MPPEA.

#### 19. Solid Wastes

On December 30, 2010, the Law for the Management of Waste (the "LMW") was published in the Official Gazette of the Bolivarian Republic of Venezuela, derogating the Law of Residues and Solid Wastes, dated November 18, 2004. The LMW became effective 90 days after its publication in the Official Gazette. The main purpose of the LMW is to regulate all activities related to the treatment and management of solid waste.

Under the LMW, it is mandatory that all persons engaged in the activities described in the LMW be registered with the National Registry for the Management of Solid Wastes, which is controlled by the MPPEA. The purpose of the National Registry for the Management of Solid Wastes is to keep a database with the basic information of the persons who engage in the activities described in the LMW. Also, said registry keeps record of the types and amounts of solid wastes handled or treated by the registered persons. The LMW establishes several sanctions for defaulting on the obligations set forth therein. Failure to comply with the duty to be registered with the National Registry for the Management of Solid Wastes is sanctioned with a fine ranging from 101 to 199 tax units.

#### 20. Noise Pollution

Parties responsible for creating noise must adjust it to the limits established by the applicable technical regulations. There are technical regulations for noise pollution produced by both fixed and mobile sources. The MPPEA does not keep records of the responsible parties as in the case of other contaminating activities, but may conduct visits and inspections to verify compliance with the applicable technical regulations.

According to the LCAA, fixed or mobile sources of noises shall adopt measures and necessary controls to prevent risks to the health or prejudices to the goods, the natural resources and the environment. To such effects, the National Executive, through decree, shall establish the permissible noise levels for the various types of sources and generating facilities.

The LCAA prohibits the generation of noises of fixed or mobile sources in areas subject to special regimes, recreation areas or beaches. However, public shows in beaches may be authorized by the competent authorities, prior to the provision of the relevant guaranties.

Regulations on noises generated by aircrafts and land transportation vehicles will correspond to the authorities competent in those matters.



# Tax System

All three main territorial levels (*i.e.*, republic, states and municipalities), as well as the Metropolitan District, and the Capital District have taxing powers. The Constitution, however, grants most of those powers to the national (federal) government, while granting states, municipalities, the Metropolitan District and the Capital District limited and specific powers. The following is a general overview of the Venezuelan taxation system:

<b>Tax</b>	<b>Level</b>	<b>Agency</b>
Income tax, VAT, luxury tax, estate and gift tax, customs duties, financial transaction tax, capital or assets taxes (currently not in force), production taxes, alcohol and tobacco levies, gaming and ambling taxes, public registry taxes and fees, and other taxes, levies, fees or special contributions not assigned to states or municipalities	Federal	National Integrated Service of Customs and Tax Administration (“Revenue Service”)
Stamp tax in federal dependencies, Venezuelan consulate offices and certain states	Federal	The Revenue Service
Mining and hydrocarbons taxes, including oil windfall taxes	Federal	Ministry of the People’s Power of Mining and Hydrocarbons
Special contribution levied on the average of assets of financial institutions	Federal	Office of the Superintendence of the Banking Sector
Telecommunications taxes	Federal	National Telecommunications Commission
Special contributions to the National Institute of Socialist Training and Education (INCES)	Federal	National Institute of Socialist Training and Education (INCES)
Special contributions to Pension and Health Systems	Federal	Social Security Institute (“IVSS”)
Special contributions to the Housing and Habitat Benefits System (however, please note that a recent Supreme Court decision held that these contributions do not have a tax nature)	Federal	National Housing and Habitat Bank
Special contributions to the Employment Benefits System	Federal	IVSS
Special contributions under the Organic Law on Drugs	Federal	National Anti-Drugs Office
Special contributions under the Organic Law on Science, Technology and Innovation	Federal	National Observatory of Science and Technology
Special Contribution under the Organic Law on Sports, Physical Activity and	Federal	National Fund for the Development of Sports, Physical Activity and Physical



<b>Tax</b>	<b>Level</b>	<b>Agency</b>
Physical Education Special contribution and fees under the Law on Government Data Processing	Federal	Education National Information Technologies Commission and National Observatory of Science and Technology
Special contribution under the Law on Integrated Management of Social, Environmental and Technologies Risks	Federal	National Council of Integrated Management of Social, Environmental and Technologies Risks
Special contribution under the Law of National Cinematography	Federal	Cinema Promotion and Financing Fund
Taxes and special contribution under the Forestry Law	Federal	The environmental services of the Ministry of the People's Power of Environment
Special contribution under the Law of Protection to the Cultural Employee	Federal	National Fund for the Development and Protection of the Cultural Employee
Stamp tax, tolls on state highways, fees for the use of state services and assets, and other taxes	State	State Tax Agency
Fees for the use of municipal services and assets, and other taxes	Metropolitan District	District Tax Agency
Stamp tax, fees for the use of municipal services and assets, and other taxes	Capital District	District Tax Agency
Turnover tax on economic activities, industry, trade, services and similar activities; real estate property tax; advertising tax; vehicle tax; and fees for the use of municipal services and assets	Municipal	Municipal Tax Agency

1. General Issues

Venezuelan taxes are normally self-assessed and tax returns and other tax relevant documentation are covered by a bona fide presumption. The Tax Administration is empowered by law to audit taxpayers and to issue deficiency assessments. As a general rule, the statute of limitations for tax liabilities is six years. This period, however, may be extended to ten years in certain circumstances (e.g., if the taxpayer fails to file the corresponding tax return or in the case of foreign-source income). Tax fraud and other criminal tax offenses are not subject to the statute of limitations.

The Tax Administration is fully empowered under a substance-over-form analysis to disregard the incorporation of companies, the execution of agreements and, in general, deny all legal forms and procedures that fundamentally purport to evade, reduce or avoid taxes.

Entities or individuals qualified and designated as special taxpayers may be subject to different tax and withholding tax filing duties as well as to payment dates and places, as determined by the Revenue Service. They are also subject to the close scrutiny of the Revenue Service.



Income tax rates apply on net taxable income as represented by a construction designated as tax unit. The tax unit is a referential value created for tax purposes as a measure that allows an annual update for inflation (according to the National Consumer Price Index issued by the Venezuelan Central Bank) the monetary amounts that represent the bases for taxes, exemptions, and penalties, among others. As of February 24, 2017, the value of the Tax Unit was equivalent to VEF 300.00. The Revenue Service should adjust the value of the tax unit at the beginning of each year.

## 2. Income Tax

### *Determination*

Under the Income Tax Law, Venezuelan income tax consists of three main elements. The first includes the taxpayer's operating income arising from its actual activities in the country, less costs and expenses actually or presumably incurred during a given fiscal year in Venezuela. This means that income from Venezuelan sources would be subject to income tax liability, without regard to the nationality, domicile, place of incorporation, place of execution of the agreements, currency or place of payment. Services are considered territorial if they are rendered in Venezuela, while interest is considered territorial if the principal is invested in income-producing activities in Venezuela.

The second element that is levied on operating income and which is basically an assumption created by law, arises from the adjustment for inflation of the taxpayer's non-monetary Venezuelan assets, non-monetary liabilities and net worth (including both monetary and non-monetary assets and liabilities). This system of adjustment for inflation has the effect of increasing or reducing the taxpayer's operating net income and applies only to domiciled taxpayers. Taxpayers engaged in banking, financial, insurance and re-insurance activities, as well as special taxpayers<sup>1</sup> are excluded from the inflationary adjustment system.

The third element comprises the taxpayer's operating income arising from its extraterritorial activities, less costs and expenses incurred abroad and accrued during a given fiscal year. The combination of these three elements will constitute the taxpayer's net taxable income, to which the relevant tax rates will apply.

### *Foreign Tax Credit*

Venezuela has adopted a simple foreign tax credit system which allows Venezuelan taxpayers to claim a tax credit for taxes paid abroad levied on their foreign-source income. The tax credit is subject to an overall limitation pursuant to which the foreign tax paid would not be creditable to the extent that it exceeds the maximum Venezuelan tax rate applicable thereon (*i.e.*, 34 percent). There is no indirect foreign tax credit for dividends paid by foreign companies and received by resident individuals or entities. There is no carry forward or carry back either for foreign taxes paid that are otherwise not creditable in a given fiscal year.

### *Rates*

Corporations, limited liability companies, stock limited partnerships organized under Venezuelan law, branches of foreign corporations, permanent establishments of foreign companies, and unregistered foreign entities of any nature (*e.g.*, foreign partnerships) with taxable income from

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<sup>1</sup> Special taxpayers are the so called "big" taxpayers. The Revenue Service designates special taxpayers based upon their level of income or the activities they carry out. This requires an official designation letter. Special taxpayers are subject to the close scrutiny of the Revenue Service, must file their income tax and VAT returns and withholding forms according to the Special Taxpayer's Calendar that the Service publishes annually in the Official Gazette and must pay their taxes and tax withholdings in the specific banks indicated by the Service.

Venezuelan sources, other than income from banking, finance, or insurance activities, oil production and related activities, are subject to progressive tax rates, depending on the amount of net taxable income, again represented by tax units. The applicable rates are 15 percent on the first 2,000 tax units, 22 percent on the excess of 2,000 tax units up to 3,000 tax units, and 34 percent on the excess of 3,000 tax units (Tariff No. 2). The effective tax rate in this category is essentially 34 percent. Interest arising from loans granted by non-domiciled financial institutions is subject to a flat rate of 4.95 percent. Income received by entities, derived from banking, financial or insurance activities are subject to a 40 percent rate. Oil companies are subject to a 50 percent rate, while mining royalties are subject to a 60 percent rate.

The marginal income tax rates applicable to Venezuelan resident individual taxpayers range from 6 percent to 34 percent and apply gradually to the worldwide net taxable income. The maximum 34 percent rate applies to the portion of net taxable income that exceeds 6,000 tax units. Non-resident alien individuals are subject to a flat 34 percent rate.

Neither the individual nor the corporate income taxes are supplemented by an asset or alternative minimum tax under the current statutory provisions.

### *Deductions and compliance*

Business taxpayers may generally deduct normal (ordinary) and necessary Venezuelan-source expenses and losses incurred in obtaining Venezuelan-source income. Net operating losses may be carried forward up to three years. Taxpayers are entitled to offset each fiscal year a portion of their carry forward net operating losses up to 25% of their taxable income for the relevant fiscal year. Losses arising from the adjustment for inflation cannot be carried forward. Foreign losses can only offset foreign-source income while territorial losses can only offset Venezuelan-source income.

Taxpayers have three months from the end of their fiscal year to file their final tax return and pay income taxes. After filing the first income tax return, each company must file, within the second half of the sixth month following the end of its fiscal year, an estimated tax return. The amount of the net income reflected in the estimated tax return cannot be less than 80 percent of the total net income for the preceding fiscal year. A different term for filing the estimated tax return applies to taxpayers engaged in oil activities. The amount of the tax paid in the estimated return is an advance payment of the tax payable for the corresponding fiscal year in the year-end tax return.

Special taxpayers are required to file their returns and pay the income tax on the dates set forth in the special taxpayers' calendar published each year by the Revenue Service.

### *Tax Withholding*

Amounts paid to and by a company for services are subject to back-up withholding. The withholding rate will vary depending on whether the services are characterized as commercial services or non-commercial professional services. If the services are characterized as non-commercial professional services and are rendered by a domiciled corporation, a 5 percent of the gross fees must be withheld at the source (back-up withholding). If the services are characterized as non-commercial professional services and are rendered by a non-domiciled foreign corporation, then 90 percent of the gross fees would be deemed net taxable income. Other types of income (e.g., royalties, dividends, technical assistance; disposition of shares, etc.) are also subject to withholding tax. The tax should be calculated by reference to Tariff No. 2 and totally withheld at the source. Subject to certain exceptions (e.g., dividends and sale of shares) taxes withheld at the source must be paid over to the Treasury by the withholding agent (i.e., payor) within the ten calendar days of the month following that in which the payment of the



income giving rise to the withholding was made. However, if the withholding agent is a special taxpayer, it is required to pay the tax withheld on the dates set forth in the special taxpayers' calendar published every year by the Revenue Service. If the withholding agent fails to withhold the tax at the appropriate time, it will be subject to a penalty, will be held jointly and severally liable for the taxpayer's liability, along with the risk that the company might lose its right to deduct the expense. Withheld taxes are always creditable against the final income tax liability determined in the year-end return.

### *Capital Gains*

With the exception of shares traded in a local stock exchange (explained below) and the gain derived from the sale of the principal home of individuals (which is exempt from tax liability under certain circumstances), there is no separate taxation of capital gains. Therefore, capital gains are added to the net taxable income of the taxpayer and are taxed according to the applicable corporate/individual rates.

Regarding the transfer of stock of a domiciled corporation, the taxable income is determined by the difference between the tax cost basis of the shares (adjusted for inflation, if applicable), and the purchase price paid by the buyer. Standard corporate rates are applicable to net profits. If the shareholder can claim the benefits of a double taxation convention, the capital gain may be exempt from income tax liability, depending on the specific convention.

A flat-rate tax of 1 percent applies to the gross sales price of shares disposed of through a Venezuelan stock exchange, irrespective of whether the shareholder realized a gain or loss on the transaction. This tax must be withheld by the broker.

Gambling and betting prizes are subject to a 34 percent flat tax. Lottery and horse racing prizes are subject to a 16 percent flat tax. In both cases the payor of the prize must withhold the applicable tax and pay the amounts withheld over to the National Treasury.

### *Dividends*

Dividends paid by companies incorporated in Venezuela are taxed at a flat rate of 34 percent, regardless of the nationality, country of incorporation, domicile or residence of the corresponding beneficiaries. In this respect, the dividend tax only applies to non-previously taxed income at the level of the distributing entity. This system was created in order to avoid the double taxation of dividends. Therefore, subject to special imputation or allocation rules, the amount of the taxable dividends will be calculated as follows: the amount of the dividend, minus the net taxable income of the company paying the dividend, minus the exempt or exonerated income. The tax rate is increased in the case of distributing companies engaged in oil (50 percent) and mining (60 percent) activities.

Dividends received by Venezuelan resident entities or individuals and paid by companies incorporated and domiciled outside of Venezuela or incorporated abroad and domiciled in Venezuela are subject to a 34 percent flat dividend tax. Subject to certain limits, the shareholder will be entitled to claim a foreign tax credit for any income tax paid outside Venezuela on the dividends.

Dividends paid by a Venezuelan company to shareholders entitled to claim the benefits of a double taxation treaty entered into by Venezuela, are subject to lower tax rates, or even exempt from Venezuelan tax, depending on the applicable treaty and the participation exemption provision provided in the said treaty.



### *Tax Transparency or Controlled Foreign Corporations (CFC) rules*

The system applies to investments held by taxpayers in branches, legal entities, real or personal property, shares, bank or investment accounts, and any form of participation in entities with or without legal capacity, trust funds, partnerships, investment funds or any other similar legal entity located in low tax jurisdictions. To this end, the service published a list of low tax jurisdictions including a catch-all provision whereby any jurisdiction that does not have a double taxation convention in place with Venezuela, and those with income tax rates lower than 20 percent are regarded as low tax jurisdictions for Venezuelan tax purposes. If the tax transparency system applies, the foreign entity is deemed “transparent” for tax purposes and the taxpayer domiciled in Venezuela must report as its own, on an accrual basis, the income, costs and expenses of the entity and pay the corresponding tax. In very broad term, the Venezuelan CFC rules provide for an anti-deferral income tax system.

### *Transfer Pricing Rules*

This system allows the Revenue Service to control the manipulation of the import and export prices of goods and services, and the consideration paid for loans among members of the same economic group. The Income Tax Law defines related parties and sets forth the methods to determine the market price of goods and services among such related parties. The Venezuelan transfer pricing regime is based on the arm’s-length principle and the transfer pricing methods developed by the Organization for Economic Co-operation and Development (“OECD”). Additionally, Venezuela has thin capitalization rules (with a 1:1 equity/debt ratio) for income tax purposes, which limit the deduction of interest paid to related parties.

### *Net Operating Losses*

Net operating losses are subject to a three-year carry forward rule. As pointed out above, however, taxpayers are only entitled to offset each fiscal year a portion of the carry forward net operating losses (*i.e.*, a portion not exceeding 25 percent of the net taxable income derived in the relevant fiscal year). Foreign-source net operating losses cannot be used to offset Venezuelan-source income and vice versa.

### *Investment Tax Credit*

There is an investment tax credit equivalent to 75 percent of the value of certain investments related to the maritime sector.

### *Exemptions and Exonerations*

**Sovereign Debt:** Both interest and capital gains on sovereign debt bonds issued by the Venezuelan government are exonerated from income tax liability.

Interest on private debt bonds issued by *Petróleos de Venezuela, S.A.* (*Petrobonos* or *Bonos PDVSA*), the state-owned oil company, is exonerated from income tax liability. In this respect, both interest and capital gains on *Petrobonos 2017, 2027, 2037* (issued in 2007) were, under a Presidential Decree, exonerated from Venezuelan income tax liability (Presidential Decree No. 5,282, Official Gazette No. 38,662 of

12 April 2007). Such exoneration, however, expired in 2012. *Bonos PDVSA 2017* (issued in 2010) (Presidential Decree No. 7,744, Official Gazette No. 39,533 of 19 October 2010) are exonerated from Venezuelan income tax liability. The specific wording of Decree No. 5,282 includes within the exoneration “income derived” by holders of the securities (which encompasses both interest income and capital gains). Interest and capital gains on *Bonos PDVSA 2022* (issued in 2011) as well as *Bonos PDVSA 2026* (issued in 2013) are subject to income tax liability.



Agricultural and other activities: Presidential Decree No. 2,287 (Official Gazette No. 40,873 of March 21, 2016) exonerated from income tax liability those individuals and legal entities that obtain Venezuelan-source income from the primary exploitation of agricultural, forestry, cattle and poultry breeding, fishery, aquaculture, and fish farming activities in years 2016, 2017 and 2018.

Construction: Presidential Decrees Nos. 2,459 and 2,460 (hereinafter, the "Decrees") (Official Gazette No. 40,995 of September 23, 2016) exonerated from income tax liability the Venezuelan source net taxable income that (i) legal entities domiciled or not in Venezuela obtain for the provision of services related to the implementation of *Misión A Toda Vida Venezuela* and the *Comisión por la Paz y la Vida* (<http://www.misionatodavidavenezuela.gob.ve/>), executed by Propatria 2000 Foundation (Decree No. 2,459) and (ii) legal entities domiciled or not in Venezuela and Venezuelan resident individuals obtain for the provision of services related to the execution of projects established in the Emergency Organic Law for Lands And Housing, *Gran Misión Vivienda Venezuela* (<http://www.minhvi.gob.ve/>), and *Gran Misión Barrio Nuevo Barrio Tricolor* (<http://www.barriotricolor.gob.ve/>) (Decree No. 2,460). The Decrees entered into force on September 23, 2016 and will apply to the open fiscal years as of that date.

The exoneration established on Decree No. 2,459 will last until September 23, 2018. The Minister of the People's Power for Banking and Finance, in coordination with the Minister of the People's Power of the Presidency Bureau and the Monitoring of the Governance Control will be in charge of the execution of Decree No. 2,459.

The exoneration established on Decree No. 2,460 will last until December 31, 2019. The Minister of the People's Power for Banking and Finance, in coordination with the Minister of the People's Power for Habitat and Housing will be in charge of the execution of Decree No. 2,460.

Decree No. 2,460 established three conditions for the exoneration. The beneficiaries: (i) must comply with the requirements established on Decree No. 2,460; (ii) must register before the National Integrated Service of Customs and Tax Administration and file a request with a certificate provided by the Ministry of the People's Power for the Housing and Habitat certifying that the projects are framed under the Emergency Organic Law for Landing and Housing; and (iii) must destine 100% of the income tax liability to pay direct investments in capital goods necessary to develop and increase their construction capacity, unless it is a temporary legal entity created by foreign investors for a specific housing project. The beneficiaries that do not comply with obligations and requirements established in Decree 2,460 will lose the exoneration.

The Decrees will apply according to the Income Tax Law and its Regulations, taking into consideration the determination of the exonerated income, terms and conditions, requirements and obligations. The beneficiaries must file their annual income tax return with their taxable and exonerated global net income. Losses generated due to the exonerated activity during the validity of the Decrees, cannot be offset against the income derived from taxable activities. When the taxpayer makes taxable and exonerated activities, it must prorate common costs and expenses.

### 3. Double Taxation Conventions

Conventions for the avoidance of double taxation serve to define the scope of the taxing power of the states. This is done by distributing the taxable matters between the two countries, providing the exclusive right to tax to one of the contracting states, in some cases, or on a

shared basis, in other cases. The conventions typically contain rules against discrimination between national and foreign persons, and mechanisms for the settlement of controversies through an amicable procedure between the states. These conventions also regulate the international cooperation between the two tax administrations in order to fight tax evasion and fraud.

Venezuela has entered into double taxation conventions with the following countries (all currently in force): Austria, Barbados, Belarus, Belgium, Brazil, Canada, China, Cuba, Czech Republic, Denmark, France, Germany, Indonesia, Italy, Iran, Korea, Kuwait, Malaysia, The Netherlands, Norway, Palestine, Portugal, Qatar, Russia, Saudi Arabia, Spain, Sweden, Switzerland, Trinidad and Tobago, United Arab Emirates, United Kingdom, United States of America and Vietnam.

#### 4. VAT

All purchases and importations of goods and services are subject to VAT liability. The lease of real estate to be used as housing is excluded from VAT; however, the lease of real estate for commercial, industrial or office purposes is deemed to be a service subject to VAT. The actual tax to be paid by each taxpayer is the difference between the taxpayer's output VAT (*i.e.*, the VAT charged to its clients) and its input VAT (*i.e.*, the VAT paid by it to providers of goods and services or upon importation of goods and services) and is determined on a monthly basis. Currently, the applicable rate is 12 percent of the gross price, but certain assets and services are subject to a reduced rate of 8 percent. Also, some goods and services are subject to an additional 15 percent luxury tax. Under the recently enacted Reform to the VAT Law of November 2014, the Executive Branch of the Federal Government is entitled to modify the applicable rates between 8 percent and 16.5 percent the general VAT rate and between 15 percent and 20 percent the luxury tax rate.

Importations by certain persons and institutions, the sale of some basic foodstuffs, gasoline and other oil by-products, education and health services, electricity and water services, and public telephone services, are exempted from VAT.

The exportation of taxable goods or services is also subject to VAT but at a zero percent rate. Exporters subject to VAT are entitled to recover the taxes paid on the goods and services used in their export activities. The tax may be refunded by a cash reimbursement of the tax credit or through the issuance of special tax refund certificates ("CERTs"), which may be used to pay taxes and related charges, such as interest and fines. The CERTs may alternatively be assigned to other taxpayers, normally at a discounted price, for the same offsetting purposes.

Importation of food for shrimp and shrimp larvae: Presidential Decree No. 2.356 (Official Gazette No. 40.931 of June 22, 2016) exonerated from VAT liability, customs duties and customs service fee the importation of food for shrimp and shrimp larvae made by the legal entities that produce shrimp under the "Agreement for the Execution of Import Transactions of Balanced Food for Shrimps and Fish Larvae of the National Shrimp Industry". The Decree entered into force on June 22, 2016 and the exoneration will be valid until June 22, 2018.

Importation of assets for the construction repair, restoration, improvement and maintenance of houses or their demolitions under the Decree of Emergency for Lands and Housing, Venezuelan Housing Mission: Presidential Decree No. 2,394 (Official Gazette No. 40,950 of July 26, 2016) exonerated from VAT liability, customs duties and customs services fees, the final importation of assets for the construction repair, restoration, improvement and maintenance of houses or their demolitions under the Decree of Emergency for Lands and Housing, Venezuelan Housing



Mission (v. <http://www.minhvi.gob.ve/>) and the Barrio Tricolor Mission (v. <http://www.barriotricolor.gob.ve/>) made by Government offices, Government-owned entities and companies. The Decree exonerated from VAT liability the provision of independent services that organs and entities of the Public National Administration hire that are executed or used in Venezuela or abroad in the execution of projects described above. The Decree entered into force on July 26, 2016 and will remain in force during three years.

## 5. VAT Withholding

Special taxpayers are required to withhold 75 percent of the applicable VAT on each payment or constructive payment made to ordinary VAT taxpayers, whether or not they are also special taxpayers. In principle, the amount to be withheld shall be equivalent to 75 percent of the tax rate applicable to the transaction.

The amount to be withheld is 100 percent (*i.e.*, the entire applicable rate) if the invoice fails to itemize the tax, comply with established requirements and/or formalities or when the supplier is not registered with the Tax Information Registry (“RIF”). The VAT withheld must be paid by special taxpayers to the Revenue Service. VAT withholding may cause several cash flow problems to VAT taxpayers.

## 6. Customs and Tax Benefits in Special Zones

According to the Enabling Law of November 19, 2013, the President issued Decree No. 1.425 of November 13, 2014 with Rank, Value and Force of Law of Integrated Regionalization for the Social and Productive Development of the Homeland (Special Official Gazette No. 6.151 of November 18, 2014) (the “Decree”). The scope of the Decree is to regulate the creation, functioning and management of the geographical entities of planning and development, under the System of National Regionalization (*Sistema de Regionalización Nacional*).

The Decree authorizes the President to approve special tax and customs’ benefits for the development of special economic zones (“Zones”). In addition to such special plans, the Decree established other tax and custom’s benefits. In this regard, the President must establish the conditions required for the aforesaid benefits in each Zone.

The companies authorized for operating in the Zones (the “Companies”) shall prioritize their goods for the domestic needs of the country. Lastly, subject to the satisfaction of the local market, the Companies may only sell their goods directly to public entities (as determined by the Executive Branch of the Government) or freely export them.

### *Custom’s Benefits*

The President, may release the customs tariffs and para-tariffs restrictions regarding (i) goods and services destined for the construction of facilities and infrastructure and (ii) raw material required by the companies authorized to operate in the Zones. The Decree does not authorize the President to release health, phytosanitary, zoosanitary, safety and defense regulations.

The Companies may choose between the direct dispatch and the direct unload procedure set forth in the Customs Law.

The payment of taxes for the import of goods and services (*e.g.*, customs tariff customs service fees and VAT) destined for the construction of infrastructure and facilities and raw material may be suspended until the start of the operations of the Companies. When the Decree refers to the



Companies' "regular operations" it is understood that is the start of the commercial operations after finishing the pre-operative stage (the time elapsed for investment, set up and start of the Company). The Companies shall, after start-up, amortize the taxes paid upon the importation of goods and services, according to the amortization schedule set forth by the President.

### *Tax Benefits*

The President may establish a suspensive regime for the payment of the income tax on the income obtained by the Companies, until the start-up of their regular operations. The President shall determine a gradual frame in accordance to the production targets. The Companies shall pay income tax starting from the date they begin their regular operations, as set forth by the schedule of the President.

The Decree designated the Companies as VAT withholding agents. In this regard, the Companies will have to withhold the total amount of the VAT invoiced to the suppliers of goods and services and pay to the National Treasury the VAT withheld, in accordance with the amortization schedule set forth by the President. The suppliers will be entitled to offset the VAT withheld by the Companies, even if the Companies did not pay such withholdings to the National Treasury.

### *Customs Duties*

Import duties must be paid for all products imported into Venezuela. The duties are calculated on the CIF value of the products. Rates generally range from 2 to 20 percent depending on the tariff classification of the products. However, the universe of all these tariffs ranges from 0 percent to 20 percent. In addition, for each import it will be necessary to pay 12% corresponding to Value Added Tax (VAT) and a customs service fee of 1% per cent on the CIF value of the product.

The import duties are produced with the registration of the customs declaration made by the consignee before any customs office of the country authorized for imports. The goods will be subject to the customs regime in force for the date of registration of the declaration. In addition, the fee regulation established a new tariff ranging from 0.1 tax units to 8 tax units for the use of the electronic customs system (commonly known as ASYCUDA) and any other mechanism or electronic system for the detection and verification of documents and merchandises. At present, the tariff only imposes customs duties on imports and permissibility required in some exports.

The taxable amount of these import duties is the customs value of the goods. In order to determine the amount of import duties that will be paid to import the products into Venezuela, the importer must apply the value in ad valorem customs contained in the tariff corresponding to the goods in the customs tariff having as taxable base the CIF value of said goods.

## 7. Other Taxes

### *Organic Law on Science, Technology and Innovation ("Science Law")*

The contributions set out in the Science Law became effective on 1 January 2011. According to the Science Law, all economic sectors of the country, both public and private, are involved in the development of science and technology. For this purpose, the Science Law provides that the companies or legal entities, private or public, domiciled or not in Venezuela, engaged in business activities in Venezuela and obtaining annual gross income exceeding 100,000 tax units in the previous fiscal year must pay a percentage of their gross income to the National Fund for Science, Technology and Innovation at the rate set forth below according to the sector to which they belong:



- 2 percent for companies in the sector of casinos, bingos and similar activities, alcohol, spirits and tobacco
- 1 percent for private companies and legal entities engaged in the mining and oil sectors
- 0.5 percent for public companies or entities engaged in the mining and oil sectors
- 0.5 percent for entities engaged in any other business activity

#### *Organic Law on Drugs (“Law on Drugs”)*

The Law on Drugs provides for the two following special contributions:

- Private legal entities, consortia, public entities with entrepreneurial purposes employing 50 or more workers are required to report and pay to the National Anti-Drug Fund, within 60 calendar days following the closing of their fiscal year, a special contribution equivalent to 1 percent of their net operating profits or gains obtained during the prior fiscal year. Legal entities belonging to economic groups will consolidate their results for the purpose of complying with this special contribution.
- Legal entities engaged in the manufacture or importation of alcoholic beverages, tobacco and their mixes are obliged to report and pay to the National Anti-Drug Fund, also within 60 calendar days following the closing of their fiscal year, a special contribution equivalent to 2 percent of their operating profits or gains in the prior fiscal year.

The Law on Drugs defines the operating profits or gains as the gross profits derived in the fiscal year less operating expenses, the foregoing determined according to general accepted accounting principles in Venezuela.

#### *Organic Law on Sports, Physical Activity and Physical Education (“Sports Law”)*

The Sports Law established, among other obligations, a special contribution intended to fund plans, projects and programs for the development of physical activity and sports, and to sponsor sports athletes through the National Fund for the Development of Sports, Physical Activity and Physical Education. The contribution is equivalent to 1 percent of the net annual accounting profits and must be paid by public or private companies or other organizations engaged in economic activities for profit in the country, whenever such net profits exceed 20,000 tax units. The Sports Law provides that taxpayers may invest 50 percent of the contribution to carry out their own projects oriented towards the development of physical activities and to sponsor sports, provided they are within the guidelines set by the National Sports Institute.

#### *Large Financial Transactions Tax*

Presidential Decree No. 2,169 (Official Gazette No. 6,210. Extraordinary, of December 30, 2015) created a tax on large financial transactions of legal entities and unincorporated economic entities (hereinafter the "Tax"). The Tax is not a novelty because in the past 21 years the Executive established several bank debits or financial transactions taxes. In those cases, however, taxes were extraordinary taxes created on account of a fiscal emergency and with a limited duration.

Decree No. 2,169 will enter into force on February 1st, 2016. Different from the past, Decree No. 2,169 omitted any reference of the Tax's time limit. It looks like the Executive's intention is for the Tax to apply indefinitely in the Venezuelan tax system. Despite the absence of any



official statement, it is evident that the Tax's purpose is to reduce the fiscal deficit.

In general, except for the Tax rate, Decree No. 2,169 is almost an exact copy of Decree No. 5,620, which established the Decree with Rank, Value and Force of Law of Tax on Financial Transactions of Legal Entities and Unincorporated Economic Entities (Official Gazette No. 5,852, Extraordinary, of October 5, 2007), applicable until June, 2008. In that case the tax rate was 1.5%.

The Tax has a 0% rate for the debits to bank accounts of companies specialized in managing food tickets, intended to transfer funds of the employees' food tickets. In this regard, these companies must use banks accounts exclusively to make these operations.

Additionally, the Tax has a 0% rate on the following operations:

- i. Debits in single accounts that banking and other financial institutions maintain in the Venezuelan Central Bank, due to the application of measures established by the Issuing Institution, or derived from the execution of operations with the Venezuelan Central Bank;
- ii. Debits that generate the purchase, sale and transfer of the custody of securities issued by decentralized entities of the Republic, as well the payment of the capital or interests therefrom; and,
- iii. Debits generated by the payment of transactions in the execution of the currency exchange control policy.

Although the 0% tax rate is a typical VAT mechanism that allows exporters to recover the input VAT paid upon the purchase or importation of goods and services used in their export activities, for this Tax purposes the mechanism turns, in practice, into a tax exoneration.

#### *Net Worth Informative Return*

The Revenue Service issued Administrative Order No. SNAT/2017/0003<sup>2</sup> ("Order 0003"), which obliges legal entities qualified by the Revenue Service as special taxpayers ("Taxpayers") to file a net worth informative return ("Return"). Order 0003 considers net worth to be the aggregate of the Taxpayers' assets and economic rights. This definition excludes the Taxpayer's liabilities, differing from the accounting and financial definition of net worth. Therefore, the Return, in substance, establishes an obligation to file an informative return of the assets of the Taxpayer. Order 0003 entered into force on January 16, 2017. The legality of the Order is very questionable, because only laws passed by the National Assembly and regulations issued by the President can establish the obligation and conditions of filing a tax return.<sup>3</sup>

Taxpayers must file the return following the terms and conditions established in the Revenue Service's Webpage (<http://www.seniat.gob.ve>). Likewise, Taxpayers must file the Return before May 30, 2017.

It is not absolutely clear which would be the sanctions applicable to the Taxpayers for not complying with Order 0003. Under one position, if the Taxpayer does not file the return or files it with a delay longer than a year it would be sanctioned with closure of the Taxpayer's offices, premises or establishments for 10 continuous days and a fine of 450 Tax Units (nowadays

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<sup>2</sup> Official Gazette No. 41,075 of January 16, 2017.

<sup>3</sup> Organic Tax Code, Art. 155(1)(e).

equivalent to VEB 79,650.00).<sup>4</sup> If the Taxpayer files an incomplete Return or files the Return with a delay of less or equal to one year, it will be sanctioned with a fine of 300 Tax Units (nowadays equivalent to VEB 53,100.00).<sup>5</sup> Under a second position, if the Taxpayer does not file the return or files it late, it would only be subject to a fine of 150 Tax Units (currently equivalent to VEB 26,550).<sup>6</sup>

## 8. Local Taxes

### *Municipal Turnover Tax on Economic Activities, Industry, Trade, Services and Similar Activities*

All persons engaged in industrial, commercial or similar activities for profit must obtain a municipal license from, and pay a municipal tax to, the municipal jurisdiction (*i.e.*, municipality) in or from which they perform such activities. The amount of the tax is calculated on the basis of a fixed percentage of the taxpayer's gross receipts for the prior tax year. Fixed periodic amounts are established for a few activities. The amount of the tax varies considerably according to the municipal jurisdiction where the taxable activity is performed (as mentioned before, there are 335 municipal jurisdictions in Venezuela).

Generally, the tax is determined annually and paid quarterly within the first month of each quarter. For calculation purposes, taxpayers must submit an annual return reporting their gross receipts obtained from each of their activities. Failure to submit the return and pay the tax on time, or any other infringement of the corresponding municipal ordinance, normally results in fines, suspension or cancellation of the municipal license and temporary or permanent closure of the premises. There is some question as to whether the municipalities can tax activities performed outside their jurisdiction.

### *Municipal Property Tax*

A tax on urban real estate (commonly called Municipal Property Tax) must be paid by the owner of real property. This tax is calculated by applying the tax rate established in the ordinance governing the location where the real estate is located to its municipally appraised value, including the value of the land, buildings and industrial or commercial facilities. The amount of this tax varies considerably according to the municipal jurisdiction where the property is located and even within the same municipal jurisdiction, according to the type, use and purpose of the property. This tax is determined annually and paid quarterly within the first month of each quarter. Generally, the ordinances provide exemptions and exonerations, establish the obligation to submit returns on a periodic basis in order to determine the tax payable, and provide sanctions for any infringements.

### *Miscellaneous Municipal Taxes*

Additional municipal taxes include the vehicle circulation tax, public services tax, commercial advertising tax, public performances tax, and legal games and gambling tax. All of these taxes are expenses which may be deducted from a company's taxable income.

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<sup>4</sup> Organic Tax Code, Art. 103(1) and 108.

<sup>5</sup> Organic Tax Code, Art. 103(3) and 108.

<sup>6</sup> Organic Tax Code, Art. 103(2) and (4) and 108.

# Foreign Investments

Foreign Investments in Venezuela are governed by Decree No. 1,438 with Rank, Value and Force of the Law of Foreign Investments (“LFI”), published in Official Gazette No. 6,152 Extraordinary dated November 18, 2014. The LFI was enacted by the President of the Republic in execution of the Enabling Law dated November 19, 2013. The LFI declared foreign investments as a matter of public interest.

The LFI abrogated and superseded all existing laws and regulations on foreign investments in Venezuela, including among others: (i) Decree 2,095 which issued the Regulations for the Common Treatment Regime of Foreign Capital over Trademarks, Patents, Licenses and Royalties (Official Gazette No. 34,930 dated March 25, 1992) (“Decree 2,095”); (ii) Decree 356 with Rank, Value and Force of Law of Promotion and Protection of Investments; and (iii) Decree No. 1.867 of the Regulations on the Law of Promotion and Protection of Investments.

The LFI granted a term of one (1) year to the National Executive to issue the regulations on the law; and a term of six (6) months to the National Center for Foreign Trade (“Cencoex”) to enact the necessary rulings regarding transfer abroad of foreign investments, in order to develop the contents on exchange control matters.

Notwithstanding the entering into force of the LFI and the abrogation of Decree 2,095, as of the date of this publication, (i) the National Executive has not yet issued the regulations of the LFI; (ii) Cencoex has not yet assumed its attributions pursuant to the LFI; and (iii) in practice, SIEX continues to perform the attributions it had under Decree 2,095.

## 1. The System of Foreign Investments

The LFI ordered the elimination of the Office of the Superintendent of Foreign Investments (“SIEX”), the entity formerly responsible of governing foreign investments in Venezuela, and created the system of foreign investments, which is composed by the following entities:

- A Governing Entity, which is the Ministry of the People’s Power with competence in trade matters. The governing entity establishes the policies for fulfilling the purposes of LFI.
- An Implementing Entity, which is Cencoex. The implementing entity is responsible for implementing the criteria, forms, requirements, rules and proceedings in foreign investments matters. Likewise, Cencoex has wide inspection powers to verify the compliance with LFI and foreign investments regulations in force, being able to coordinate activities with the bodies and entities of the National Revenue Administration, Foreign Relations and other pertinent entities for such purposes. The legal representation of Cencoex is entrusted to its President. Cencoex’ duties and responsibilities include (i) to bring to the Governing Entity’s consideration the adjudge on the merit of the Registration of Foreign Investments and its update, and (ii) the approval of the registration of technology transfer agreements.
- A Sanctioning Entity, which is the Ministry of the People’s Power with competence in finance matters.



## 2. Persons/Subjects Governed under the LFI

Pursuant to the LFI, the following bodies are subject to the application of the law:

- Foreign companies and their affiliates, subsidiaries or related companies, governed or not by International Treaties or Contracts, as well as any other form of foreign organization with economic and productive purposes that perform investments in the national territory.
- Great National Companies, which purposes and functioning are subject to the strategic plan of two or more States.
- Private, public or mixed national companies, and their affiliates, subsidiaries or related companies, governed or not by International Treaties or Contracts, and other organizations with economic or productive purposes which are recipient of foreign investment.
- Individuals, either nationals or foreigners, domiciled abroad, who carry out foreign investments in the national territory.
- Foreign individuals domiciled in the country, who carry out foreign investments.

## 3. Direct Foreign Investments and Foreign Investors

Pursuant to the LFI, foreign investments are contributions made by foreign investors consisting on tangible and intangible resources intended to form part of the subjects recipients of foreign investments in the national territory. Such contributions may be:

- Financial investments in foreign currency and/or any other means of exchange or compensations within the Latin-American and Caribbean integration.
- Physical and tangible capital assets, such as industrial plants, new or reconditioned machinery, new or reconditioned industrial equipment, raw material and intermediate products that form part of the productive process of the subject recipient of the investment. In the case of reconditioned assets, the same relationship between the value of the investment and the lifespan that would apply to new assets must be kept; such relationship will be established by experts appointed by Cencoex for such purposes.
- Immaterial or intangible assets consisting on trademarks, product brands, patents, utility models, industrial designs or drawings and copyright, and all rights to intellectual property embodied in the Constitution of the Bolivarian Republic of Venezuela and the laws that govern this area. It is also included the technical assistance and know-how related to processes, procedures or methods of manufacturing of products, duly supported by physical delivery of technical manuals and instruction documents. These contributions will be considered as foreign investment when the transfer takes place between companies that are not directly or indirectly related, prior registration of the assignment agreement before the competent national authority on intellectual property, provided that the transfer of rights involves the effective transfer of the property of the assigned immaterial or intangible assets to the subject recipient of the investment.



#### 4. Reinvestment in Accordance with LFI Provisions

The LFI defines as “Foreign investors” all foreign individuals or entities that perform an investment registered with Cencoex. The LFI expressly excludes from the definition, the Venezuelan individuals or entities that directly or through intermediaries act as shareholders of foreign companies. This exclusion is particularly relevant since the LFI obliges all subjects under its application, to supply any information that Cencoex may require when the Agency considers that there is hidden information or that corporate structures have been created to (i) impair Cencoex’ knowledge on the internal functioning of companies; or (ii) commit fraud against the law. The research may lead to the lifting of the corporate veil and Cencoex’s decision may be based on the result of the lifting of the veil. The meaning of “piercing the corporate veil” is generally known, but since LFI has expressly included such term (that is not defined in the Venezuelan legislation), Cencoex may investigate any structure and may require information at the level of the ultimate beneficiaries, regardless of corporate forms, nationality, domicile or residence of the individuals or entities involved.

The LFI does not provide for procedures or requirements for the registration and/or the update of direct foreign investments. Possibly this will be governed by the Regulations of the LFI to be enacted by the National Executive.

#### 5. Treatment of the Direct Foreign Investment

The principal aspects set forth in the LFI for the treatment of Foreign Investments are the following:

- The LFI establishes that the constitutive value of foreign investments should be represented by 75% for tangible or physical assets.
- The minimum amount for the purpose of obtaining registration of a foreign investment is the equivalent of USD 1,000,000.00 calculated at the official exchange rate in force at the time of investment. It seems then that the minimum investment must be of USD 1,000,000.00 and at least 75% must be represented by physical assets.
- Cencoex may authorize a lesser amount, but not less than USD 100,000.00, considering the sectorial interests or promotion of small and medium industry and other organizational forms. It is not clear what would be the treatment of investments for less than USD 1,000,000.00 which have not been authorized in smaller amounts by Cencoex, nor what would be the legal status of an investment for that lower amount, since the rights of foreign investors shall have effect only from the date on which Cencoex register the investment.
- Foreign investments should remain in the country for at least five (5) years; after that period, investors can make remittances abroad for registered and updated invested capital.
- With regard to the repatriation of dividends, foreign investors are entitled to report annually in freely convertible currency, and from the end of the first fiscal year, up to 80% of proven profits or dividends coming from registered and updated foreign investment.
- Foreign investors can remit to their country of origin income obtained from selling in Venezuela their shares or investments, or from a capital reduction, having completed the



term of five (5) years mentioned above and also the duties established by the laws of Venezuela.

- With regard to the distribution of net profits in legal tender, the last part of Article 32 of the LFI provides that if net profits are not paid, they may be routed to a reinvestment account only in the same company that have generated them. Under this provision, foreign investors cannot reinvest profits in the company other than those generated for the purposes of registration of direct foreign investment.
- Pursuant to Articles 35 and 37 of the LFI, if a company recipient of an investment is liquidated, up to 85% of the total amount of the registered foreign investment may be remitted abroad “provided that such liquidation occurs as a result of the sale of the company directly to national investors” and in turn Cencorex verifies the full functioning of the productive and commercial operations of the recipient company. In this respect, the following should be noted:
  - (i) If the recipient company is liquidated, the foreign investor may remit up to 85% of the total of the foreign investment (which is not necessarily equal to 85% of what it may be received as a result of the liquidation).
  - (ii) It must be noted that the “sale of a company” differs from the “liquidation of a company.” The sale of a company will never constitute a liquidation thereof. If Articles 35 and 37 of the LFI govern the sale of a company to domestic investors, these articles may imply that when a foreign investor “sales a company” directly to domestic investors, such sale will be considered as a “liquidation of a company”, which will allow foreign investors to remit up to 85% of its registered and updated investment.
- The capitalization of debt will be authorized as a foreign investment only if the investor can prove that the "borrowed funds" were allocated to the real increase of fixed capital or tangible assets of the company recipient of the foreign investment.
- Cencorex' powers provided by the LFI include (i) to approve or reject the remittances of capital for purposes of payments related to investment of initial capital, additional funds for the expansion and development of investment, benefits payments, profits, interest and dividends, prior binding opinion of the Ministry of the People's Power in trade; and (ii) to approve or reject the authorization to transfer abroad of ownership of tangible assets and intangible capital, that are made through financial transactions, prior binding opinion of the Ministry of the People's Power in trade. It is unclear whether under this provision prior approval of Cencorex will be required for the remission of capital abroad and to transfer ownership of tangible assets and intangible capital, in the cases identified.

## 6. Notices

Under the provisions of the LFI, the following matters must be notified to Cencorex:

- Any kind of investment in domestic or foreign companies which are in the national territory, made after the initial registration of a foreign investment through the purchase or sale of shares or other titles, credits, mergers, acquisitions or any other mean that does not involve the real investment of capital, but merely financial. Any transaction of this nature that is carried-out without giving notice to Cencorex will be rendered void.



- The reinvestment of profits under the provisions of the LFI. Cencorex may raise observations to such transaction within sixty (60) days following the filing date.
- The reduction of the capital stock of companies recipient of foreign investment. This notice must be given within thirty (30) days following the registration of the Minutes of the Shareholders' Meeting that resolved upon the capital reduction, by filing a copy of the registered Minutes of such Shareholders' Meeting and a copy of its legal publication.
- The latest amendments to the corporate By-laws of the recipient companies.

#### 7. Import of Technology and Trademark and Patent License

The LFI maintains the obligation to register "technology transfer agreements" with Cencorex. In this respect, the following should be noted:

(i) The LFI did not establish the procedures, requirements or conditions to register "technology transfer agreements" with Cencorex. Possibly this will be governed by the Regulations on the LFI, to be enacted by the National Executive.

(ii) Although in principle, trademark and patent license agreements should be included in the definition of "technology transfer agreements" provided for in the LFI, the law is not clear as to this particular issue. Therefore, it is not clear as to whether trademark and patent license agreements should be registered with Cencorex.

#### 8. Inspection Powers, Preventive Measures and Sanctions

Cencorex has wide powers of inspection, in order to verify compliance with the LFI and other regulations on foreign investment. Additionally, Cencorex has special powers to issue preventive measures on subjects that are under inspection. It is very likely that the Regulations on the LFI further elaborate on the preventive measures that may be issued by Cencorex.

Failure to comply with LFI is sanctioned with a fine ranging between 1,000 Tax Units and 100,000 Tax Units, without prejudice to the civil and criminal actions that may be applicable. In case of recurrence, the fine will be increased by one hundred percent (100%). Fines must be paid within fifteen (15) working days from the applicable notice. Once paid, the offender shall file with the Ministry of People's Power with competence in finance, within the business day after the payment, the settlement form in order to proceed with the issuance of the certificate of release.

#### 9. Jurisdiction

The LFI eliminated the possibility of submitting disputes concerning foreign investment to international arbitration, since it states that disputes must be subject to the jurisdiction of the Venezuelan courts. In that sense, an investment framework agreement or an international business investment agreement executed or negotiated by the Republic, after the publication of the LFI, must be based on the provisions of the law. As an exception, the LFI provides that the Republic may participate and use other dispute resolution mechanisms built within the framework of the integration of Latin America and the Caribbean.

Additionally, it is important to mention that Venezuela has executed a number of bilateral agreements for the promotion and protection of investments with Argentina, Barbados, Germany, Belarus, Canada, Chile, Costa Rica, Cuba, Denmark, Ecuador, Spain, France, United



Kingdom, Iran, Lithuania, Netherlands, Paraguay, Peru, Portugal, Czech Republic, Russia, Sweden, Switzerland, Uruguay, Vietnam and Belgium-Luxembourg Economic Union. As a result, disputes that may arise between a foreign investor whose country of origin is one with which Venezuela has a treaty or agreement in force for the promotion and protection of investments, could be submitted to international arbitration, under the terms of the respective treaty. The treaties with Brazil and Italy have not entered into force yet. The treaty between Venezuela and the Netherlands ended on November 1, 2008. However, with respect to investments made prior to the date of termination of the latter treaty, its provisions remain in force for a period of 15 years from the date of termination.



# Intellectual Property

Industrial Property matters are governed by the 1955 Industrial Property Law (the “1955 IPL”), TRIPS and the Paris Convention. The Venezuelan Criminal Code, the Law against the Crime of Contraband and the Special Law on Electronic Crimes also contain provisions that deal with intellectual property. As background information, until 22 April 2006, Venezuela was a member of the Andean Pact and as such, trademarks and patents were governed by Decision 486 of the Andean Pact, which is TRIPS compliant. On 26 April 2006, Venezuela notified the Andean Pact countries of its decision to withdraw from the pact. In spite of the notification of withdrawal, intellectual property authorities continued applying Decision 486 in connection with industrial property matters; however, in September of 2008, the Industrial Property Registry published a notification indicating that the 1955 IPL would be applied to all intellectual property matters as of that date. The 1955 IPL is not TRIPS compliant and, in fact, collides with TRIPS and the Paris Convention on certain issues. Such collisions are untested to date.

## 1. Trademarks

Trademarks are registered with the Industrial Property Registry, a Division of the Autonomous Service of Intellectual Property (“SAPI”) which is part of the Ministry of the People’s Power for Economy and Finance. The right to exclusive use of a trademark in Venezuela is acquired upon registration with the Industrial Property Registry. Notwithstanding this, the mere use of the trademark vests in the user the right to oppose subsequent applications filed by third parties for identical or similar trademarks and to request the cancellation of a third party’s registration on the grounds of prior use. This cancellation right is subject to a two-year period following registration of the trademark.

The trademark registration process begins by filing an application in the appropriate national class and presenting the required documents. Under recently implemented changes, once the application is reviewed to assure compliance with formal requirements, the application is reviewed as to registrability and, if relevant, published as denied. If the application is not denied, the Registry orders its publication in a local newspaper by means of an official notice. Within two months of the notification, the application must be published in a newspaper; failure to publish the application in a newspaper will result in the application being declared abandoned. Once the registry verifies publication of the application in the newspaper, it is then published in the Industrial Property Bulletin to allow third parties to oppose. If no opposition is filed, or if an opposition is dismissed, the application is published as granted in a future Industrial Property Bulletin. Trademarks are granted for 15 years and may be renewed for successive 15-year periods. There is no express grace period for renewals.

Pursuant to the 1955 IPL, it is possible to obtain protection for trademarks, trade names and slogans (collectively referred to as Trademarks). Trademarks are classified according to the National Classification System.

Notorious trademarks do not enjoy express protection in Venezuela pursuant to the 1955 IPL, but are protected by the Paris Convention and TRIPS.

Trademark rights can be enforced through civil, administrative and criminal actions. As a result of a civil action, the owner of a registered trademark may be entitled to a form of injunctive relief which is discretionary on the part of the judge. In our opinion, while not expressly provided for in the 1955 IPL, parallel imports cannot be stopped from a trademark standpoint, *i.e.*, the owner of a registered trademark cannot prohibit a third party from using the registered trademark in connection with products that are provided by the trademark owner, a licensee of the trademark

owner or another authorized person. Parallel imports were expressly permitted under Decision 486; however, the 1955 IPL does not contain any provisions in this regard.

A trademark may be cancelled at the request of any interested third party if it has not been used in Venezuela by its owner or licensee for two consecutive years during the life of the registration. Subsequent use does not cure the defect caused by non-use. Non-use of a trademark and its subsequent cancellation may also be alleged as a defense in trademark infringement, opposition, or cancellation proceedings. There are no standards set for determining when a trademark is deemed in use pursuant to the 1955 IPL; however, we believe the same use standards of Decision 486 would be applied, that is, a trademark would be deemed in use when the products and services bearing the mark are available in the market in the quantities and manner that correspond to the nature of the products covered by the trademark.

The Industrial Property Registrar, either *ex officio* or upon petition by a third party, can declare a registration null and void when it was granted in violation of the law.

Trademarks registered and valid in Venezuela may be licensed and assigned through written agreements. Trademark license agreements must be registered with SAPI. Trademark assignments must also be registered with SAPI. Pursuant to the 1955 IPL, if the assignment or license is not registered, the assignee or licensee will not be deemed to be a user, and the trademark may be susceptible to be cancelled for non-use.

## 2. Patents and Related Intellectual Property

Patents are governed by the 1955 IPL, the Paris Convention and TRIPS. Inventions, industrial drawings and industrial models are subject to protection in Venezuela. Inventions are deemed to be all products or procedures in all fields of technology that are new, inventive and applicable to industrial activities.

Excluded from patent protection are beverages and foodstuff intended either for human or animal consumption; medicines of all types; pharmaceutical and chemical preparations, reactions and combinations; financial systems, combinations or programs whether speculative, commercial, advertising or those of simple control or supervision; simple use or exploitation of natural substances or forces, even of recent discovery. Also excluded from patent protection are the new use of already existing articles, objects, substances or elements or their use for specific purposes and simple changes or variations in form, dimensions or materials derived therefrom; work modalities or trade secrets; simple theoretical or speculative inventions not evidencing well-defined practical and industrial applications; the juxtaposing of elements already patented or in the public domain, unless joined differently, thereby losing their functional characteristics, and inventions made known to the public or disclosed in printed works or by any other source, as well as those already in the public domain resulting from the exhibition, sale or publicity, locally or abroad prior to their protection; and inventions contrary to National Law, public health or order, morality or proper behavior and state security. Furthermore, the 1955 IPL states that only industrial models or drawings intended for the manufacture of products in Venezuela may be patented.

Invention patents, industrial models and industrial drawings are granted for a maximum term of five or ten years, as preferred by the applicant. The first application validly filed in a Paris Convention member country confers a priority period of one year for inventions and six months for industrial models and drawings.



Once filed, the patent application is reviewed for compliance with formal requirements and then three publications in a local newspaper, with intervals of 10 days, are ordered by means of an official notice issued in the Industrial Property Bulletin. Once published in the newspaper, the patent application is published in the Industrial Property Bulletin in order to allow third parties to file oppositions. If no opposition is filed or if the opposition is dismissed, the application is reviewed for compliance with substantive requirements and subsequently published as granted or denied in an Industrial Property Bulletin.

The patent vests in the owner the right to prevent third parties from exploiting a patented invention and/or process without authorization. A patented invention must be exploited directly by the owner or by a person authorized by the owner.

Patents may be licensed by their owners in writing. Patent licenses must be registered with SAPI. The assignment of any rights to the patents or the use thereof must also be registered with SAPI. If a patent has been infringed, the owner may institute civil or criminal actions.

### 3. Trade Secrets

Trade secrets are expressly protected in TRIPS, provided the information is secret, it has commercial value and the owner has adopted reasonable measures to maintain its secrecy. Information in the public domain or which is apparent to a person with sufficient technical skills or that must be disclosed pursuant to the law or a court order does not qualify as a trade secret. Trade secrets are also protected in the Venezuelan Criminal Code. Trade secrets can be enforced through civil and criminal actions.

### 4. Copyright

Creative works are protected pursuant to the Copyright Law of 1993, the Regulations to that Law, the Bern Convention, and the Universal Copyright Convention. The Venezuelan Copyright Law protects the rights of authors of creative intellectual works, whatever the type, form of expression, merits or use. Among the creative works protected are literary, artistic and scientific works, including computer software, technical documentation and user manuals; audiovisual works, including both motion picture and television programs; works to support teaching or research; video clips, and radio programs, such as dramatic programs, musical productions, special programs and documentaries.

The Copyright Law defines software as the expression in any form, language, notation or code of a set of instructions intended for a computer to perform a given task or function, whatever the form of expression or the hardware where it has been installed. It is presumed that the authors of computer software have assigned the unlimited, exclusive right to exploit their work to the producer. The law permits the user to make one copy of the program solely for backup purposes, and to feed the software into the internal memory of the computer solely for the user's personal use.

Copyright protection is valid for the life of the author, plus 60 years. The Copyright Law provides for moral as well as patrimonial rights. Under most circumstances, moral rights cannot be assigned or waived. The right to exploit a creative work includes the right to communicate it to the public and to reproduce it. Copyrights may be assigned, either for consideration or gratuitously. There is a rebuttable presumption that all assignments are made for consideration.

Copyrights may be licensed for consideration under a non-exclusive and non-transferable license. Where intellectual property is created in the course of employment, the employee is presumed to have granted the right of use to its employer.



# Mergers and Acquisitions

## 1. Legal Environment

Statutory mergers, though provided for by the Venezuelan Commercial Code, have, in practice, been used sparingly, if at all. This is due to the inadequacy and ambiguity of the statutory rules and to the absence, until the amendment of the 1991 Income Tax Law, of any tax rules governing the cost basis of assets acquired through statutory merger. As a result, acquisitions are normally made in Venezuela through either asset or share purchases, which are governed by general principles of contract law. Statutory mergers have generally been confined to intra-company transactions and have not been extended to use in arms' length transactions. This is probably due to the fact that, although the transfer of assets and liabilities in the case of a statutory merger does not generate a taxable gain or loss for the transferor or the transferee, and the assets and liabilities are reflected on the books of both parties to the transaction on the same basis, there is no tax-free treatment granted to the shareholders of the merged corporation upon receipt of shares in the surviving corporation. Besides the Commercial Code rules on statutory mergers and the rules governing public offers in general, transfer of employment contracts, bulk sales and competition rules prohibiting certain economic concentrations, there is very little legislation governing mergers and acquisitions in Venezuela. It must be pointed out that the Antimonopoly Law (which repealed the Law to Promote and Protect the Free Exercise of Competition of 1992) establishes that the notification, evaluation and approval procedures regarding economic concentration operations will be instituted in the respective Regulation that must be enacted. It is not clear if there will be a change in respect to the obligation to notify and/or request authorization for the realization of some or all concentration operations. In this sense, it is necessary to wait for the Regulation to be issued.

## 2. Shares versus Assets

Besides the buyer and seller's specific commercial considerations, the choice between a share transaction and an asset transaction is influenced mainly by tax considerations and the need, if any, to avoid the assumption of hidden liabilities by operation of law.

### *Share Purchase*

The seller normally prefers a share purchase since it usually provides more latitude for tax minimization. From the buyer's perspective, a share purchase may be attractive if the target company has significant tax loss carry forwards. Such losses continue to be available to offset the income of the target company after the acquisition. The absence of a value-added tax in the case of a share transaction may also be regarded as an advantage by the buyer.

### *Asset Purchase*

The buyer will typically find an asset transaction more advantageous. This is because the buyer may obtain a stepped up tax cost basis for depreciable or amortizable assets, including goodwill, equal to the purchase price and through proper use of bulk sales rules, avoid exposure to certain liabilities not otherwise expressly assumed in the purchase agreement. To the extent that the asset transaction has been taxed, there is no tax on dividends distributed by the seller to its shareholders. This means that the shareholders of the seller will not have an additional tax burden when ultimately receiving the proceeds of an asset transaction. In the case of an asset transaction, however, the selling company's tax loss carry-forwards are not available to the buyer. In the case of taxpayers excluded from the adjustment for inflation for tax purposes (banks and financial institutions since 2015 and special taxpayers since 2016), they will not be entitled to include, as part of the tax cost basis of the assets sold, the adjustment for inflation for

fiscal years 2015 or 2016, as applicable, and thereafter. This will probably result in a higher taxable gain for the seller.

The buyer must withhold, at the source, 5 percent of the purchase price of both asset and share acquisitions unless payment is made in kind, for example in marketable securities, or the seller is able to take advantage of a full exemption set out under a double taxation convention. Additionally, in the case of asset acquisitions, a value-added tax applies to the portion of the purchase price allocable to tangible personal property, which may create a cash flow problem for the buyer unless the buyer's existing or projected sales volume is relatively high.

In the absence of statutory publications under the bulk sales regulations, the transferee becomes jointly and severally liable for all the transferor's liabilities. The responsibilities of the transferee, however, may be limited to those expressly assumed in the asset acquisition agreement, provided that the statutory publications required under the bulk sales regulations have been made. The transferee will be jointly and severally liable for the pending tax liabilities of the transferor on the date of the transaction. The transferee's joint liability will cease one year after the notification of the bulk sale to the relevant Tax Authorities. Notwithstanding the statutory publications, the transferee will be liable for any violations of environmental regulations by the transferor that have not been sanctioned prior to the asset transaction.

### 3. Regulatory Framework

#### *Foreign Investment Regulations*

Foreign equity investments in any business activity are unrestricted in Venezuela, except for development of the strategic sectors according to the national interest and the provisions of the Constitution and the national legislation. Furthermore, the Executive Branch may establish foreign investment regimes with different foreign investment percentages than the ones set forth in the Foreign Investments Law due to security and defense of the Nation matters. There are other limitations for the participation of private parties (local or foreign) in certain specific regulated sectors, e.g., hydrocarbons.

#### *Rules on Competition*

The Venezuelan Antimonopoly Law prohibits economic concentrations that restrain trade or result in a dominant market position. The Antimonopoly Superintendence is empowered to enjoin a prohibited economic concentration and to order its subsequent divestiture and apply substantial penalties.

### 4. Acquisition of a Public Company

The Venezuelan Securities Market Law contains the general rules for the acquisition of stock of public companies. Notice shall be given to the National Superintendent of Securities in cases where a person or group of related persons intends to acquire, in one or several transactions, a number of shares of a listed company that is deemed to represent a "significant equity participation." In this case, a public tender offer must be made and all shareholders are afforded an opportunity to sell their shares on a pro rata basis.

### 5. Banks and Financial Institutions

The acquisition of shares of licensed banks or other financial institutions is governed in Venezuela by the Law of Institutions of the Banking Sector. The transfer of shares of financial institutions must be registered with the Superintendence of Banking Sector Entities regardless of the percentage of shares involved.



The direct or indirect transfer of shares that represent 10 percent or more of the capital stock of a financial institution requires the prior authorization of the Superintendence of Banking Sector Entities.

#### 6. Labor Law Considerations

In the event of a share purchase, the relationship between the entity and its employees is not affected. In an asset purchase the buyer becomes the substitute employer of the employees transferred as a result of the transaction. The buyer in this case becomes liable by operation of law for all pre-existing labor obligations. This includes, among other items, all seniority and vested termination indemnities. An employee who resigns as a result of the asset transaction (for considering it not convenient to his/her interests) would be entitled to receive the indemnities provided for in the law as if the employment relationship had terminated for reasons not attributable to the employee. The transferor is jointly and severally liable with the substitute employer for all the labor rights that the transferred employees have accrued for up to a term of five years as of the date of the change of the employer (or as of the date the respective judgment becomes final in the event of judicial claims). Thereafter, only the substitute employer continues to be liable. In the event of a transfer of employees incidental to an asset transaction, notice of such transfer must be given to the affected employees, the competent Labor Inspector's Office(s) and the union(s) of which any of the employees involved is a member.

#### 7. Tax Law Considerations

In structuring a transaction, while income taxes may be minimized in both share and asset acquisitions, special care must be taken to avoid gift tax implications. Due to the high levels of inflation, the historical cost is significantly lower than market value and, consequently, an asset purchase at market value may result in significant future tax savings based on inflationary adjustments for tax purposes in the case of ordinary taxpayers engaged in activities other than banking and finance. As indicated in the Tax section, for fiscal years commencing after December 31, 2015 special taxpayers are excluded from the adjustment for inflation system for tax purposes. Banking and financial institutions were excluded from the adjustment for inflation system in 2014.



## Banks

The Banking Institutions Act (“Banking Act”) published in the Official Gazette No. 40.557 dated December 8, 2014, regulates the incorporation, operation, supervision and control of banking institutions operating in Venezuela. Pursuant to the Banking Act, the conduction of financial intermediation, deposit taking, private banking services and other banking activities (with the exception of lending) in Venezuela is strictly reserved to banks licensed under the Banking Act (“Banks”).

Moreover, the Banking Act sets forth the regulations applicable to (i) exchange operators and (ii) entities that provide collection and other administrative services to banks, which constitute banking-related services. These entities are also subject to licensing requirements under the Banking Act.

Banks, exchange operators and entities engaged in the provision of banking-related services, licensed under the Banking Act, are subject to the control and regulatory powers of the Office of the Superintendency of Banking Institutions (“Bank Superintendency”). The Bank Superintendency is also vested with broad powers to issue rules regarding activities regulated by the Banking Act.

Pursuant to the Banking Act, financial intermediation consists of habitually receiving funds from third parties under any modality to provide financing or to invest in public debt securities in Venezuelan under any type of contractual arrangement. Unauthorized financial intermediation, exchange activities, unlicensed habitual attraction of funds from the public and the performance of any activities reserved to banks under the Banking Act are sanctioned with imprisonment ranging from eight to twelve years.

Banks wishing to obtain the authorization to operate as such must meet several requirements, including, without limitation: (i) being incorporated as a public limited company with a minimum of ten (10) nominative shares of the same class, and (ii) meeting the applicable individual minimum capital requirements set forth in the Banking Act. All the requirements must be met and maintained by banks during the term of authorization granted. Additionally, the Banking Act sets forth numerous cases of situations or circumstances which preclude the persons involved from being a shareholder or director of a bank.

Pursuant to the Banking Law, individuals or legal entities wishing to purchase an amount of shares representing ten percent (10%) or more of the capital stock of a bank or voting power in the Shareholders’ Meeting thereof, must obtain the prior authorization of the Superintendence of Banks. Such authorization is required even if the shares are purchased through the stock exchange. All transfers of shares of financial institutions must be registered with the Superintendence of Banks.

There are no limitations on foreign investments in the financial sector. In this regard, foreign banks that meet the requirements set forth in the Banking Act can set up branches or subsidiaries in Venezuela.

The Banking Act provides that foreign banks may act in Venezuela only through their representatives in Venezuela (“Representatives”). Representatives of foreign banks must obtain prior authorization from the Bank Superintendency in order to act in Venezuela. Representatives are very limited in their scope of activities. Pursuant to the Banking Act, representatives may only promote (i) the services of the foreign bank they represent among companies of the same nature that operate in Venezuela; (ii) the financing offers of the foreign bank they represent



among individuals and companies interested in the purchase or sale of goods and services in foreign markets; and (iii) the services of the foreign bank that they represent among potential demanders of credits or external capital. In addition, the Banking Act expressly prevents representatives from (a) carrying out operations and rendering services that constitute activities of the foreign bank that they represent; (b) receiving funds and investing such funds directly or indirectly in

Venezuela; (c) offering or investing in securities or other foreign securities in Venezuela; and (d) advertising their activities in Venezuela.

### Universal Banks

Universal banks are omnibus financial institutions that perform all intermediary financial operations and related activities.

### Development Banks

Development Banks are financial institutions engaged in the development, financing and promotion of projects aimed at the industrial and social development of the country, as well as economic and social activities for specific productive sectors of the country. The capital stock of this type of banks must be subscribed to by the Bolivarian Republic of Venezuela, and private entities may participate in amounts not surpassing the amount represented by the Bolivarian Republic of Venezuela.

### Micro-financial Banks

Micro-financial banks are financial institutions engaged in the development, financing and promotion of the production of goods and services of small and medium commercial enterprises, the popular and alternative economy, and small entrepreneurs. Micro-financial banks provide credit under rates and parameters different from the rest of the banking institutions and may perform other financial intermediation activities as set forth in the Banking Act.



# Securities Market

## General Overview

The Venezuelan securities market system is broadly regulated in Venezuela and its activities are subject to the strict control and supervision of (i) the Superior Body of the National Financial System (“OSFIN”); and (ii) the Superintendency of National Securities (“NSS”), formerly denominated as the National Securities Commission.

The Securities Market Law, published on Extraordinary Official Gazette No. 6.211 dated December 30, 2015, (“SML”) establishes that issuers of publicly offered securities, brokerage firms, securities brokers, investment advisers, stock exchanges and transfer agents, among others, are subject to the control and supervision of the authorities previously mentioned.

The conduction of (i) the public offering of securities; (ii) securities brokerage and intermediation; and (iii) investment advice, which includes the distribution of research reports containing recommendations in connection with the purchase and sale of securities issued in Venezuela or abroad, are restricted activities, subject to NSS’s regulations and prior authorization from the NSS.

The public offering of securities in Venezuela is subjected to prior authorization from the NSS. Private offerings of securities are beyond the scope of the SML and, hence, not subject to prior authorization from the NSS. The SML, however, does not provide any guidance when it comes to defining the thin line between public and private offerings of securities. In the absence of such definitions, the NSS has traditionally applied a three-pronged test to distinguish between private and public offers. The three prongs are based on:

the number of people to whom the offer is addressed. If the offer is made to a substantial number of people, it is likely that the offer will be considered public. As the number of addressees increases, the risk that the offering is deemed a public offering will increase; the means through which the offer is made. Any form of public dissemination or marketing of the offering increases the risk of the offering being characterized as a public offering; and the identification of the class of offerees. If the offer is made generally and indiscriminately within a class, unlike an offer made particularly to a group of people each identified by name, the offer is likely to qualify as public.

A public offering of securities is the offering of securities made to the public or to sectors or designated groups by means of any type of publicity or dissemination. The NSS is empowered to characterize an offering in case of doubt according to its nature.

The SML defines securities as “financial instruments representing property or credit rights over the capital of a company, issued on short, medium or long terms, en masse, possessing equal characteristics and offering the same rights within a given class”. In addition, pursuant to the SML, the following instruments are also considered securities: (i) derivative instruments; (ii) instruments or securities representing the right of an option to purchase or sell securities; (iii) future contracts over securities; and (iv) in general, any other type of instrument the value of which is determined and fixed by reference to the value of other assets or group of assets (SML, Article 16).

The unauthorized public offering of securities in Venezuela is subject to the following sanctions: (i) fines ranging between 5,001 to 10,000 tax units; and (ii) imprisonment ranging from two to six years. The conduction of activities governed by the SML in breach of the regulations issued by

the NSS is sanctioned by fines ranging from 5,001 to 10,000 tax units. Currently, a tax unit is equivalent to VEF 300.00 (approximately US\$ 0.42 at the official rate of VEF 710.59 per US\$1). This value is adjusted annually as per inflation.

Issuers of securities, securities operators and investment advisors are also subjected to the control and regulatory powers of the NSS; and required to comply with several reporting requirements and other detailed restrictions and obligations, among others.

### 1. Securities Brokerage

The performance of securities brokerage activities within Venezuela is restricted. It may only be carried out by authorized securities brokers duly authorized by the NSS. Those are individuals or legal entities authorized to carry out, on a regular or habitual basis, intermediation activities with securities in the primary and secondary securities markets in (i) their own name, on their own behalf or on behalf of third parties, or (ii) in the name and on behalf of third parties.

### 2. Investment Advisory Services

The rendering of investment advisory services within Venezuela is an activity that should only be conducted by investment advisers licensed under the SML. Investment advisers are defined by the law as individuals or companies (ii) that conduct studies regarding securities and the issuance thereof and (ii) regularly offer advice, opinions and assistance related to the opportunities for the investment and the purchase and sale of securities in the securities market.

### 3. Rules on Tender Offers

The Venezuelan SML, the Rules on Public Offers to Acquire, Exchange and Take Over Public Companies and the Rules on the Purchase of Shares through the Public Offering of Shares, Tender Offers and Public Exchange Offers are the main regulations on tender offers in the Bolivarian Republic of Venezuela. Under these regulations, any person or entity (“Introducer”) that intends to acquire, complete or increase, in a single or successive acts, either directly or indirectly, 10 percent or more of the capital stock (“Significant Participation”) of a public company (“Target Company”) must comply with the procedures set for a public acquisition offer (“PAO”), a public exchange offer (“PXO”), or a public takeover offer (“PTO”), as the case may be.

PAO is a term that refers to the procedure and regulations applicable to an Introducer that intends to acquire a Significant Participation in a Target Company by offering to pay a determined amount of money as consideration thereof. PXO refers to the procedure and regulations applicable to an Introducer that intends to acquire a Significant Participation in a Target Company by offering to deliver securities as consideration thereof. PTO is the procedure and regulations applicable to an Introducer that intends to acquire shares of a Target Company in order to reach a political majority in such company that enables the Introducer to control the decisions of its Shareholders’ Meeting, regardless of the consideration offered.

The procedures established by the NSS for PAOs, PXOs, and PTOs are mandatory, notwithstanding (i) the mechanism used for the acquisition of the Significant Participation in the Target Company, including private negotiations and acquisitions through the stock exchanges; (ii) that the acquisition is made in a single act or in successive acts; and (iii) the legal structure used for the acquisition of the Significant Participation in the Target Company, be it purchase, assignment, usufruct, participation, contractual pacts regarding voting rights or any other having an equivalent effect. Such procedures also apply to cases of acquisition of shares or rights of any nature abroad that directly or indirectly allow reaching a Significant Participation in a Target



Company organized or domiciled in Venezuela, without impairing the compliance with the requirements set by the laws of the country where the acquisition is made.

The NSS has a period of five stock exchange business days to authorize the disclosure of the report, starting on the date the report is filed by the Introducer. The report shall be confidential until its disclosure is authorized by NSS.

Finally, the PAOs, PXOs, and PTOs of Venezuelan financial institutions are subject to additional rules issued by the Banking Regulatory Agency.

#### 4. National Public Debt Brokerage

Individuals or companies habitually conducting brokerage activities with securities in the securities market, if previously authorized by the NSS, may conduct brokerage activities with national public debt securities and keep such securities in their portfolio.



# Foreign Exchange Control in Venezuela

## 1. Exchange Control System Main Features

In 2003, the Venezuelan Government imposed a foreign exchange control system. In 2005, the Law against Illegal Foreign Exchange Transactions was issued by the government to regulate the exchange control (the “Exchange Control Law”). Subsequently, the provisions of the Exchange Control Law have been modified during the years 2008, 2010, 2013, 2014, 2015 and 2017 (“Exchange Control Regulations”).

The Exchange Control Regulations provided for: (i) the mandatory sale to the Central Bank of Venezuela (“CBV”) of foreign currency resulting from the exportation of goods, services and technologies; or any foreign currency funds that entered the country, and (ii) a procedure to purchase foreign currency from the CBV for certain items expressly provided for in the exchange regulations.

The Exchange Control Regulations in force before the 2015 law conceived three official exchange rates for the purchase of USD for VEB. The first exchange rate was fixed in VEB 6,2842 per USD 1 for the purchase and VEB 6,30 per USD 1 for the sell. Such exchange rate was applied for the import transactions of the goods that the government deems as priority goods (“6,30 Rate”). The second rate of exchange was calculated in accordance with the exchange rate resulting from the last allocation of foreign currency performed through the Complementary System for the Administration of Foreign Currency (Sistema Complementario de Administración de Divisas, “SICAD Rate”). The third rate raised from the daily transactions carried out through the Marginal System of Foreign Currency, which involved the free purchase and sale of foreign currency and securities denominated in foreign currency (Sistema Marginal de Divisas, “SIMADI Rate”).

In all matters related to the sale of foreign currency to the private sector at 6,30 Rate and SICAD Rate, the coordination, administration, control and management of requirements, procedures and restrictions are functions of the National Center for Foreign Trade (Centro Nacional de Comercio Exterior, “CENCOEX”) a decentralized entity assigned to the Vice-presidency of the Republic, created on November 21, 2013 by Decree No. 601, with the purpose to develop and implement the national policy for the administration of foreign currency, exports, imports, and foreign investments.

Venezuelan banks act as intermediaries for all transactions between the CBV and individuals or corporations entitled to acquire foreign currency in the official exchange market.

CENCOEX authorizes the applications for the purchase of foreign currency filed by applicants who are beneficiaries of the items. In any event, the beneficiaries do not have vested rights to purchase foreign currency at the official rate of exchange even if they are under an authorization to purchase foreign currency (“AAD”) because the CBV may reserve the right to sell foreign currency due to budgetary considerations.

Apart from the restrictions imposed on the purchase and sale of foreign currency by the Exchange Control Rules, there are statutory prohibitions or restrictions on certain real estate contracts payable in foreign currency. However, the exchange control and statutory restrictions and prohibitions are exceptions to the validity of most contracts for goods and services in foreign currency whose validity is supported by the Constitution, the Civil Code and the law of the CBV.

The exchange control regime had important changes with the enactment of the Exchange Agreement No. 35 ("Agreement No. 35") published in the Official Gazette No. 40,865 dated March 9, 2016. This Agreement No. 35 creates in substitution of the above mentioned: (i) the protected system for the import of preferential goods (denominated as "DIPRO"), with the exchange rate of VEB 10 per 1 USD ("DIPRO Rate"), and (ii) a floating complementary system for all other goods that are not subject of the DIPRO system (denominated as "DICOM"), subject to daily fluctuations.

On November 28, 2016, the new Agreement No. 36 published in the Official Gazette No. 41,040, established a special exchange regime for tourism commercial entities (hotels, duty-free shops, travel agencies, etc.). Under this special regime the tourism entities are authorized to collect payments from non-Venezuelan residents in foreign currency and are allowed to retain and manage a percentage of their income in foreign currency.

The remaining foreign currency obtained must be sold to the Central Bank, which will acquire it at the DICOM rate. In addition, Agreement No. 36 sets forth a mechanism through which air transport companies may be authorized to deduct from the foreign currency of mandatory sale to the Central Bank, the amounts destined to cover the costs and payments necessary to ensure the continuity of their service that cannot be covered with the percentage of foreign currency that they may retain.

On February 23, 2017 the reform to Exchange Agreement No. 34 was published in the Official Gazette No. 41,102, and it established that individuals and private entities may retain and freely manage up to 80% of the income received in foreign currency of the exports of goods, services and technologies. The rest of the foreign currency will be sold to the CBV at DICOM Rate. Connected with the Agreement No. 34, the Providence No. 014, published in the Official Gazette No. 40,956 dated August 1, 2016, the formal duties of the exporters are further explained.

On March 22, 2017 were published in Official Gazette No. 41,119 the Decree 2,777 and the Decree 2,778. The Decree 2,777 creates the Foreign Currency Productive Fund ("Fund") and mandates the Venezuelan public companies to maintain their foreign currency accounts exclusively in (i) the CBV or (ii) the Bank of Economic and Social Development of Venezuela ("BANDES") unless expressly authorized by the President, the Fund is fed by the revenue of those public entities, in consequence they cannot manage any part of their foreign currency income.

The Decree 2,778 creates a Register of Securities, Investment and Other Financial Assets in which all the investments in securities or other financial assets of Public banks and companies have to be registered.

On May 19, 2017 were published in the Official Gazette No. 6,300 the Decree No. 2,877, the Exchange Agreement 38 (the "Agreement No. 38") and the Resolution No. 17-05-01. The Decree No. 2,877 remove the Cencoex functions regarding the administration of foreign exchange, the export control and the national and foreign invest, leaving the import functions. Now, these functions of the Ministry of Commercial Trade and International Investment; and the foreign exchange operations with "DICOM" are now managed by the new Foreign Currency Auction Committee, this one, created by the Resolution No. 17-05-01 and under to the CBV.

The Agreement No. 38 established a new DICOM system, where: (i) natural and legal persons may participate in the foreign exchange auctions; (ii) those auctions will be made under a system where the value proposed by the offeror is the one that will be paid, regardless of the

exchange rate resulted from the auction; (iii) the auctions are going to be governed by the Foreign Currency Auction Committee, which will call and establish the rules over the auctions, set the exchange rate and regulate all the aspects regarding DICOM; (iv) the auctions will be composed by an ordinary form and a contingency form, the first one where anybody may participate without any restrictions and the second, when the foreign currency cannot be adjudicated, and (v) the natural persons may acquire a maximum of USD 500.00 during every quarter up to maximum of USD 2,000.00 yearly; and the legal persons may acquire the monthly equivalent of the 30% of their declared gross monthly average income in the fiscal year immediately preceding that year, up to a maximum of USD 400,000.00.

## 2. Comments regarding the so-called “Parallel Market”

*The Exchange Control System only controls the purchase and sale of foreign currency*

In substance, the purchase or sale of foreign currency other than through the subjects expressly established by the Exchange Control Law (2015) is a violation of the Exchange Control Regulations, and therefore constitutes a black market transaction.

Under the Exchange Control Law, foreign currency means coins, bank bills and bank checks or any other form of payment in a currency other than the Venezuelan bolivar, as well as securities denominated in foreign legal tender or that may be liquidated in foreign legal tender. In addition, the Exchange Control Law provides for two kinds of purchases and sales of foreign currency: (i) a purchase and sale of foreign currency in money; and (ii) a purchase and sale of foreign currency in securities.

The purchase and sale of foreign currency in money is the exchange of foreign currency for a price in VEB; therefore, there is a purchase and sale of foreign currency in money if there is an exchange of (1) coins in foreign legal tender, (2) bills denominated in foreign legal tender, (3) any means of payment in foreign legal tender such as a wire transfer or a traveler’s check; (4) securities denominated in foreign legal tender, or (5) securities payable in foreign legal tender at maturity for a price in bolivars.

The purchase and sale of foreign currency in securities is the acquisition of a security denominated in foreign legal tender or payable in foreign legal tender with the intention of liquidating it before its maturity date.

Residents and legal entities incorporated in Venezuela are generally not allowed to purchase foreign currency from the CBV for savings in offshore accounts or offshore investments. Residents may purchase foreign currency for specific purposes set forth under the CENCOEX regulations; for example, certain imported items and travel expenses. However, residents and legal entities incorporated in Venezuela may validly fund an account opened with a banking institution from different sources other than the purchase of foreign currency from the CBV.

Since the Exchange Control System is not retroactive (Article 24 of the Constitution), foreign currency purchased or legally acquired before the exchange control system became effective, may be kept by the legal citizens and business entities incorporated in Venezuela.

*So-Called Parallel market transactions: Swap Transactions; TICC Transactions*

Article 9 of the derogated versions of the Exchange Control Law that were in effect prior to the 2010 amendment, expressly provided for the nationalization of the so-called parallel market for acquiring foreign currency. The so-called “parallel market” was supported by the principle of economic freedom and property provided for by the constitution, and was technically a securities



market rather than a foreign currency market. The “parallel market” was based on variations of what was known as the Swap Transaction and the TICC Transaction. Since the 2010 amendment these transactions became prohibited except when they were executed with the CBV. The 2010 Exchange Control Law and Exchange Agreement No 18 regulated the securities traded in Venezuela as an indirect mechanism to acquire foreign currency by creating the System of Transactions with Securities denominated in Foreign Currency (“SITME”) centralized by the Central Bank of Venezuela. The SITME used to enable the carrying out of transactions with securities denominated in foreign currency purchased in the local market in Venezuelan bolivars and liquidated abroad for a sales price in foreign currency but within certain restrictions and parameters.

On February 13, 2013 the CBV suspended the operation of SITME and was substituted by SICAD, an auction system administered by the CBV through which individuals, legal entities, the Republic and the CBV may legally purchase and sell for a price in VEB in Venezuela (i) foreign currency and (ii) securities denominated in foreign currency. In addition, on February 12, 2015 a new market started operations (SIMADI), which had been conceived as a free market for foreign exchange transactions. However, with the enter in force of the Agreement No. 35 all these systems were substituted by DICOM, and are now governed under the new DICOM regulations, with the considerations made above.



# Relevant Aspects of the Law on Insurance Activities

The Venezuelan insurance system is mainly governed by: (i) the Financial System Law; (ii) the Insurance Law; (iii) the Regulations of the Insurance Law; (iv) the Insurance Contract Rules; and (v) other regulations issued by the Superintendence of Insurance.

Entities licensed under the Insurance Law are subject to the control and supervision of: (i) the Superior Organ of the National Financial System; and (ii) the Superintendence of Insurance. The Ministry of Finance also exercises, to a certain degree, control over the activities of such entities. The execution of insurance activities is strictly reserved to entities licensed under the Insurance Law.

The Superintendence of Insurance exercises continuous control over the Venezuelan insurance system, and is entitled to apply a wide range of administrative measures and sanctions on the regulated entities in case of breach of their legal obligations and the law.

## 1. The Law on Insurance Activities

The Law on Insurance Activities ("LIA") was published in Special Official Gazette No. 6,220 of March, 15, 2016 and, under this law, insurance activity is defined as all relations or operations related or connected to the insurance, reinsurance contracts and the risk management contract, including intermediation, risks inspection, appraisals, loss adjustments, prepaid medicine services, bonds, premium or fees financing, the trusts related to the insurance matters and the managed funds.

The LIA applies to all Insurance Activity: (i) developed within Venezuela or materialized abroad; (ii) carried out by the entities regulated under the Law and those individuals and legal entities which perform activities characterized as insurance activities; and (iii) related to risks or persons located in Venezuela.

Also regulates different aspects of trusts (fideicomisos), personal guarantees (fianzas), risk management contracts, prepaid medicine contracts, and financing of insurance or prepaid medicine payments. The Insurance Contract Rules develop the regulation on these agreements.

## 2. The intermediaries

Pursuant to the LIA, insurance intermediation activities may only be performed by intermediaries duly licensed under the Insurance Law. Intermediaries are defined as persons that contribute through their mediation in the execution and advising of insurance contracts.

The Superintendence of Insurance may only authorize to act as intermediaries and advisors, the following:

- (i) agents acting directly and exclusively with an insurance company, a prepaid medicine company or an insurance brokerage company;
- (ii) brokers operating directly with one or more insurance or prepaid medicine companies;
- (iii) insurance brokerage companies; and
- (iv) reinsurance brokerage companies.

Licensed intermediaries are subject to several obligations, reporting requirements and prohibitions set forth in the Insurance Law.

## **Foreign Investments**

According to the Insurance Law, the participation of foreign investments in local insurance activities may be carried out through: (i) the incorporation of any of an insurance company; (ii) the acquisition of shares; or (iii) the establishment of branches or representatives offices of reinsurance companies or reinsurance brokerage companies.

Moreover, pursuant to the Insurance Law, insurance intermediation activities may only be performed by intermediaries duly licensed under the Insurance Law. Foreign investors may establish branches or representatives offices of reinsurance brokerage companies.



# Telecommunications

Telecommunications has become one of the best developed areas in Venezuela. The spiraling growth in telecommunications, especially through mobile telephony and the need to receive and send different types of content, and the growth of this sector worldwide, have made telecommunications a strategic sector for private investors and for the Venezuelan government. The Venezuelan government has increased its participation in the telecommunications market by nationalizing Compañía Nacional Teléfonos de Venezuela (“CANTV”) and its mobile telephony subsidiary MOVILNET.

CANTV is the largest provider for national and international fixed telephony, mobile telephony, and Internet in Venezuela. CANTV was founded in 1930 and nationalized in 1973, then privatized again in 1991 and finally nationalized in 2007 through the purchase of the entirety of its shares by the Venezuelan State. However, in the Venezuelan market, there are nationwide providers of fixed and mobile telephony, Internet and subscription TV, wholly owned by private capital.

Venezuela still requires a network structure that may serve the majority of its people. An example would be the southern region of the country that does not have all the telecommunications services yet. For this reason, the Venezuelan government intends to develop a plan seeking to democratize telecommunications, especially the Internet, to benefit those who do not have this service. One of the mechanisms for achieving this is to strengthen the development of technological convergence, based on the fact that it is possible for different types of operators, including those traditionally engaged in rendering other types of services (electricity or subscription TV) to provide different telecommunications services through their networks.

## 1. Telecommunications Regulations

In Venezuela, the law that governs the exploitation of telecommunications networks and services is clearly differentiated from the law that regulates content. The regulations regarding the establishment, exploitation of networks and the provision of telecommunications services are contained in the Organic Law of Telecommunications (“OLTEL”), and the regulations on the content are set forth in the Venezuelan Law on Social Responsibility in Radio and TV.

According to the OLTEL, the establishment and exploitation of telecommunications networks and the provision of telecommunications services require an “administrative authorization.” Additionally, if any of these activities involves the use of the radioelectric spectrum, the interested party must apply for a “concession.” The administrative authorization and the concession are granted by the National Telecommunications Commission (“Comisión Nacional de Telecomunicaciones”) (“CONATEL”).

Applicants for an authorization or a concession must be domiciled in the country. Foreign investments in the telecommunications sector are only restricted in the area of radio and TV broadcasting.

The acquisition, in whole or in part, of companies that hold administrative authorizations for setting up and exploiting networks and for providing telecommunications services, agreements for the merger, division, transformation or creation of affiliates that exploit telecommunications services, when these imply changes in the control thereof, and any business transactions that implies a direct or indirect change in the shareholding or financial control thereof, must be approved by CONATEL in order to become effective, with the favorable opinion of the Antitrust Agency.



## 2. Administrative Authorizations and Concessions System

An administrative authorization is the instrument granted by CONATEL authorizing the establishment and exploitation of networks and the provision of telecommunications services. The specific activities and services that may be provided under an authorization are named “attributes of the administrative authorization.” CONATEL grants only one administrative authorization per operator, including all the attributes requested and granted by CONATEL.

The concession is a unilateral administrative decision whereby CONATEL grants or renews the right to use and exploit a specific portion of the radioelectric spectrum. The relationships derived from a concession are regulated by legal provisions and by the respective concession agreement. The granting of the concessions will be made through public bid or by direct award.

## 3. CONATEL

CONATEL is an autonomous institute having jurisdiction over the field of telecommunications, ascribed to the Ministry. Among the main functions of CONATEL are: (i) to issue the rules and technical plans to promote, develop and protect telecommunications, (ii) to grant, revoke and suspend administrative authorizations and concessions, except in cases pertaining to the Ministry in charge, (iii) to authorize and certify telecommunications equipment, and (iv) to penalize the failure to observe the law. The law stipulates an active interaction between CONATEL and Pro-Competencia for protecting free competition in the telecommunications market.

## 4. Interconnection

Telecommunications network operators have the obligation to interconnect with other public telecommunications networks in order to establish inter-operative and continuing communications among the users of their services over time. Any operator may request interconnection from another operator and the parties will have a negotiation period of not more than 60 calendar days. The parties may fix interconnection charges by mutual agreement; however, if they do not reach an agreement within the stipulated period, CONATEL may order the interconnection requested to be implemented and stipulate the technical and economic conditions for the interconnection. The parties must settle disputes on interconnection matters pursuant to the terms of the respective agreement; otherwise, either party may submit the controversy to be decided by CONATEL.

## 5. Approval and Certification of Equipment

Telecommunications equipment and devices are subject to approval and certification. In the case of equipment and devices manufactured or assembled in Venezuela, these must be approved and certified by CONATEL, through national or foreign certification entities recognized for this purpose. Imported equipment approved or certified by an internationally renowned entity in CONATEL’s opinion will not require new approval or certification in Venezuela. To this end, CONATEL will keep a public register of the national and foreign entities recommended to certify and approve telecommunications equipment. Additionally, CONATEL will publish a list of approved trademarks and models and their use, which will be considered automatically approved if the assigned use is observed.

## 6. Prices and Rates

Telecommunications service providers may freely fix their prices, except with regard to services rendered pursuant to an obligation to provide “universal services,” in which case the proposed minimum and maximum rates must be submitted to CONATEL for consideration and approval.



The law defines “universal telecommunications services” as the defined set of telecommunications services that operators must provide to the users in order to offer minimum standards of penetration, access, quality, and economic accessibility.

#### 7. Amendments to the OLTEL

The OLTEL was amended as evidenced by the publication of its text in Official Gazette No.39.610 dated 7 February 2011. There are taxes set forth for those who exploit orbital resources and portions of the related radioelectric spectrum and provide satellite capacity for profit to operators authorized by CONATEL to provide telecommunications services in Venezuela.

The tax created is 0.5 percent over the amounts invoiced or paid to the persons providing the services for the satellite capacity. This tax will be calculated and paid annually within 45 consecutive days following the end of each calendar year. The satellite capacity providers will only be liable for this tax.

#### 8. Ruling on Data Messaging

The OLTEL was developed through various regulations. One of them was the ruling issued by CONATEL that regulates the provision of text messaging services by operators of mobile telephony services. This ruling sets forth, among other things, that: (i) users of these services may request operators not to receive text messages for commercial and/or advertising purposes, whether generated by the same operator or by a third party based on an agreement entered into with the operator; (ii) operators will be liable for the contents of the text messages they generate or transmit using their network. They will not be responsible for the contents of the text messages sent over their messaging services among their subscribers; and (iii) operators must actually deliver 90 percent of the messages sent by users during the first 20 seconds, 95 percent of said messages during the first 60 seconds and the entirety of the messages generated by users within a maximum term of 24 hours; the operators must report to CONATEL the percentage of effectiveness on a quarterly basis.



# Electronic Commerce & Data Privacy

Since May 2000, the Venezuelan Government decreed the access to and use of the Internet as a priority policy for the country's cultural, economic, social and political development.

Fortunately, the Venezuelan legal framework is sufficiently broad and flexible, so it is not necessary to generate a large number of new "e-" regulations, but only to adjust the existing ones to this new mode of business. The following is a description of the main legal aspects that should be considered when entering into "online" contracts, maintaining B2B and B2C businesses, including the advertising activities and the handling of personal data and intellectual property within the context of the cyberspace.

## 1. The Law on Data Messaging and Electronic Signatures

The Law on Data Messaging and Electronic Signatures (the "LMD") was a major step for Venezuela to enter into the new digital economy, since in a timely fashion it settles the main deficiencies of our legal system regarding this interesting business medium. Particularly, the LMD facilitates and promotes electronic commerce through the use of data messages and electronic signatures that are legally valid and enforceable, thus restoring the reliability, which is a fundamental element for commerce that was seriously impaired by the lack of clear rules.

The purpose of this law is to (i) grant and acknowledge the legal effect and value of electronic signatures; (ii) grant and acknowledge the legal effect and value of data messages and all intelligible information in electronic format (regardless of its material support); (iii) regulate all matters pertaining to providers of certification services, and (iv) regulate all matters related to electronic certificates. The LMD is closely related to electronic commerce and online transactions, whereas it sets forth clear rules for the fundamental components of the exchange of goods and services through the Internet.

## 2. The Electronic Signature

The LMD grants legal value to and acknowledges the effect of the "electronic" signature, not simply as a "digital" signature, deviating from a regulatory trend that is limited to acknowledging legal value only to the signatures made with asymmetric encryption technology ("digital" signatures), a technological sub-species of the electronic signature genre that includes, in addition to the digital signature, the symmetric encryption signature and any other information created or used by the signatory that is related to the data messages and enables ascribing authorship.

## 3. The will of the parties

The LMD contains supplement rules to the will of the parties regarding the establishment of the issuer's identity, the time when the message is deemed to be issued and received, the place of issuance and receipt, acknowledgments of receipt, and an express reference to contractual matters that enables the parties to agree that the offer and the acceptance be made through data messages.

## 4. The Superintendence of Electronic Certification Services

Finally, the LMD creates the Superintendence of Electronic Certification Services ("SUSCERTE"), as a service with budgetary, administrative, financial and management autonomy, and has the purpose of accrediting, supervising and controlling the public or private

Certification Services Providers (“CSP”) upon the terms set forth in the LMD and its regulations. In this regard, the SUSCERTE has currently certified at least two companies as CSP.

## 5. Data Privacy

### I. Legal Framework

- a. Constitution
- b. Law Protecting the Privacy of Communications
- c. Law of Data Processing Crimes
- d. Law of Data Messages and Electronic Signatures
- e. Supreme Court Decision of August 4, 2011 which develops Article 28 of the Constitution (The “August 4, 2011, SC Decision”)
- f. Supreme Court Decision of March 14, 2001

### II. Definition Of Personal Data

Personal Data is defined as the combined information that could create a complete or partial profile of an individual (Supreme Court Decision of March 14, 2001).

### III. Data Owner Rights

The Constitution provides:

- a. Protection of the secrecy of private communications
- b. Right to be informed of how entities are using personal data
- c. Right to access registries with personal data
- d. Right to file a court action (*habeas data*) to update, correct or destroy registries with inaccurate or prejudicial data
- e. Right to access documents of interest to communities or groups of people

The above mentioned rights were interpreted by the Supreme Court in the August 4, 2011, SC Decision in nine data privacy principles that are summarized as follows:

#### 1. Autonomy of Will

- a. Inform data owner about:
  - i. Collection of data
  - ii. Entity responsible
  - iii. Purpose
  - iv. How self-determination can be exercised



- b. Disclosure of data is subject to prior, free, informed, unequivocal and revocable consent.
- 2. Legality
  - a. Information cannot be used for purposes contrary to the principles of the August 4, 2011, SC Decision
  - b. Cannot be processed by illegal or unfair methods
- 3. Purpose and Quality
  - a. Data must be compiled with a clear purpose, reason or cause - essential for validity of consent
- 4. Temporality and Preservation
  - a. Data must be updated regularly and it must be preserved accurately and completely, in a safe manner to avoid data lost.
- 5. Accuracy and Self-Determination
  - a. Data owner must have access to data
  - b. Data owner can demand correction or cancellation of incomplete, inaccurate, inadequate and excessive data and has the right to be notified of the correction
- 6. Foresight and Integrity
  - a. Take technological advances into account so as not to prejudice data owner's rights or interests.
- 7. Safety and Confidentiality
  - a. Obligation to keep data secure and prevent third party modification
  - b. This obligation survives the termination of the relationship
  - c. Transfer of data to other states that don't have the same guarantees prescribed in the Venezuelan Laws is prohibited
- 8. Protection
  - a. Judicial protection is not sufficient; public entities must establish framework
- 9. Responsibility
  - a. Violation gives rise to civil, criminal and administrative penalties
- IV. Data Transfer
  - a. The August 4, 2011 SC Decision set forth that data can only be transferred to jurisdictions which provide the same protection as the Venezuelan laws do.



- b. It must be carefully noted that the transfer of personal data from Venezuela to countries which do not offer legal protection to personal data at the same level that Venezuelan regulations do, **is not permitted**.

The nine principles prescribed by the August 4, 2011, SC Decision commented above, have not yet been developed. However, the standards provided therein should be followed before transferring the data to a different jurisdiction. In any event, a detailed comparison and analysis of Venezuelan laws and the laws of the country where the data is going to be transferred, is strongly recommended.

The data owner's prior, free, informed, unequivocal and revocable consent is required before the transferring of the data is performed.

#### V. Data Owner Consent

- a. Venezuela is an opt-in country. Data owner's prior and express consent must be given for the collection of his/her personal data. To provide their consent, the data owner should be able to have a special tool such as clicking a button or ticking an unchecked box.

#### VI. Unlawful Conducts Related To Personal Data

##### A. Pursuant to the Law of Data Processing Crimes, the following conducts against the personal data and communications are unlawful:

- a. To obtain, modify or eliminate any information contained or concealed in data processing systems without the consent from its lawful owner.
- b. To access, capture, interfere, reproduce, modify, deviate or eliminate, by means of any data processing technology, any data message, transmission signal or any other communication of a third party.
- c. To publish any information obtained by unlawful methods as described in the law.

##### B. Pursuant to the Law Protecting the Privacy of Communications, the following conducts are unlawful.

- a. To record any communication between any persons.
- b. To install any recording equipment to illegally record or obstruct any communication.
- c. To alter, damage or forge the content of any communication for the obtainment of personal benefit.
- d. To cause emotional distress on other persons, by the utilization of unlawfully obtained information



# Foreign Trade

## 1. Imports

In Venezuela, there is generally an open system of imports where no permit or prior license is required from the authorities, and importers are not required to be registered in any registry. However, the latest reform to the Customs Law established that the importer was required to file an Anticipated Customs Declaration (DAI), through his customs agent, previous to the arrival of the merchandise to the customs zone. On the other hand, the import of certain products may require a license, permit, certificate of quality, delegation, registries, such as a health permit from the Ministry of Health and/or from the Ministry of Agriculture, or a license from the Ministry of Defense. Imported goods are classified as: (i) taxable, (ii) non-taxable, (iii) prohibited (iv) reserved and (v) subject to restrictions, registration or other requirements. To determine if a permit or license is required for specific goods, you must refer to the Customs Law, Customs Regulations and the Customs Tariff Schedule.

On January 19, 2015 came into force Amendments to the Customs Law, which was published in Official Gazette No. 6,155 Extraordinary of 19 November 2014. In this reform the number of items were extended to the Law, totaling one hundred ninety four (194) items, of which thirty-seven (37) were modified, thirty-two (32) removed, sixty-nine (69) new articles and four (4) items relocated. In its content the most important changes were: to establish a new time of accrual of the tax liability in customs figure AEO joined new customs offenses were typed, there was an increase in the amount of penalties and as new obligations and sanctions for all auxiliary of the Customs Administration were also developed. It sets as mandatory filing a statement early information (DAI) before the arrival of the goods.

As a requisite imposed under the current exchange control system, in order to obtain foreign currency from the Central Bank of Venezuela at the official rate, importers of all goods that are not included in the “essential goods list” must first request and obtain “Non-Production Certificates” or “Insufficient Production Certificates” from the correspondent Ministries, depending on the nature of the goods imported. In addition, importers must declare to the customs authorities the origin of the foreign currency used to cover importation costs.

Registration with the Ministry of Health is required to be able to import health products, cosmetics and foodstuffs. To import products that are similar to Venezuelan products subject to mandatory quality standards, the products must be registered with a special register maintained by the Ministry of Economy and Finance.

In order to avoid penalties due to an improper tariff classification, it is advisable that importers obtain the product's proper customs tariff classification from the customs authorities prior to importation. Article 40 of the General Regulations on this subject matter allows any person to conduct inquiry on the tariff classification of any goods. The request for tariff classification must be made separately, one request per product or good. The requests for tariff classification must be submitted to the Tariffs Management of SENIAT's National Customs Intendance. The answers to the requests are public and fully valid, and they grant legal certainty to the requesting party, provided the goods are the same as those subject to the customs transaction.

Since Venezuela entered MERCOSUR, import duties are now imposed at 0%, 2%, 4%, 6%, 8%, 10%, 12%, 14%, 16%, 20% increasing 2% until reaching the maximum import duty (which is 35% for some textiles products) on the CIF value of the imported goods, depending on the product's degree of manufacture. Generally, raw materials are subject to 5% duty; capital goods and intermediate products to 10% or 15%; and finished products to 20%. There is a list of

certain products which have a 15% surcharge over the duties set forth in the Customs Tariff Schedule. Special treatment is granted for imports from certain regions or countries as a result of international agreements or conventions, such as the Latin American Integration Association (ALADI) member, namely, Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, and Uruguay, that are granted preferential treatment for certain products. It is important to mention that Venezuela was a member of the Cartagena Agreement, known also as the Andean Pact.

Import to Venezuela of merchandise from Andean Pact members (Colombia, Ecuador and Bolivia) were free of import duties. However, in April of 2006 Venezuela denounced the Andean Pact. Accordingly, with such denouncement and Article 135 of such Pact, the import benefits established in the Andean Pact were applicable for Venezuela imports until April 22, 2011. In order to maintain some of the benefits and preferential treatment existent in the Andean Pact, Venezuela has subscribed several commercial agreements with the other members of the Andean Pact, that establish preference zones and free trade zones.

On July 31, 2012, Venezuela became a full member of the Southern Common Market (“MERCOSUR”). As a result, the country agreed to adapt, among other trade policies, the tariff nomenclature system and the common external tariff of MERCOSUR (“CET”), on a maximum period of four years. However, on December 30, 2017, Presidential Decree No 2.647 with the new Customs Tariff Schedule of Venezuela was issued and published on the Official Gazette No 6.281 Extraordinary.

With the Customs Tariff Schedule, Venezuela adopted in a 100% the CET, and included to its legal system the VI amendment of the Harmonized Commodity Description and Coding System with the Nomenclature and the Common External Tariff of MERCOSUR. Venezuela changed its nomenclature known as “NANDINA” corresponding to the Andean Community tariff nomenclature and present in the Customs Tariff prior to the present Customs Tariff Schedule, to the Mercosur Common Nomenclature or “MCN”.

The current Customs Tariff Schedule includes the following legal systems applicable to the importation and transit of goods:

1. Forbidden Importation
2. Importation Reserved for the Executive Branch of the Government
3. Permit from the Ministry of Health
4. Permit from the Ministry of Industries.
5. Health Certificate of the Country of Origin
6. Health Permit from the Ministry of Agriculture and Lands
7. Permit from the Ministry of Defense
8. Import Licenses administered by the Ministry of Food
9. Import Licenses administered by the Ministry of Commerce.
10. Permit from the Ministry of the Environment
11. Permit from the Ministry of Petroleum and Mining



12. Health Registration issued by the Ministry of Health.
13. Health Registration issued by the Ministry Agriculture and Lands.
14. Permit from the Ministry of Food.
15. Permit from the Ministry of Science, Technology and Innovation.
16. Import Licenses administrated by the Ministry of Industries.
17. Permit from the Ministry of Electric Energy.
18. Permission of the Ministry of Fisheries and Fisheries.
19. Certificate of the Kimberley Process.
20. Registration of Venezuelan Standard COVENIN administered by the National Autonomous Service of Standardization, Quality, Metrology and Technical Regulations.
21. Registration of Technical Regulations administered by the National Autonomous Service of Standardization, Quality, Metrology and Technical Regulations

Besides import duties, importers must pay 1% of the value of goods as a customs service fee, as well as value added tax ("VAT"), which is currently 12% of the CIF value.

Both for importation and exportation of goods, the subject must pay a fee for customs services. The percentage of this fee is 1% of the customs value of the goods that are subject to the customs operation. This customs service fee is due and must be paid at the same time as the import duties. In cases of exportation, said rate is due and must be paid at the time of registering the export declaration (DUA). The customs service fee shall also apply in cases of temporary admission, temporary extraction, nationalization of goods that are in transit and other special customs systems.

VAT is imposed, among other things, to the final import of personal property or tangible personal property. In general terms, the VAT is a tax designed to operate based on a tax credit and debit system. Thus, the amount that taxpayers must pay to the Venezuelan Republic for this tax, within the first 15 days of each month, shall be equal to the difference between their tax debits (*i.e.*, the VAT charged to their clients for services rendered or real property sold in the country) and their tax credits (*i.e.*, the VAT paid on the importation of goods and services).

In the final importation of goods, the taxable event is deemed to have occurred when the import declaration (DUA) is registered, which is when the obligation to pay VAT is due.

The taxable basis for VAT on the final importation of real property shall be the customs value of the goods, plus the contributions, surcharges, compensatory duties, anti-dumping fees, late payment interest and other expenses due on the importation, except for VAT. The relevant rate will be applied on the VAT taxable basis. Currently, the VAT rate applicable for the final importation of personal property is 12%.

Venezuela is a signatory of the Treaty of Marrakesh, and therefore applies all multilateral agreements that are part of said treaty.



Imported goods subsidized in the country of origin or dumped in Venezuela are subject to compensatory or anti-dumping duties, respectively, under the Law against Unfair Practices in International Trade (the “Anti-Dumping Law”). Under the Anti-Dumping Law, any person that produces similar goods in Venezuela and where the existence of dumping is presumed, may request an investigation of imported goods by the Anti-Dumping and Subsidies Commission.

Imports may also be subject to commercial safeguard measures that are applied pursuant to the provisions set forth in the Venezuelan Safeguard Law, in various regional treaties to which Venezuela is a party, and in the WTO Safeguard Agreement.

## 2. Exports

The exportation of Venezuelan products is generally free from regulatory requirements. However, there is a limited list of products (certain components of the basic food list, strategic products, radioactive products and fertilizers) that are subject to prior export licenses. Certain other products (gold, cocoa, coffee, fruits, vegetables, flowers, and certain drugs, among others) are subject to special permits and/or registrations. Most of these licenses are established in the second annex of the Customs Tariff Schedule.

Other requirements for exports include health permits for agricultural products, sanitation permits for animal origin products; phyto-sanitation certificates for vegetable products, and a certificate of origin, which evidence that the exported product has actually been produced in the country.

The export incentive consisting of export bonds has been eliminated except for some agricultural products.

Exports are deemed to be sales for income tax purposes. Although exporters are subject to value-added tax, the applicable rate is zero.

The exporters of capital goods and services of domestic origin have the right to recover the fiscal credits on the acquisitions of goods and services related to exportation. However, in order to obtain said recovery, it is necessary for the exporter to register in a special exporters register created by the Customs and Tax Administration (SENIAT).

In Venezuela, customs duties are not applied to exports. However, exporters must comply with all administrative customs formalities, which require the use of a customs agent. The fee for compliance with the formalities is 1 percent of the value of the exported merchandise.

As a requisite imposed under the current foreign exchange control system, exporters are obliged to sell 20% the foreign currency obtained from exports to the Venezuelan Central Bank at the exchange rate determined by the Central Bank.

## 3. Customs System

The customs authority in Venezuela is the National Integrated Customs and Tax Administration Service (Servicio Nacional Integrado de Administración Aduanera y Tributaria – SENIAT), ascribed to the Ministry of the People’s Power for Economy and Finance, whose website is [www.seniat.gob.ve](http://www.seniat.gob.ve). SENIAT is the agency in charge of intervening, facilitating and controlling the entry, permanence and exit of goods in international transit to and from Venezuelan territory, and their means of transportation to determine and apply the legal system pertaining to such goods.



SENIAT, as customs administration, has an operating level and a regulatory level. The operating level is made up of 17 main customs offices and 27 subaltern customs offices, which are in charge of effecting the perceptive control of the goods declared, their physical inspection and the liquidation and collection of the customs duties and other fees caused by reason of customs operations. In turn, the regulatory level is made up of the National Customs Intendance, the Tariff Management, the Customs Systems Management, the Value Management, the Innovation and Customs Development Management, and the General Management for Customs and Tax Control. The competences of the aforementioned organisms of the Customs Administration are established in the SENIAT Law of 2015, the SENIAT's Reorganization Regulations, the Customs Law, Resolution No. 32 for the Organization, Atributions and Functions of the National Customs Intendencia, and the Providence that creates the General Management for Customs and Tax Control.

#### 4. Customs-Related Taxes and Duties

The Venezuelan legal system establishes several contributions that tax both imports and exports. In the first place, there is the tax on the importation of goods, set forth in the Organic Customs Law, with a taxable base tied to the value of the goods in customs, which varies from 0.01 percent and 500 percent of the value of the goods. Exports are subject to 0 percent. In the second place, there is VAT on the importation of personal property, which currently has a calculation base of 12 percent of the value of the goods. Finally, there is the customs service fee, equivalent to 1 percent of the customs value of the goods.

#### 5. Automated Customs System

Currently, Venezuelan taxes are controlled by the systemized customs system ("SIDUNEA"), which enables a better control of the arrival, warehousing, entry, stay and extraction of the goods. Among the main functions of SIDUNEA are: (i) recording the data of the freight or courier manifest; (ii) controlling the cargo at authorized premises, warehouses and storages; (iii) transmitting and formalizing the respective declarations in electronic media; (iv) determining the selective or random inspection of goods, or both; (v) controlling the payment of customs duties and other contributions and fees; (vi) authorizing the delivery and withdrawal of goods; and (vii) controlling the goods brought or extracted through special customs systems.

The National Integrated Customs and Tax Administration Service ("SENIAT") has only been implemented the new version of SIDUNEA WORLD in the customs of La Guaira (Maritime) and Maiquetía (Air). The rest of the Customs of the territory keep using the SIDUNEA++ system. The SIDUNEA WORLD system offers mechanisms that will allow SENIAT to perform, in a more efficient and rational manner, its control and collection of import duties and other fees caused by reason of importing goods to Venezuela.

SIDUNEA WORLD system has two new applications: (i) guaranty control module, whereby it will keep control of the guaranties (permanent and eventual) in the customs transactions and special systems; and (ii) module for Declaration of Value at Customs (DVA), that enables knowing in more details all the aspects related to the commercial transaction.

#### 6. General Rules on the Valuation of Goods

Regarding the valuation of goods, Venezuela adopted the valuation rules set in the General Agreement on Tariffs and Trade – GATT of 1994. These method for the valuation of the merchandise are the following: (i) transaction value method (ii) method for transaction value of identical goods, (iii) method for transaction value of similar goods, (iv) deductive method, (v) computed method and (vi) fall-back method.

The main valuation method is the Transaction Value Method. The other methods apply exceptionally and in strict successive order when the Transaction Value requirements are not met. The administration must use this method to verify the declared value. When the Transaction Value Method cannot be applied, the value of the goods will be determined by the Administration by using the previously mentioned valuation methods in order until arriving to the fall back method used.

## 7. Customs Tariffs

Regarding customs matters, Venezuela, currently applies the Mercosur Common Nomenclature (“MCN”). Pursuant to the entry into force of the Customs Tariff Schedule, Venezuela changed its tariff nomenclature “NANDINA”; present in the repealed customs tariff, to the MCN. Although both tariff nomenclatures are based on the International Convention on Harmonized Commodity Description and Coding System of the Customs Cooperation Council of the World Customs Organization, the MCN differs from NANDINA in the sense that the first is more detailed including a higher number of digits. The MCN presents more tariff codes (approximately 11.897 tariff codes) in comparison to the 6,927 codes present in the NANDINA.

The tariff classification for declaring goods must fully observe the rules set in the Organic Customs Law, its regulations, the Customs Tariffs and its modifications.

The declaration must contain a numerical code, that should be composed of 8 or 10 digits, depending on whether it is a regional subheading (MCN) or a national subheading. The first two digits identify the chapter; the third and fourth digit refer to the heading; the fifth and sixth digit refer to the subheading of the harmonized system; the seventh and eighth to the regional subheading (MCN), and the ninth and tenth digit, to the national subheading. Goods could not be identified on the Tariff unless they are classified under a tariff code that includes 8 or 10 digits, as appropriate.

## 8. Self-Liquidation and Payment of Customs Tariffs

Currently, importers of goods to Venezuela, through their customs agents, must self-liquidate and pay before the national fund receiving offices the customs tariffs and fees arising from the importation of goods (*i.e.*, VAT, customs services fees) on the same date on which the Sole Customs Declaration is filed with SIDUNEA (Order for Payment of Import Duties). The payment of self-liquidated customs duties and fees shall be made through the liquidation bulletin issued by SIDUNEA (Order for Payment of Import Duties).

## 9. Means of Defense to Appeal Against the SENIAT

All actions by the Customs Administration that affect or impair the rights and interests of a person in a customs operation or customs regime, or by an administrative decision of a customs nature are subject to the control of the Customs and Tax Administration, through administrative recourses, and before the superior tax litigation courts, through tax litigation appeal and other judicial recourses, such as tax protection orders and constitutional protection. If any party is notified of an administrative decision that impairs its rights or interests, it may file an administrative appeal or a tax litigation appeal against said decision; finally the parties may file a constitutional writ (*amparo*).

## 10. Special Customs Systems

In Venezuela, under the OCL and the Regulations on Tax-Free, Suspension and other Special Customs Systems, there is a series of special regimes, different from that applied according to the normal customs system.. These special customs systems provide the special customs



treatment merchandises that have a different customs destination to that applied to merchandises with a general customs destination such as import, export, and transit.

Suspension systems are those whereby the payment of the customs charges and other fees arising from the importation of the goods are suspended, provided the requirements and formalities set in the OCL and the Special Customs Systems Regulations are met. Among the suspension systems are the following categories: temporary admissions, temporary admission for active improvement (ATPA), temporary export, and temporary admission for passive improvement, and customs warehouses (In Bond), and temporary storages.

Free-Tax customs regimes comprise tax exemptions and exonerations, in board provisions, tourist luggage, substitution of goods and merchandises, reposition with customs tariff franchise, and Duty Free warehouses/shops. The exemptions for customs matters are established in Articles 125 and 126 of the Customs Law, and in Articles 1, 2, and 3 of the Customs Law Regulations on Special Customs Regimes. There are also exemptions on custom duties in other laws, such as: Aquatic Spaces Law, the Venezuelan Institute for Scientific Investigations Law, the National Institute for Canalizations Law, amongst others. On the other hand, total or partial exoneration on customs tariffs are also applicable in accordance to Article 127 of the Customs Law and Chapter II, Title I of the Customs Law Regulations on Special Customs Regimes.

Amongst the returnable customs regimes is the Draw-Back or payback of the customs duties. According to the Draw-Back customs regime, legal entities that export can obtain the payback of the customs regimes that taxed the imported merchandises used and raw goods or supplies of their productive process of the exported goods. The amount of this payback is determined through a fixed percentage applied for each industrial branch, which will be multiplied by the FOB value of the goods. The payback of this Draw-Back is realized through Tax Payback Certificates (CERT). Today this regime is scarcely used since the Customs and Tax Administration has long delays for granting these Tax Payback Certificates (CERT).

#### 11. National Center for Foreign Trade and the Venezuelan Foreign Trade Corporation

By Decree No. 601 was issued the Law of the National Center for Foreign Trade and the Venezuelan Foreign Trade Corporation (the "Decree"). The Decree was published on Official Gazette No.6.116 Extraordinary on November 29, 2013.

The purpose of the Decree is to create the National Center for Foreign Trade ("Centro Nacional de Comercio Exterior") as a new de-centralized institution oriented towards the promotion of diversified economy and the optimization of the exchange system. Additionally, the Decree authorized the creation of the Venezuelan Foreign Trade Corporation ("Corporación Venezolana de Comercio Exterior") (VENECOM S.A.), as a State Enterprise under the form of a stock partnership.



# Energy and Natural Resources

## 1. Oil Activities

The current oil policy is based on the consideration that certain oil activities can only be performed by either wholly-owned state entities or mixed companies (*empresa mixta*), in which only a limited private participation is allowed under the 2001 Organic Law of Hydrocarbons (“OLH”), as amended by law re-printed in the Official Gazette No. 38.493 of 4 August 2006. This is also the case of the activities related to the primary activities pursuant to the Organic Law Reserving to the State the Goods and Services related to Primary Hydrocarbon Activities (“OLR”), published in the Official Gazette No. 39.173 of 7 May 2009.

### *Reservation of Hydrocarbon Activities*

The mixed company system established by the OLH with respect to oil activities reserves some activities and eliminates the pre-existing reserve over other activities. The purpose of the OLH is to regulate all hydrocarbon-related activities, for which it differentiates four types of activities: (i) primary activities, (ii) refining of natural hydrocarbons, (iii) industrialization of refined hydrocarbons; and (iv) marketing.

Private participation and investments are allowed in carrying out primary activities with State participation and control, if the National Assembly has approved the terms and conditions under which the activities will be conducted. The National Assembly maintains the power to modify the proposed terms and conditions or establish the new ones at its convenience. Primary activities include the exploration for natural hydrocarbon reservoirs, the extraction of hydrocarbons in their natural state, as well as their initial collection, transportation and storage.

The OLH defines refining as distilling, purification and transformation activities of natural hydrocarbons for the purpose of increasing their value.

The OLH also provides that activities related to the internal and external marketing of natural hydrocarbons and products set forth by the executive branch of the government, will remain reserved to the State by means of a decree. These activities may be performed by the State or by state-owned oil companies.

The activities reserved by the OLR to the State shall be carried out directly by the republic through Petróleos de Venezuela, S.A. (“PDVSA”) or through the subsidiary designated thereby for such purpose, or through mixed companies under PDVSA’s or its subsidiary’s control.

The companies must obtain a license from the Ministry of the People’s Power of Petroleum in order to carry out primary activities established in the OLH.

The duration of mixed companies has a maximum of 25 years, renewable for a period which must be agreed by parties that may not exceed 15 years. This extension must be requested after half of the term granted to carry out the activities has passed and five years before its expiration.

Related hydrocarbon activities include (i) those of water, vapor or gas injection, which allow for an increase in the wells’ energy and to improve the recovery factor; (ii) gas compression; (iii) those related to the activities in Lake Maracaibo: motor boats for the transportation of personnel, divers and maintenance; barges with cranes to transport material, diesel, industrial water and other supplies; tugboats; flat barges, buoys, cranes, refuse, laying or replacement of underwater pipes and cables; maintenance of ships at shipyards and docks of any kind.

The OLR sets forth that the ministry responsible for oil matters, formerly the Ministry of the People's Power for Energy and Petroleum ("MPPEP"), now the Ministry of the People's Power of Petroleum ("MPPP"), shall determine, by means of a resolution, the goods and services of companies or sectors that shall fall within the reserve.

The old Ministry of the People's Power for Energy and Petroleum ("MPPEP") issued Resolution No. 051, published in Official Gazette No. 39.174 on 8 May 2009 ("Resolution 051"), in which the services of companies or sectors and goods included in the reserve established in Articles 1 and 2 of the OLR are mentioned, as well as those companies affected by the takeover and control measures. It is worth noting that in Resolution 051, the MPPEP reserves the right to establish other goods, services provided by companies or sectors, and companies affected by the OLR.

The MPPEP issued Resolution No. 054, published in Official Gazette No. 39.177 of 13 May 2009 ("Resolution 054"), which states that the following goods and services are affected by the reserve established in the OLR: (i) Pigap II compression gas service, El Tejero, State of Monagas; (ii) Jusepín compression gas service and Furrrial gas injection, State of Monagas. By means of Resolution No. 054, the companies that render direct or indirect services to the abovementioned sectors and goods are also affected.

Thereafter, the MPPEP issued Resolution No. 65 published in Official Gazette No. 39.181 of 19 May 2009 and Resolution No. 67 published in Official Gazette No. 39.183 of 21 May 2009, whereby it listed a number of private entities subject to the OLR.

## 2. Income Tax

According to the Income Tax Law, the income tax rate applicable to companies engaged in the exploitation of hydrocarbons and related activities is 50 percent. Companies that engage in the exploitation of non-associated natural gas and the processing, transportation, distribution, storage and marketing of natural gas pay income tax at the corporate rate of 34 percent.

## 3. Royalties and Additional Taxes

Article 44 of the OLH, as modified in 2006, provides that the State is entitled to receive a royalty equivalent to 30 percent of the hydrocarbons' volume extracted from any reservoir. The executive branch of the government may reduce this royalty to (i) 20 percent for extra-heavy crude oil projects in the Orinoco Oil Belt and the exploitation of mature oil fields; and (ii) 16.66 percent for projects for the extraction of bitumen mixtures in the Orinoco Belt. These reductions are for the purpose of guaranteeing the economic viability of the projects. Although the OLH does not contain any provision that expressly allows the reduction of royalty payments in other cases, it appears that such a reduction is legally possible since the executive branch is authorized to demand only a portion of the royalty due by the licensee. The royalty may be paid to the State both in cash and in kind.

In addition to the royalty, the OLH's modification establishes the following taxes:

A Surface Tax equivalent to 100 tax units per square kilometer, or a fraction of the area granted that is not exploited each year, to be increased by 2 percent annually for the first five years and by 5 percent annually in the following years.

A Specific Excise Tax, equivalent to 10 percent of the value of each cubic meter of hydrocarbon byproducts produced and consumed as fuel in their own operations, calculated on the basis of the final consumer price of such products. If such products are not marketed in the local market, the MPPP will set the price for the purpose of calculating this tax.

A General Excise Tax, varying from 30 percent to 50 percent of the price paid by the final consumer per liter of hydrocarbon byproducts sold in the internal market. The specific rate shall be set each year in the Budget Law. This tax must be paid by the final consumer, and withheld at the source of supply and paid each month to the National Treasury. The executive branch may exonerate this tax, in whole or in part, for the purpose of promoting public interest activities and may restore it when the circumstances that gave rise to the exoneration cease to exist.

An Extraction Tax, which represents one-third of the value of all liquid hydrocarbons extracted from any reservoir. The operating company that extracts said hydrocarbons will pay this tax on a monthly basis, together with the royalty set forth in Article 44. To calculate this tax, the taxpayer is entitled to deduct what it has paid as royalty, including the additional royalty it pays as special advantage (3.3 percent, as provided by the Agreements for the organization of mixed companies approved by the National Assembly). Also, the taxpayer is entitled to deduct from this tax the amounts it has paid for any annual special advantage, but only in periods subsequent to those in which said special annual advantages have been paid. The executive branch, in order to encourage certain activities of public or general interest, may reduce this tax to 20 percent for the period of time it determines is necessary or until the causes for exoneration have ceased.

An Export Registration Tax, defined in Article 48 of the OLH, provides for a 0.1 percent tax on the value of all hydrocarbons exported from any port in the national territory. The tax will be calculated using the sales price of said hydrocarbons. To this end, the seller is required to report the volume, API grade, sulfur contents and destination of the shipment to the MPPP before the ship leaves port. Within 45 calendar days following the date of departure, the seller will submit a copy of the relevant invoice and proof of insurance payment to the MPPP.

#### 4. Special Contribution Based on Extraordinary and Exorbitant Prices in the International Market

The law that establishes the Special Contribution based on Extraordinary and Exorbitant Prices in the International Hydrocarbons Market (the “Law”) was published in the Special Official Gazette No. 6.022 of 18 April 2011, on which date it became effective. It was amended by the National Assembly as published in the Official Gazette No. 40.114 of 20 February 2013.

##### 1. Taxable Event

Operations related to the international exportation for the purpose of selling liquid hydrocarbons (natural or improved) and some byproducts thereof shall be subject to a special contribution (the “Contribution”).

The Contribution is based on:

- extraordinary prices, *i.e.*, prices whose average monthly international quotations of the Venezuelan liquid hydrocarbons basket are higher than the price established in the Annual Budget Law each year, but are equal to or lower than the threshold price of US\$80 per barrel, and so forth; or
- exorbitant prices, those whose average monthly quotations in the Venezuelan international liquid hydrocarbons basket are higher than the price of US\$80 per barrel.



## 2. Taxpayers

The obligation to pay the Contribution remains with the exporter of liquid hydrocarbons or byproducts for the purpose of selling them abroad, including mixed companies that sell such products to PDVSA or any of its subsidiaries.

## 3. Rate

### *Extraordinary Prices*

The Contribution due by the taxpayers is the result of applying the 20 percent rate to the difference between the price established in the Annual Budget Law for each fiscal year and the price of the average monthly international quotation of the Venezuelan liquid hydrocarbons basket when it is equal to or lower than US\$80.

### *Exorbitant Prices*

The Contribution due by taxpayers is the result of applying:

1. a rate of 80 percent to the difference between both prices, when the exorbitant prices are higher than US\$80 per barrel but lower than US\$100 per barrel;
2. a rate of 90 percent to the difference between both prices, when the exorbitant prices are equal to or higher than US\$100 per barrel but lower than US\$110 per barrel; and
3. a rate of 95 percent to the difference between both prices, when the exorbitant prices are equal to or higher than US\$110 per barrel.

### Other aspects

#### *Time of Payment*

Article 10 of the Law establishes that the payments shall be made on a monthly basis.

#### *Collecting Agency*

Although the Law provides that the competent authority for charging the Contribution is the MPPP, it expressly states that the amount should be paid to the National Development Fund ("FONDEN"). For this matter, PDVSA shall receive the payments referred in the Contribution and hand them over, either in foreign or national currency, depending on the instructions issued by FONDEN. FONDEN shall act as a creditor of the Contribution and as a collecting agency, according to the provisions of Article 8 of the Organic Tax Code.

#### *Use of the funds arising from the Contribution*

The resources arising from the collection of the Contribution shall be used primarily to fund the Great Missions created by the executive branch, or for executing infrastructure, roads, health, education, communications, agricultural and nutritional projects, and generally, for the development of the national productive system.

#### *Exemptions*

The following are exempt from paying the Contribution:

- Mixed companies selling liquid hydrocarbons (natural or improved) and their byproducts to PDVSA or its subsidiaries as a consequence of the execution of new oilfield



development projects, as well as the quantities associated with improved recovery projects or production remediation projects, declared as such by the MPPP.

- The exportation of quantities in performing International Cooperation or Financial Agreements.

### *Exonerations*

The executive branch of the government shall be entitled to exonerate, in whole or in part, the payment of the Contribution. Exonerations are for the purpose of benefiting certain exports and must remain within the framework of the economic policies and international cooperation. However, contrary to the provisions of Article 74 of the Organic Tax Code, the Law does not set forth the conditions for enjoying the tax benefit.

### *Contribution as a cost element for calculating income tax*

Contrary to what is provided in the bills of law approved by the National Assembly in the first and second discussions, according to which the Contribution would be deductible as an expense for income tax purposes, the Contribution must be accounted for as a cost for income tax purposes. However, this is irrelevant from a financial standpoint because the Contribution will constitute a deduction.

### *Deduction of contributions made to FONDEN*

According to the provisions of Article 125 of the law of the Central Bank of Venezuela, the contributions made to FONDEN may be deducted from the amounts due as Contribution.

### *Maximum Limit*

In order to guarantee compliance with the Contribution, the price of US\$80 is established as the maximum price for the calculation and liquidation of Royalties, Extraction Taxes and Exportation Registry Taxes established in the OLH.

## 5. The Gaseous Hydrocarbons Sector

The 2006 modification of the OLH confirms that activities related to gaseous hydrocarbons (besides those associated with petroleum) are to be governed by the Organic Law of Gaseous Hydrocarbons ("Gas Law"), published in the Official Gazette No.36,793 of 23 September 1999, and its regulations ("Gas Law Regulations"), published in the Special Official Gazette No. 5,471 of 5 June 2000. The Gas Law Regulations contain a great deal of substantial rules that, together with the Gas Law, govern the gaseous hydrocarbons industry. One of the main purposes of the Gas Law is to separate the production of natural gas from the production of oil, thus releasing non-associated gas exploration and production and natural gas processing and refining from the ties of the Hydrocarbons Industry and Trade Law. Hence, non-associated gas may be produced free of the limitations set by the Organization of the Petroleum Exporting Countries ("OPEC") and/or any other limitations that affect the production of crude oil. One of the main benefits of the Gas Law is that it opens the entire industry to national and international private investment.

The Gas Law purports to create a competitive environment for the development of the industry: it orders the functional separation of production, transportation and distribution activities, establishes a regulatory entity to be named the National Gas Entity (*Ente Nacional del Gas*), and allows access to other operators, under equal conditions, to the facilities for storage, transportation and distribution.

### *Exploration and Production of Non-Associated Gas*

The exploration and exploitation activities of non-associated gas may be undertaken directly by the State or indirectly through state-owned companies, either alone or with the participation of national or foreign private investors, or by national or foreign private investors on their own. Private investors who wish to engage in exploration and exploitation activities, on their own or with the State's participation, must obtain a license issued by the MPPP.

Licenses may be granted for a maximum term of 35 years, extendable for a term that cannot exceed 30 years. The license confers upon its holder the exclusive right to engage in exploration and exploitation activities pursuant to the terms established therein. The rights conferred through the licenses are not subject to encumbrances or foreclosures, but may be assigned with the prior approval of the MPPP.

According to the Gas Law, all assets and facilities related to exploration and exploitation activities performed during a license term are subject to reversion. This is the right of the Republic to acquire title to all the assets and facilities used by the license holder to achieve the purpose of the license on the date it expires for whatever reason. In this case, title to the assets and facilities is transferred to the Republic free of liens and without any indemnification.

Controversies between the Republic and the license holder may be settled by arbitration. If the parties agree to submit the controversy to arbitration, Venezuelan courts will not have jurisdiction. However, the courts may provide assistance in the arbitration proceedings if, for example, the arbitration panel issues precautionary measures of attachment or another similar measure.

### *Natural Gas Processing and Refining*

The rules pertaining to processing and refining activities apply to all gaseous hydrocarbons, without distinction regarding their origin. Private investors who wish to invest in processing or refining projects must obtain a permit from MPPP. According to the Gas Law, permits for processing and refining activities will not have a specific term and the operating assets will not be subject to reversion.

### *Storage, Transportation, Distribution and Marketing*

The Gas Law orders the separation of production, transportation and distribution activities. To this end, it establishes that the MPPP must divide the country into several geographic regions and provides that a person, whether an individual or a company, cannot own or control more than one production, transportation or distribution activity within the same region. Pursuant to the regulations, "control" means the capacity of one person to decide, positively or negatively, over the activities or decisions of another person. The Gas Law granted vertically-integrated companies existing on the date it became effective a 24-month period to complete the separation of the aforementioned activities.

In limited cases where it can be proven that the separation is not possible from an economic standpoint, the MPPP may grant an exception, provided each activity is treated as a separate business unit with separate accounting.

Private investors who wish to engage in storage, transportation, distribution and marketing activities must obtain a permit from the MPPP. According to the Gas Law, the term of all these permits, except those for the marketing of liquid petroleum gas ("LPG"), is limited to 35 years with a one-time extension of 30 years. Although the Gas Law does not limit the term for LPG marketing permits, the Gas Law Regulations do so. According to the Gas Law Regulations,



such permits are subject to the same limitations as the permits for other activities. In addition, the Gas Law states that all permits subject to a time limit are also subject to reversion.

According to the Gas Law, the sales price of gaseous hydrocarbons to be charged by producers and processors at production and dispatch centers is set by means of a resolution issued by the MPPP based on “equitable principles.” Additionally, the MPPP and the Ministry of the People’s Power for Industry and Trade (“MPPIT”), jointly set the prices (“rates”) to be applied to final consumers.

#### *Tax Treatment of Activities Subject to the Gas Law*

The Gas Law provides that the holders of licenses for the exploration and exploitation of non-associated gas must pay a 20 percent royalty on all the natural gas extracted from any reservoir and not re-injected. The MPPP, at its sole discretion, may demand the royalty in cash or in kind. Although neither the Gas Law nor the Gas Law Regulations contain any provision that allows the royalty to be reduced, it would seem that such a reduction is legally possible because the executive branch of the government is authorized to demand only a portion of the royalty due from the license holder.

The income tax rate applicable to the profits arising from the sale of non-associated natural gas is 34 percent.

#### *Method for Calculating Royalties on Non-Associated Natural Gas*

The Resolution No. 244 issued by the MPPEP and published in Official Gazette No.38,353 of 9 January 2006, sets forth the methodology for calculating the royalties on non-associated natural gas (“Resolution 244”). Resolution 244, which became effective on the date it was published, expressly abrogates the Ministry of Energy and Mines’ Resolution No. 218, published in Official Gazette No.37,334 of 28 November 2001 (“Abrogated Resolution”).

#### *Legal System for Calculating Royalties on Non-Associated Natural Gas*

To understand the purpose and meaning of Resolution 244, we must clarify the meaning of the word “royalty.” According to the Resolution, “royalty” means the State’s right of participation in the exploitation of the resource.

According to Article 20(1) of Decree No. 6,732 on the Organization and Functioning of the Central Public Administration, published in the Official Gazette No. 39,202 of 17 June 2009 the MPPP (formerly the Ministry of Energy and Petroleum), is the competent agency for regulating, formulating and following up on the policies, planning, execution and supervision of the activities of the executive branch of government regarding hydrocarbons and energy in general. This includes non-associated gaseous hydrocarbons.

Furthermore, Article 6 of the Gas Law provides that the executive branch of government, through the MPPP, will have nationwide jurisdiction regarding gaseous hydrocarbons. Consequently, the MPPP may plan, assess, inspect and supervise the activities related to gaseous hydrocarbons.

Article 34 of the Gas Law provides that the State is entitled to a royalty of 20 percent on the volumes of gaseous hydrocarbons extracted from any reservoir and not re-injected therein. Thus, to calculate the State’s participation in the form of a royalty, one must exclude the gaseous hydrocarbons that are re-injected into the reservoir. Article 36 of the Gas Law Regulations adds that the state is entitled to a 20 percent royalty participation. The payment is not subject to impairment by additional amounts resulting from the payment amounts that have been set in favor of the republic due to the granting of the respective license.



The sole paragraph of Article 36 of the Gas Law Regulations provides that the market value of natural gas at the production field will be calculated in bolivars per calorific unit. Article 37 of the Gas Law Regulations provides that the gas subject to royalty payments will be resulting from deducting the volume of gas that was re-injected into the reservoirs from the total production.

Article 34 of the Gas Law provides that the aforementioned royalty payment may be demanded in whole or in part, in cash or in kind. If the MPPP does not expressly provide for the manner how it wishes to receive such payment, it will be understood that it elects to receive the payment in whole and in cash. When it elects to receive the royalties in kind, the MPPP may use the services of the exploiting company for transportation and storage purposes, in which case the executive branch of government must pay the price agreed for such services. According to Article 34 of the Gas Law and Article 38 of the Gas Law Regulations, if the government elects to receive the royalties in cash, the exploiting company must pay the price of the volume of the relevant gaseous hydrocarbons which is then calculated at market value at the production field. Article 35 of the Gas Law, in turn, provides that the exploiting companies must pay the taxes set by law for the gaseous hydrocarbons they consume as fuel.

#### *Calculation of the Royalties on Non-Associated Natural Gas*

Royalty on Non-Associated Natural Gas: Article 2 of Resolution 244 provides that this royalty will be calculated by multiplying the volume of natural gas subject to royalty payment (“NGV”), by the market value of the natural gas at the production field (“MVNG”) and by the royalty participation rate (“%R”).

$$\text{Royalty} = [\text{NGV}] \times [\text{MVNG}] \times [\%R]$$

Volume of Natural Gas Subject to Royalty (NGV): Article 3 of Resolution 244 provides that this volume is calculated by subtracting from the volumes of gas extracted in the production field (“VGE”) the volume of natural gas re-injected into the same field (“VGR”).

$$[\text{NGV}] \text{ subject to royalty} = [\text{VGE}] - [\text{VGR}]$$

Volume of Gas Extracted (VGE): Article 3 of Resolution 244 provides that this volume is calculated by adding together the volumes of gas extracted and measured at the different check-points set for the production field.

$$\text{VGE} = \Sigma \text{VGE at the various points}$$

In order to determine the volume of natural gas subject to royalty payment, Article 4 of Resolution 244 provides that the producers must report to the MPPP within the first five days of the following month, the volume of natural gas extracted from the production field and the volume of natural gas re-injected.

Royalty Participation Rate: Article 5 of Resolution 244 provides that the royalty participation rate (“RR”) will be the result of adding the additional amounts resulting from the considerations set in favor of the republic by reason of the granting of the license (“AA”) to the 20 percent base participation. The foregoing is in line with the provisions of Article 34 of the Gas Law and Article 36 of the Gas Law Regulations referred to above.



$$RR = [20\%] + [AA]$$

Market Value of Natural Gas (MVNG): Article 6 of Resolution 244 provides that in order to calculate the market value of non-associated natural gas at the production field, the handling costs pertaining to such gas (“Handling Costs”) should be deducted from the price of methane gas (“CH4”) at the production field (“PCH4”).

$$\text{Market Value [MVNG]} = [\text{PCH4}] - [\text{Handling Costs}]$$

Price of Methane Gas at the Production Field (PCH4): Article 6 of Resolution 244 provides that this will be the price of methane gas (CH4) set by the MPPP at the corresponding dispatch center. Furthermore, the producer may enter into contracts, to the MPPP’s satisfaction, in which the price of methane gas (CH4) at the production field is the quotient of the average income from sales of methane gas (CH4) divided by the volume of methane gas (CH4) sold by the producer at the production field in one month and expressed in bolivars per cubic meter. In this article, there appears to be a formulation error. We are of the opinion that the term “average” is superfluous, because the average is the quotient of the income divided by the methane gas (CH4) volume. Although it is not clear, it may be understood that this article refers only to the effects of the methodology for calculating the non-associated natural gas royalty, since that is the purpose of the resolution.

In order to determine the price of methane gas (CH4) subject to royalty payment, producers must report to the MPPP within the first five days of the following month, 1) the volume of methane gas (CH4) sold at the production field; 2) the income from sales of methane gas (CH4); and 3) the respective sales prices.

Handling Costs for Natural Gas at the Production Field: Article 7 of Resolution 244 provides that in order to determine these costs, the MPPP will assess the costs associated with the collection, compression, treatment or processing activities, according to the methodology it establishes. However, these costs may not be higher than 15 percent of the market value of the non-associated natural gas at the production field.

#### Computation of the Royalties on the Liquid Hydrocarbons of Non-Associated Natural Gas

Liquid Hydrocarbons of Natural Gas: In a very simplified manner, liquids of natural gas may be understood as hydrocarbons that can be extracted from natural gas in liquid form. Among them, we can mention ethane, PLG, pentane, condensed and other heavy hydrocarbons.

Royalty on Liquid Hydrocarbons (“LH Royalty”): According to Article 8 of Resolution 244, the royalty on liquid hydrocarbons contained in the non-associated natural gas will be calculated by multiplying the extractable volume of natural gas liquids (“EVNGL”) by the market value of the natural gas’ liquids (“MVNGL”) and the percentage royalty rate (“%R”).

$$\text{LH Royalty} = [\text{EVNGL}] \times [\text{MVNGL}] \times [\%R]$$

Extractable Volume of Liquids from Non-Associated Natural Gas (EVNGL): According to Article 8 of Resolution 244, this volume will be obtained by adding the product of the percentage of molar fraction of the natural gas components (taken from the chromatographic analysis submitted by the producer), multiplied by the volume of non-associated natural gas at the production field and adjusted according to the respective recovery factors for natural gas liquids. Resolution 244 does not clarify the schedule for the producer’s preparation and submission of the chromatographic analysis.

Resolution 244 provides that the values that must be used are those indicated in the most recent edition of the publication *GPSA Engineering Data Book FPS*. Resolution 244 may be understood to incorporate the aforementioned publication by reference. This publication is in the English language on the website of the Gas Processors Association. Consequently, we should highlight that Article 9 of the Constitution provides that the official language of the republic is Spanish. In any case, the incorporation by reference apparently does not comply with the standards for the publication of regulations.

Recovery Factors for Natural Gas Liquids: Article 9 of Resolution 244 provides the following factors for recovery according to their GPM.

Recovery Factor (%)				
GPM (C3+)	C2	C3	C4	C5
<1.5	0	0	0	0
≥1.5	0	90	98	100

When the extraction of ethane (C2) is justified both technologically and economically, to the MPPP's satisfaction, the following recovery factors will be used:

Recovery Factor (%)				
GPM (C3+)	C2	C3	C4	C5
<1.5	0	0	0	0
≥1.5	35	85	90	100

The Abrogated Resolution set a different formula for calculating the royalty on natural gas, taking into account whether or not there was a technical and economic justification for the extraction of the non-associated gas liquids. In this regard, Article 7 of the Abrogated Resolution provided that for the purposes of calculating the royalty, the market value of the non-associated natural gas would be determined based on 1) the value of the methane gas; 2) the value of the natural gas liquids; and 3) the handling costs for natural gas in the production fields. Regarding the natural gas liquids, the sole paragraph of said article provided that in the production fields in which there is no technical or economic justification for the extraction of natural gas liquids, the contribution value of the natural gas liquids would be nil.

Resolution 244 does not contain a formula similar to the one referred to in the Abrogated Resolution, but it sets a zero recovery factor for such liquid hydrocarbons whose GPM is lower than 1.5. Bear in mind that the recovery factor is used to calculate the extractable volume of natural gas liquids. Consequently, it may be concluded that the MPPP has taken the value "1.5" as an objective factor to determine the technical and economic justification for extracting the natural gas liquids.

Market Value of Natural Gas Liquids (MVNGL): To calculate the royalties, Article 10 of Resolution 244 provides that this value will be set and reported each month by the MPPP based



on the prices of natural gas liquids in the internal and export markets. However, the resolution does not provide the manner of how the MPPP will advise the interested parties about the establishment of this value. Consequently, it is not clear whether this value will be reported by means of a resolution published in the Official Gazette, or privately to each interested party.

**Royalty on Natural Gas Liquids:** Article 11 of Resolution 244 provides that the share percentage for royalties applicable to natural gas liquids will be 30 percent. It seems that the MPPP has interpreted that the royalty applicable to the liquids extracted from non-associated gaseous hydrocarbons will be that set forth in the OLH and not the royalty rate set in the Gas Law. In this regard, Article 44 of the OLH (2006) provides that the State is entitled to a share of 30 percent of the volumes of liquid hydrocarbons extracted from any reservoir. According to Article 2 of the OLH (2006), the royalty applicable to gases associated with liquid hydrocarbons reservoirs is 30 percent; that is, the rate set in that law and not the 20 percent royalty set in the Gas Law.

**Quantity of Liquid Hydrocarbons Contained in Natural Gas:** Article 12 of Resolution 244 provides that the quantity of liquid hydrocarbons contained in the natural gas at the checkpoint will be calculated by dividing the percentage of the molar fraction of the natural gas components by their density. The amount will be stated in cubic feet of gas per liquid gallon obtained. To this end, the values set forth in the most recent issue of the publication GPSA Engineering Data Book FPS will be used.

The use of “cubic feet of gas” and “liquid gallons” in this article is noteworthy because these measures pertain to the English Measurement System, while Venezuela uses the International Unit System. In this regard, Article 6 of the Law on Metrology, published in the Official Gazette No.38,263 of 1 September 2005, was re-printed due to material error. The re-printed version, in the Official Gazette No.38.371 of 2 February 2006 (the “Law on Metrology”) provides that the International Unit System adopted by the General Conference on Weights and Measures will govern as Legal Measurement Unit System in Venezuela. According to this article, the definitions, symbols, multiples and submultiples, uses and applications of the International Unit System will be set forth in the respective legal provisions.

According to Article 3 of the Law on Metrology, this law will be applicable throughout the republic and its provisions are of public interest. The enforcement and supervision thereof is the responsibility of the executive branch of the government through the competent entities of the Public Administration. Article 9 of the Law on Metrology provides that the Legal System for Measurement Units must be used in the public documents, books, educational texts and commercial registries, in all kinds of commercial paper, credit deeds, advertising and publicity activities and, generally, all such acts in which there is reference, quotes or the need to use measurement units. Moreover, Article 10 provides that the competent authorities will not register, authenticate, acknowledge or process documents or deeds that refer to, quote or use measurement units other than the Legal System for Measurement Units, unless the interested party submits an authorization from the MPPIT. To this end, Article 7 of the Law on Metrology provides that the MPPIT will only authorize, in exceptional cases and with a prior explanation of motives issued by the competent office in the area of metrology, the use of units other than the International Unit System, in the following cases: (i) when their use is deeply rooted among the population; (ii) in specialized areas; and (iii) when the units are approved by the pertinent international agencies governing such matters, through the respective treaties and agreements signed and ratified by Venezuela. We have not found evidence that the MPPIT has authorized the use of units other than the International Unit System for this specific case.

**Measurement Conditions:** According to Article 13 of Resolution 244, the volumes of natural gas will be measured under standard temperature and pressure conditions, as follows:



Temperature: 15.5°C (equivalent to 60°F); Absolute Pressure: one atmosphere (101.325 Kpa) (equivalent to 14.7 pounds per square inch).

Discrepancies: According to Article 14 of Resolution 244, whenever there are discrepancies regarding the volumes presented by the producers to the MPPP at the time they are filed, the MPPP will have up to three days to determine the final volumes.

#### *Legal system for the regulation of methane gas prices*

Resolution No. 045 issued by the MPPEP and published in the Official Gazette No. 38,401 of 20 March 2006 (“Resolution 045”) establishes the prices of methane gas at Dispatch Centers. Resolution 045 expressly abrogates Joint Resolution of the Ministry of Production and Trade (“MPT”) No. 384 and the Ministry of Energy and Mines (“MEM”) No. 332, dated 16 December 2003 (Official Gazette No. 37,906 of 25 March 2004) (the “Abrogated Resolution II”).

According to Article 20 (3) of Decree No. 6,732 on the Organization and Functioning of the Central Public Administration, published in the Official Gazette No. 39,202 of 17 June 2009, the MPPP (formerly the Ministry of Energy and Petroleum) is the competent agency for analyzing the market and fixing the prices of oil products, electricity services and other similar activities.

The heading of Article 12 of the Gas Law provides that the MPPP is authorized to determine the prices of gaseous hydrocarbons from the production and processing centers. Consequently, the MPPP may, through a resolution, determine the price of the various gaseous hydrocarbons that make up natural gas or those obtained by processing hydrocarbons (for example, methane gas and LPG, which is mainly composed of propane) at production and processing centers and at Dispatch Centers. According to the definition provided by the Gas Law Regulations, dispatch centers are facilities situated in geographic locations where gas dispatching activities are carried out.

The Gas Law Regulations expand upon the provision set forth in Article 12 of the Gas Law. In fact, Article 46 provides that the executive branch of government, through the MPPP, will: (i) establish methodologies for calculating gaseous hydrocarbon prices in the domestic market; and (ii) fix these prices at the dispatch centers. It can be inferred from this provision that the MPPP is responsible not only for fixing the prices of gaseous hydrocarbons in the domestic market, but also for establishing and publishing the methodologies used to calculate the prices. The resolutions fixing methane gas prices that have been issued to date have made reference to two dispatch centers: (i) Anaco, in the eastern region of the country; and (ii) Lago, in the western region.

According to Article 49 of the Gas Law Regulations, the MPPP must revise, at least once a year, the methane gas prices in force at the dispatch centers. These prices will then be fixed through resolutions issued for this purpose.

Article 47 of the Gas Law Regulations allows prices other than those fixed in the resolutions to be set for methane gas at the dispatch centers. In order to succeed, producers and traders purporting to do so must request the MPPP’s approval of the specific supply contracts and such contracts must be for a fixed term.

The provisions set forth in Article 50 of the Gas Law Regulations allow methane gas producers to submit to the MPPP’s consideration proposals for fixing gaseous hydrocarbon prices. Pursuant to Articles 46 and 50 of the Gas Law Regulations, the resolutions through which the MPPP fixes the gaseous hydrocarbon prices must contain a description of the calculation method to be used. In the absence of such a methodology (which must be made public through a resolution), producers are unable to exercise their right to request a fixed price.



### *Fixing of methane gas prices at Dispatch Centers*

Resolution 045 establishes methane gas prices at dispatch centers. It applies to both methane gases derived from natural gas associated with oil production and from non-associated natural gas.

As previously indicated, the MPPP has the power to fix gaseous hydrocarbon prices at the dispatch centers. It is worth noting that, contrary to what occurred in the case of the Abrogated Resolution II, MPPIT did not participate in Resolution 045. The MPT was granted power to fix prices and rates for products and services in the national territory. Presently, said power is granted to the MPPIT by Article 11(1) of the Decree on the Organization and Functioning of the Central Public Administration.

Resolution 045 uses the term “Constant Value” to describe the basis used for fixing prices. Pursuant to Article 2 of Resolution 045, Constant Value means the value of the currency according to the exchange rate for the purchase of bolivars with US\$ in effect at the time of establishing the resolution prices (which was equal to VEF2.15 per US\$1).

Resolution 045 fixes methane gas prices at each dispatch center as of 1 January 2006, despite having been published on 13 February 2006. This raises the question of the retroactive application of the rule contained in the administrative decision for fixing methane gas prices, the application of which could affect companies that collected or paid for methane gas at each dispatch center at prices established in the Abrogated Resolution II (1 January 2006). The Abrogated Resolution II had a similar effect when it fixed the methane gas prices for 2003, despite having been published on 5 January 2004.

Methane gas prices in Constant Values at the dispatch center in Anaco, as of 1 January 2006, are as follows:

<b>Consumer Types</b>			
<b>Year</b>	<b>Household and Commercial (VEF/m<sup>3</sup>)</b>	<b>Petrochemical (VEF /m<sup>3</sup>)</b>	<b>Industrial and others (VEF/m<sup>3</sup>)</b>
1 January 2006	16.770	24.178 +F	26.018
1 January 2007	17.908	25.932 +F	28.955
1 January 2008	19.124	27.814 +F	32.224
1 January 2009	20.421	29.833 +F	35.862
1 January 2010	21.807	31.998 + F	39.911
1 January 2011	23.287	34.321 + F	44.416
1 January 2012	24.868	36.812 + F	49.431
1 January 2013	26.555	39.483 + F	55.012
1 January 2014	28.357	42.349 + F	61.222
1 January 2015	30.212	45.423 + F	68.134

(F: Formula total price component)

Methane gas prices at Constant Value at the dispatch center in Lago, as of 1 January 2006, are as follows:

<b>Consumer Types</b>			
<b>Year</b>	<b>Household and Commercial (VEF/m3)</b>	<b>Petrochemical (VEF /m3)</b>	<b>Industrial and others (VEF/m3)</b>
1 January 2006	33.539	42.234 +F	43.212
1 January 2007	35.815	45.063 +F	47.144
1 January 2008	38.246	48.082 + F	51.435
1 January 2009	40.842	51.304 + F	56.115
1 January 2010	43.614	54.741 + F	61.222

<b>Consumer Types</b>			
<b>Year</b>	<b>Household and Commercial (VEF/m3)</b>	<b>Petrochemical (VEF /m3)</b>	<b>Industrial and others (VEF/m3)</b>
1 January 2011	46.574	58.408 + F	66.793
1 January 2012	49.735	62.321 + F	72.871
1 January 2013	53.100	66.496 + F	79.503
1 January 2014	56.714	70.951 + F	86.737
1 January 2015	60.564	75.704 + F	94.630

(F: Formula total price component)

Pursuant to Article 7 of Resolution 045, “F” is the value resulting from a formula defined by the National Gas Agency (“ENAGAS”) for each project, which will take into account the efficiency of the petrochemical industry, the price of the product and the industry’s added value for the nation.

Methane gas prices will be adjusted at the dispatch centers in January of each year in order to maintain a current accumulated exchange parity, pursuant to the following formula:

$PG = PGA \times TC/TCB$
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where:

<b>Nomenclature</b>	<b>Description</b>
PG	Methane gas price applicable during the year beginning on 1 January, each year.
PGA	Methane gas price indicated in the charts contained in Articles 5 and 6 of Resolution 045
TC	Referential exchange rate for the purchase of bolivars vis-à-vis US\$ on the first bank business day in January each year, according to the Venezuelan Central Bank.
TCB	Referential exchange rate for the purchase of bolivars vis-à-vis US\$ on the first bank business day in January each year, equal to VEF 2,144.60 per dollar.

Provided that the exchange parity shift is greater than 20 percent, adjustments may be made on dates other than those previously established. This will be accomplished through an express authorization from the MPPP. Since the methane gas prices must be fixed at least once a year, it is logical that the change should occur during the calendar year for which the Resolution 045 prices were fixed. Resolution 045 fixed the PGA applicable until 2015. However, Resolution 045 has not been replaced.



As in the preceding resolutions regarding this matter, Article 9 of Resolution 045 provides that methane gas purchase contracts or agreements previously entered into will remain in force during the periods set forth therein. In our opinion, this means that prices stipulated in said contracts will be observed. The parties to these contracts may, by mutual agreement, adjust them to Resolution 045 before their expiration date. Resolution 045 uses the term “long-term contracts” when referring to methane gas purchase contracts, but fails to explain what is meant by the term. Thus, it remains unclear which agreements or contracts will be considered long-term (in which case, the contracts entered into prior to the effective date of Resolution 045 remain in force) and which will not. It is our opinion that “long-term contracts or agreements” are the specific supply contracts for definite terms referred to in Article 47 of the Gas Law Regulations.

As was the case in the Abrogated Resolution II, Resolution 045 provides that all of the methane gas supply contracts to be entered into subsequent to the effective date thereof, including those gas supply contracts or agreements entered into between companies responsible for the production and transportation of associated or non-associated methane gas and other companies, must be submitted to ENAGAS for its consideration and approval. Resolution 045 also sets forth that under no circumstances shall the methane gas supply prices in these contracts be less than those indicated in Resolution 045.

It is important to note that the use of “and” between the words “production” and “transportation” gives rise to the question of whether the rule only applies when the seller is a company that produces and transports gas (for example, PDVSA), or instead it applies when the seller is a company that only produces methane gas and does not carry out transportation activities. This doubt arises because, pursuant to the Gas Law Regulations, companies providing methane gas transportation services cannot market the products. Therefore, this provision cannot be applied to methane gas transportation companies.

Additionally, like in Abrogated Resolution II, Resolution 045 does not set the term for ENAGAS to approve the contracts. Further, it does not establish the parameters to be considered for approval, thus giving rise to uncertainties on this matter. For example, it is not clear whether the effectiveness of the contracts entered into depends upon ENAGAS’ approval. Resolution 045 also fails to establish the impact that ENAGAS’ rejection would have on a contract previously entered into and fully or partially performed.

## 6. Water Regime

The activities related to the use or development of waters are governed mainly by the Constitution, the Law on Waters of January 2007 (the “Law on Waters”) and the Law on Quality of Waters and Air on December 2015. These rules provide that waters are of the nation’s public domain and, consequently, cannot be part of the private domain of any individual or legal entity. The Law on Waters provides that the use of waters for development purposes is subject to the obtainment of concessions, assignments and licenses, according to the activity for which they are to be used.

The use of water for the development of hydroelectric power generation and industrial and commercial activities is subject to the granting of an assignment or a concession. Assignments are granted to applicants who are bodies or entities of the National Public Administration. Concessions for the development or use of water (the “Concession”), are granted when the applicant is a private person (either an individual or a corporate entity). Mining activities are deemed to be industrial activities<sup>7</sup>. Consequently, the use of waters in this type of activity

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<sup>7</sup> The Law on Waters does not define what is to be understood as an industrial activity. Considering the criterion sustained by the Ministry of the Environment (currently the Ministry of the People’s Power of Ecosocialism and Waters) regarding the industrial

requires a Concession granted by the National Authority on Waters, which is currently the Ministry of the People's Power of Ecosocialism and Waters.

The Mining Law of September 1999 confers upon the beneficiaries of mining rights the right to the rational use and development of the waters of public domain for exercising their mining activities, upon compliance with the relevant environmental provisions. This means that, in order to use the waters, the beneficiaries of mining rights must comply with the procedure set forth in the national legislation on the use of waters.

The Law on Waters prohibits the assignment or transfer of Concessions by their holders to third parties. Therefore, it is indispensable that the party who is interested in using the waters be the applicant (holder) of the Concession. No third party may be authorized to use the waters, even if the same are located in areas over which the third party have rights of ownership or other rights. Making use of the waters without the relevant Concession is subject to penalties. The formalities for requesting the Concession are regulated in Decree 1257 and the Organic Law for Territorial Distribution ("OLTD").

One of the requirements for obtaining a Concession, is having requesting and obtaining the authorization for occupation of the territory, according to the provisions of Articles 10 and 53 of the OLTD<sup>8</sup>. This authorization shall be issued by the authority in charge of controlling the execution of the plans applicable to the lands that will be occupied.

The Law on Waters created the National Registry of Users of Water Sources. Individuals or legal entities that engage or purport to engage in using water directly from the source must be registered with this registry.

Individuals or legal entities, whether public or private, that on the effective date of the Law on Waters were using water directly from the source without the respective prior control instrument, must be registered with the National Registry of Users of Water Sources and carry through all the formalities for obtaining the concession, award or license, as the case may be.

The requirements for registering in the National Registry for Users of Water Sources are set forth in the Rules for the National Registry of Users of Water Sources, issued in February 2010.

The LCAA, regulates the management of the quality of the waters, and the conditions under which the management of liquid residues shall be performed, in order to protect the health of the living beings and the ecosystems. The management of the quality of the waters comprises their classification, the activities capable of degrading the natural waters, their path and damming, the reuse of residual waters, the treatment and protection of water basins, the control of the quality of the bodies of waters, the use of the land and its impact in water basins and the agricultural irrigation systems.

According to the LCAA, the National Executive, through decree, shall establish the quality limits and ranges applicable to (i) the discharge of liquids in waters of bodies; and (ii) the injection or discharge of liquid discharges in sewage systems, the soil or subsoil.

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nature of mining activities and the definitions of industrial activity contained in Venezuelan legislation (*i.e.*, Article 2 of Resolution N° 3.617 issued by the then Ministry of Development on 8 December 1986; Article 1 of the General Regulations of the Decree having the Rank and Force of Law establishing the Value-Added Tax, and Article 208 of the Organic Law on the Municipal Public Power), we believe that for the purposes of the Law on Waters, mining activities are characterized as an industrial activity.

<sup>8</sup> In our opinion, the OLTD is in force, in spite of having been derogated by the Organic Law for the Planning and Management of Territorial Distribution, because the latter law did not become effective as it was abrogated by the Derogatory Organic Law for the Planning and Management of Territorial Distribution one day before it was to become effective.

The LCAA, imposes the following obligations and duties to persons involved in the management of the waters:

1. Qualify liquid residues based on the reuse, the recycling, the recuperation or any other action aimed at obtaining reusable materials or energy, from wastes.
2. Prevent and reduce the production and hazardousness of wastes, especially in cases of manufacturing and distribution of products.
3. Develop and implement (i) technology that reduces the generation of liquid wastes; and (ii) management and handling systems that allow to reduce their generation.
4. Ensure the elimination of liquid wastes that may affect the health or the environment, pursuant to the LCAA.

According to the LCAA, the State may grant fiscal incentives to individuals and corporate entities that (i) perform activities to reduce their effluents to the quality permissible ranges; (ii) set up equipment, machinery and procedures, to reduce or eliminate the generation of liquid residues or wastes; and (iii) develop alternatives for the handling and recycle of liquid residues and wastes.

## 7. The Electricity Sector

The legal system applicable in Venezuela to the electricity sector has undergone a profound transformation in recent years.

In fact, on 14 December 2010, the Organic Law on the Electric System and Service (the "Electricity Law") became effective, upon being published in the Official Gazette No. 39.573. This legal instrument enacted by the National Assembly expressly derogated the Organic Law on the Electric Service published in the Special Official Gazette No. 5.568 dated 31 December 2001, and brought a major change to the Venezuelan regulations on this matter, since it considerably limited the participation of private companies in the electricity sector.

In addition to the Electricity Law, there are other legal provisions in Venezuela that are closely related to the electricity sector. Among those provisions, there is Resolution No. 76 issued by the Ministry of the People's Power for Electric Power ("MPPE") (Official Gazette No. 39.694 dated June 13, 2.011); the Law on the Rational and Efficient Use of Power (Official Gazette No. 39.823 dated 19 December 2011), the Organic Law for the Reorganization of the Electricity Sector (Official Gazette No. 39.493 dated 23 August 2010); the Resolution that issues the Quality Standards for the Electricity Distribution Service (Special Official Gazette No. 5.730 dated 23 September 2004); Resolution No. 014 issued by the MPPE (Official Gazette No. 40.166 dated May 14, 2013) ("Resolution No. 014"); the Special Regulation on Security Zones of the National Electricity Service and System (Official Gazette No. 40.220 dated August 2, 2013) and Resolution No. 098 issued by the MPPE (Official Gazette No. 40.479 dated August 20, 2014) ("Resolution No. 098") which establishes the Exceptional Regime of Electricity Supply for High Demand Users.

## 8. The Electricity Law

The Electricity Law is divided into six titles that go from the rules on competence and activities to the rules on rates and penalties. The following is a review of the most relevant provisions.

### (a) Main Provisions

The purpose of the Electricity Law is to set the provisions that regulate the electricity system and the provision of electricity services in the national territory, as well as the international electric power exchanges, through generation, transmission and dispatch, distribution and marketing

activities, according to the Plan for the Development of the National Electricity System and the Plan for the Nation's Economic and Social Development. The Electricity Law also sets the premises and governing principles, and also regulates the actions of the persons that take part in the provision of electricity services and sets the rights and obligations of users.

The works and properties that are directly related to the electricity system in the national territory were declared as being of public and social interest by said law, and the activities for the generation, transmission, dispatch, distribution and marketing of electricity were declared to be public service.

The Venezuelan State, according to the competence established by the constitution of the republic, for reasons of security, defense, strategy and national sovereignty, reserved to the state the activities of power generation, transmission, distribution and marketing, as well as the dispatch of the electricity system, through the Ministry of the People's Power that is competent on the matter of electric power.

Among the new provisions of the Electricity Law, it is worth mentioning Article 10, which provides that the Venezuelan State, through the operator of the electricity service, may form mixed companies for the construction of works, the production and supply of goods and services that serve as inputs for the activities of the National Electricity System. In this regard, the Electricity Law provides that the state will reserve for itself the control and decision-making power thereof, by maintaining a participation of not less than 60 percent of their capital stock.

#### (b) Competence

The governing agency for the national electricity system and services is the Ministry of the People's Power that is competent on the matter of electric power.

The operator and provider of the service is Corporación Eléctrica Nacional S.A., or the entity that is created for this purpose, ascribed to the Ministry of the People's Power that has the competence for electric power and is charged, on an exclusive basis, with carrying out all the generation, transmission, distribution and marketing activities throughout the national territory. The operator and provider of the service, duly authorized by the executive branch of the government, may create new companies through its shareholders' meeting, for the purpose of transferring one or all the activities entrusted, and shall be the parent company of such new companies created.

#### (c) Self-Generation

The Electricity Law allows "self-generation," which is understood as the generation of electricity to be used solely for the consumption of the individual or legal entity that produces it, operates independently from the National Electricity System and is subject to the limitations set in said law.

Parties interested in setting up facilities for self-generation, with a capacity equal to or greater than two megawatts (2 MW), must request the relevant authorization from the Ministry of the People's Power competent on electricity, according to the procedure and terms set in the regulations governing this matter.

#### (d) Infractions and Penalties

The Electricity Law also contains a title especially devoted to the types of infractions and offenses, with their relevant penalties. The monetary penalties, which are independent from civil or criminal liability, may go from 5 tax units for infractions perpetrated by users of the electricity



service, up to 100,000 tax units for owners of self-generation facilities of more than two mega watts (2 MW), if they should refuse to supply electricity in a state of exception declared by the executive branch of the government.

(e) Rational and Efficient use of Electric Power

The Law on the Rational and Efficient Use of Electric Power has the purpose of promoting and orienting the rational and efficient use of electric power in the production, generation, transformation, transportation, distribution and marketing processes, as well as the final user of such power, by setting policies focused on the rational and efficient use of electricity, energy education, the certification of energetic efficiency and the promotion and incentives for the rational and efficient use of electricity. This law declares the rational and efficient use of electric power as a matter of social and public interest, and a national priority.

The persons subject to this law are individuals and legal entities, public or private, national or foreign, connected with the technological processes for production, transformation, transportation, distribution, marketing and final use of electric power throughout the national territory.

The Law on the Rational and Efficient Use of Electric power creates the obligation for the commercial sector to favor the distribution and sale of equipment and products that use low electricity consumption, high efficiency and renewable power as a substitute energy source. It also creates the obligations for the broadcasting media, whether public, private, community or alternative, to include in their programs content oriented towards the rational and efficient use of power – especially electricity - in performing their educational and informative duties.

Additionally, said law provides for the creation of electric efficiency certification processes for buildings, systems, equipment and materials that involve power consumption. According to the law governing the matter of certifications, the competent agency shall be in charge of issuing the energy efficiency certificates, by conducting assays and tests in order to check that the buildings, systems, equipment and materials that involve energy consumption comply with the technical regulations, rules, parameters and standards set. In this regard, the law contemplates the forming of a laboratories network in order to perform the relevant assays and tests.

This law also provides that the power-consuming equipment, of any kind, manufactured in the country or abroad, that is to be used or marketed in the country, shall be subject to an energy efficiency certification process, according to specific technical regulations, and national and international protocols.

The use of renewable energy shall be subject to the registrations and certifications issued by the executive branch of the government, through the Ministry of the People's Power that is competent on electricity matters.

Finally, the Law on the Rational and Efficient Use of Electric Power sets tax and education programs, benefits and incentives, equipment replacement plans, to incentivize the rational and efficient use of energy, as well as the use of the renewable power sources, especially in production and consumption sectors declared to be of priority interest, especially stressing this in areas for education, applied research and national development of processes, products and systems connected to the rational and efficient use of electric power.

(f) Register of Users of the National Electricity Service

Resolution No. 014 establishes the obligation of register and provision of information on certain users of the National Electricity Service within the frame of the Plan of Efficient and Rational



Use of Electric Power, through the website of the National Electric Corporation, S.A. (CORPOELEC). Failure to comply with the obligation of register and provision of information will lead to the imposition of financial penalties and surcharges, as the case may be, in accordance with the Electricity Law.

#### 9. Special Regulation on Security Zones of the National Electricity Service and System

The Special Regulation on Security Zones of the National Electricity Service and System establishes the legal regime applicable to persons, goods and activities executed within Security Zones of the National Electricity Service and System, its associated services and surrounding areas. This Regulation is applicable to individuals and corporate entities, either foreign or national, of public law or private law, which are located in the Bolivarian Republic of Venezuela.

The Ministry of the People's Power competent on electricity will be empowered to establish the permitted, restricted and prohibited activities in security zones and take any measure which may be deemed necessary in said zones (v.gr., intervention, expropriation).

The Ministry shall notify persons owning or possessing real estates within security zones, regarding the applicable regime on such real estates. Owners of these real estates are obliged to provide the Ministry with any information which may be necessary for conducting a census and for obtaining the corresponding authorization.

#### 10. Exceptional Regime of Electricity Supply for High Demand Users

Resolution No. 098 establishes an exceptional regime on electricity and electrical power supply which applies to High Demand Users that (i) require a special operative and commercial attention; or (ii) have a Contracted Power Demand ("CPD") equal to or exceeding of 5MVA in the supply point (the "Users").

The Users are obliged to enter into an agreement with the service providers regulating the commercial, technical, planning and operating conditions related to the provision of the electricity service. The agreement shall regulate, among other aspects, the specific economic conditions of the service.

The execution of the agreements will be subject to a transitory regime contained in a Plan that must be filed with the Office of the Vice Ministry of Electricity Services, by the operator and the service provider. The Office of the Vice Ministry of Electricity Services will be the office in charge of ensuring compliance with the Resolution.

#### 11. Mining

Venezuela is a country with an extraordinary mining potential. Almost any mineral, metallic or otherwise, is found in Venezuela. However, Venezuela's mining industry is relatively underdeveloped in comparison with the industry levels of other Latin American countries. The vast Venezuelan territory was explored as early as the XVI century by German bankers in search of precious mineral resources. British, French, South African, Italian, Canadian and US miners, just to name a few nationalities, have looked for diverse types of minerals throughout Venezuela, but only a handful of projects have reached sustained production status.

Mining legislation in Venezuela is either federal or state. While federal legislation is applicable to metallic minerals, state legislation applies to non-metallic minerals and varies from state to state.



Currently, there are 23 states in Venezuela. Non-metallic minerals located in the capital district are also subject to special legislation.

Generally, the large mining projects have significant government participation or are controlled by the state. This is particularly the case of the iron industry, nationalized more than 30 years ago; the gold industry, nationalized in 2011, and with bauxite and coal projects. Private entities have been successful in developing major projects, like the nickel mining project not far from the city of Caracas. In 2013, the Government issued a decree reserving to the Venezuelan State the direct exploration and production of certain nickel and associated mineral deposits located in the states of Aragua and Miranda. In 2015, the Government issued another decree reserving to the state the direct exploration and production of coal and associated mineral deposits located in certain areas of the state of Zulia. In 2017 the reservation of mining activities to the State was extended to diamond, copper and silver. There is no officially reported production of uranium, cadmium, molybdenum and similar minerals, although newspapers every now and then comment on alleged Venezuelan production.

Since 1855, a succession of laws has regulated the mining sector. The current mining law was enacted in 1999, and in some instances is an improvement over its predecessor of 1944.

In addition to the basic legal framework specific to mining, a number of foreign investment regulations, tax regulations and environmental regulations are equally applicable to the mining industry. As mentioned before, iron and gold mining are subject to special legislation. Usually, compliance with non-mining legislation is a prerequisite for conducting mining activities, and at times mining projects remain suspended for years until all bureaucratic paperwork, permits and clearances are obtained. The main administrative body in charge of supervising and controlling mining activities at the federal level is the Ministry of Ecological Mining Development.

During the last few years, the current administration has been working on restructuring mining policy throughout the country. Gold mining was very recently reserved to the state, where private participation is only allowed through a shareholding of less than 45 percent of the capital stock of mixed companies under state control. The expected new general mining policy will lead to an industry structure similar to the current structure of the oil industry. Accordingly, mining activities will be conducted directly by the state, by wholly-owned state entities or by mixed companies allowing for private participation, but in which the state holds more than 50 percent of the capital stock. Small mining activities will also be permitted in designated areas. Notwithstanding the foregoing, the date of adoption of this anticipated general reform is still uncertain. Venezuelan mining legislation is based on the civil-royalty principle whereby all minerals belong to the state. Therefore, minerals are part of the public domain, inalienable, not subject to acquisition by adverse possession, and as a consequence thereof private mining activities require a government authorization. Although the Mining Law establishes five alternatives for exercising mining activities (directly by the executive branch of the government, Concessions for Exploration and Subsequent Exploitation, Exploitation Authorizations for Small Miners, Mining Communities and Artisan Mining), the one having most commercial and industrial importance is the mining concession. All mining rights in respect of gold mining deposits held by individuals or private entities were terminated as of 15 December 2011. Since then, private participation in gold mining is restricted to a reduced shareholding not exceeding 45 percent of the capital stock of the mixed company that holds the relevant mining rights, and Small and Artisan mining of gold deposits can also be conducted under the form of strategic joint ventures (*asociaciones estratégicas*) between the Venezuelan State and other forms of partnership permitted for Small mining activities.



Any national or foreign individual or legal entity domiciled in Venezuela and capable according to law may obtain mining rights in the country, excluding rights for small mining carried out individually or in communities, which are reserved to Venezuelan citizens or Venezuelan legal entities, or artisan mining, which is reserved to Venezuelan citizens only. It must be borne in mind that the iron and gold industry is reserved to the state, and private participation is only allowed in limited cases. Certain persons and entities are prohibited from acquiring mining rights, namely Venezuelan public officials and specific relatives of such officials, as well as foreign governments and companies dependent on such governments or controlled by them. Mining companies formed in Venezuela must register their establishment with the competent ministry within 30 days or their applications shall not be processed. If there are foreign investment and/or technology transfer agreements, agreements governing the use of patents or trademarks, or technical assistance coming from abroad, such agreements must also be registered with the respective department of the competent ministry.

The Mining Law adopted a sole type of mining concession. Consequently, as of its enactment, the only mining concessions available are the concessions for exploration and subsequent exploitation. However, concessions granted prior to the enactment remain in full force and effect. Concessions are unavailable for gold mining purposes, for which a special regime is applicable. For gold mining, the President of the Republic will transfer the mining rights to the relevant mining company by way of a Decree. Privately held shares of a mixed company cannot be transferred without the government's prior consent. The change of control of the shares of the relevant mixed company is also subject to governmental authorization.

The concessions for exploration and subsequent exploitation will be awarded for plots of land that must be divided into lots with an area that may vary from a minimum of 493 hectares to a maximum of 513 hectares, with a total extension not exceeding 6,156 hectares, that is, 12 lot units. The maximum number of lots that may be granted to the same holder is two, that is, 24 lot units.

The right arising from the mining concession is a real property right. However, the competent ministry must first authorize and grant a permit in order to alienate, encumber, lease or subcontract the property for exploitation. To obtain this authorization, the concessionaire must have carried out prior activities and required investments for submission of the development and exploitation program, which should be filed 30 days before the commencement of exploitation. This requirement is to be taken into consideration particularly when seeking financing for a mining project.

Another characteristic of concessions is that the concessionaire is entitled to select from its explored lot up to a maximum of six adjacent lots (not more than half of the original extension) for exploitation purposes. The term for concessions cannot exceed 44 years. Concessions provide for an exploration term of no more than three years, with a sole extension of one year. The exploitation term may not be more than 20 years as of the date of publication of the respective Exploitation Certificate, with a maximum of two 10-year extensions granted at the discretion of the competent Ministry. Concessions confer upon their holders the exclusive right to explore and exploit the mineral substances that are found within the area awarded (tailings are included in the mineral granted).

Among the main features of the Venezuelan mining legal system are the so-called special advantages. Private persons and entities may be required to offer special advantages to the republic whenever requesting a concession. These advantages normally refer to aspects such as the supply of technology, internal supplies, provision of infrastructure, social endowment, and obligations to train and specialize in geology-mining, among others. Special advantages are often drafted in broad and vague terms which make it difficult to guarantee compliance.



The holders of mining rights must pay several taxes and contributions. These are: A surface tax for each hectare, starting as of the fourth year of the concession, payable quarterly. The amount is calculated in tax units per hectare, depending on the number of hectares and the year of the concession, based on a table that goes, in the case of gold and diamonds, from 0.14 tax units within the first four years of the concession for extensions no greater than 513 hectares, up to 0.38 tax units in years 17 to 20 of the concession for extensions of 12,312 hectares. Once the exploitation is started, the exploitation tax will be deducted from the surface tax pertaining to the same period until concurring with the former. The exploitation tax is equal to: (i) 3 percent of the commercial value, in Caracas, of the refined material, for platinum and metals associated with platinum; (ii) 4 percent of the commercial value in Caracas, for diamonds and other precious stones, and (iii) 3 percent of the commercial value, at the mine, for other minerals, which includes costs until the extracted mineral, whether or not crushed, is deposited in the vehicle that is to carry it outside the limits of the area awarded or to a plant for refining. In the case of gold, a 13 percent royalty is due, which can be increased by way of special advantages, or reduced down to 3 percent for specific projects. The calculation of exploitation tax is often a cumbersome task due to the imprecise terms of the law. Generally, mining rights may be terminated under any of the following circumstances: (i) due to expiration of the term for which they were awarded; (ii) by express waiver in an authenticated document; (iii) for failure to carry out the exploration within the legal term; (iv) for failure to submit the drawings (plans) within the legal term; (v) for failure to begin exploitation within the legal term; (vi) for unjustified suspension of the exploitation for a term longer than that allowed by law; (vii) for failure to pay any mining tax for one year; (viii) for failure to submit the feasibility study; (ix) for failure to comply with the special advantages; (x) for committing several infractions against the Mining Law (more than three in six months); and (xi) for other special causes provided for in the agreement. According to practice, when the relevant Ministry terminates a mining concession it usually does so alleging breach of the mining obligations without allowing the concessionaire the opportunity to show proof of compliance. The land, permanent works, facilities, accessories and equipment that are an integral part thereof and all the real and personal property, tangible or intangible, acquired to be used in the mining activities must be maintained and preserved in proven operating condition according to technical advances, during the term of the concession; full title thereto shall pass on to the republic, without liens, charges, or indemnification, upon the termination of the rights for whatever cause. Accordingly, any mortgage on a mining concession will be erased upon termination of the underlying mining concession.



# Environmental Law

The Constitution of the Bolivarian Republic of Venezuela (the "Constitution") recognizes the existence of environmental rights and establishes the general principles that govern the performance of activities capable of degrading the environment. These general principles are: the collective and individual right to enjoy life in a safe, healthy and ecologically balanced environment; the State's duty to protect the environment, the biological diversity, the genetic resources, the ecological processes, the national parks, the natural monuments and other areas of special ecological importance; and the preparation of environmental and social/cultural impact studies prior to the performance of activities capable of degrading the environment. The Constitution empowered the National Assembly to legislate on matters related to the preservation, development and exploitation of mountains, water and other natural resources of the country, as well as on agriculture, livestock production, fishing and forestry activities.

The Ministry of the People's Power of Ecosocialism and Waters (the "MPPEA") is the office in charge of ensuring compliance with the environmental regulations and granting the authorizations required for performing activities capable of degrading the environment.

Violations to the regulations regarding the conservation, defense and improvement of the environment or of the authorizations granted by the MPPEA for performing activities capable of degrading the environment are subject to administrative sanctions pursuant to the Organic Law of the Environment (the "OLE") and criminal sanctions pursuant to the Criminal Law of the Environment (the "CLE"). Additionally, the liable party may be compelled to repair the damages caused or to pay for the damages caused to the environment, regardless if the cause of the damages is considered as a punishable criminal offense subject to a sanction.

The basic principles that govern the conservation, defense and improvement of the environment are provided for in the OLE, which is the governing rule on environmental matters. The OLE allows the MPPEA to authorize, on a case by case basis, the performance of activities capable of degrading the environment, to the extent that these activities produce economic or social benefits for the country and the damages caused may be repaired. The conditions, limitations and restrictions applicable to said activities, including the relevant guarantees, procedures and guidelines for repairing the damages, must be set forth in the authorizations granted by the MPPEA.

In addition to the administrative sanctions provided for in the OLE, parties responsible for environmental damages may be criminally sanctioned pursuant to the CLE. The CLE is a law that classifies actions or omissions that violate the provisions regarding the conservation, defense and improvement of the environment as criminal offenses, and additionally, sets forth the applicable sanctions. Furthermore, the CLE establishes that the owners, presidents and administrators of companies which perpetrate environmental criminal offenses may be held criminally liable, provided that they participated in the actions or omissions which constitute the criminal offense

The CLE divides criminal offenses into two groups. The first group of criminal offenses is integrally defined in the CLE. The second group comprises criminal offenses that are not integrally defined in the CLE, but that relate to supplementary regulations established in laws issued by the National Assembly or by presidential decrees or regulations. The supplementary regulations are provisions of technical nature that set forth the basic principles, limits for tolerance, requirements and procedures applicable to specific activities capable of degrading the environment.



Additionally, there are special laws that contain environmental regulations in matters of quality control of the waters and the air, and the treatment and handling of solid wastes. These regulations also establish sanctions in case of breach.

## 1. Supervising Agencies and Authorities

The MPPEA, besides being the competent office for authorizing the performance of activities capable of degrading the environment, monitors and controls compliance with environmental regulations.

The State, through its competent bodies, exercises a post-environmental control in order to ensure compliance with the rules and conditions set forth in the standards and instruments intended for prior environmental control, as well as to prevent environmental infractions. In this sense, the post-environmental control is exercised through the following mechanisms: (i) Environmental Care; (ii) Environmental Audits; (iii) Environmental Monitoring; and (iv) Environmental Police.

The Environmental Care is exercised by the ministries with competence in the following areas: Environment, Basic Industries and Mining, Agriculture and Land, Energy and Oil, and by the National Army and other bodies and entities of the national, state and municipal governments, within the framework of their attributions. Likewise, the Environmental Care is also exercised, as an auxiliary body, by organized communities, communal councils and other civil associations with environmental purposes, in accordance with the OLE and other applicable legislation. The Environmental Care exercised by the National Army is performed through a special administrative body.

The officers in charge of the environmental care, as representatives of the Public National Power, are authorized to take the appropriate measures, within the framework of their powers and in accordance with the applicable regulations, in cases of environmental criminal offenses or administrative infractions, in order to guarantee the preservation of the environment and sustainable development.

The supervisor verifies compliance with the monitoring plan, required under the process of Determination of the Environmental Impact, the rules applicable to the prior control and other environmental measures. The environmental auditor verifies compliance with the provisions contained in the environmental regulations and rules for prior control and suggests the relevant measures for performing adjustments.

The Environmental Police Force was created in order to provide assistance to environmental criminal judges, which require highly-specialized officers who may ensure correct compliance with the CLE. The duties of the environmental police include adopting precautionary measures to avoid environmental criminal offenses: to undertake procedures resulting from formal claims or requests from a judicial authority, to determine the relevant facts of a criminal investigation and to confirm criminal acts and to take alleged criminals under custody.

## 2. Criminal and Administrative Sanctions; Civil Liability

Criminal sanctions for environmental damages may only be imposed by criminal judges after the liability of the relevant individual is determined. The sanctions for individuals pursuant to the CLE are: imprisonment, civil arrest, fines and community service. The sanctions for companies are fines and, depending on the severity of the damage, the dismantling of their installation, facility or construction. Moreover, depending on the circumstances of the criminal offense, criminal judges may also impose additional sanctions and precautionary measures. For example, the convicted party may be (i) required to publish the decision at its own expenses; (ii)



forced to close, temporarily or permanently, the installations or facility; (iii) suspended from the permit or authorization granted; (iv) prevented from entering into contracts with the public sector; and (v) ordered to destroy, neutralize or treat the substances, materials, manufactured instruments or goods, imported or sold, that have caused health or environmental damages.

The MPPEA may impose administrative sanctions, without prejudice to the person responsible for the environmental being criminally sanctioned as well. In fact, the MPPEA may impose temporary or permanent measures in order to prevent or reduce the harmful consequences of the sanctioned event, even at the beginning of an administrative proceeding. The measures include taking control of the sources of contamination; the temporary or permanent closure of plants or facilities; the temporary or permanent prohibition of performing the activities that caused the contamination; the modification or demolition of buildings; and any other measure aimed at remedying or compensating the damages caused. The MPPEA also has the power to require the liable party to restore the affected area to its original condition.

The authorizations granted by the MPPEA to perform activities capable of degrading the environment provide for the parameters under which the contaminating activity is permitted. Therefore, damages caused during the performance of activities duly authorized by the MPPEA do not constitute an infraction, provided that they have been performed within the parameters of the relevant authorization. Additionally, since the authorization constitutes a license granted by the MPPEA to the party responsible for the environmental damage, said authorization serves as a defense when facing criminal or administrative complaints related to environmental damages.

Finally, persons causing environmental damages may be required to pay for the damages caused to third parties, including the State. The CLE establishes the following principles and general rules applicable to the liability regime:

- **Strict Criminal liability:** This is a liability regime that arises from environmental criminal offenses, which occur as a consequence of the breach of administrative regulations. In this sense, the verification of the breach of said regulations is sufficient, there being no need to prove the individual's culpability.
- **Corporate Criminal Liability:** Corporate Entities may be held liable for their actions or omissions in those cases where the criminal offense has been committed as a consequence of the violation of rules or provisions contained in laws, decrees, orders, ordinances, resolutions and other administrative acts of general or particular effects.
- **Joint and Several Liability with regard to contracts:** When two corporate entities enter into an agreement regarding the performance of a particular activity for the benefit or advantage of one of the parties, the performance of which causes damages or risks to the environment or the natural resources, both parties will be held jointly and severally liable.
- **Joint and Several liability regarding dependents:** Any person that allows the perpetration of any criminal offense provided for by the CLE by individuals or corporate entities under its direction or dependency, being aware of such situation and being able to prevent the same from occurring, shall be subject to the same punishment applicable on the criminal offence that has been committed, reduced by one third.
- **Civil liability:** Whenever a criminal conviction is established in connection with criminal offenses causing environmental damages, the judge may establish the civil liability of the responsible parties and may order the implementation of the relevant remediation measures, as well as the redress of the damages caused. The obligation to restore, repair damages and pay indemnifications for environmental damages is deemed a matter of public policy.



# Labor Legislation

The Venezuelan legislative system considers the labor system as a set of rules set forth mainly for the protection of workers under an employment relationship and of labor as a social event. The rules also include the rights and prerogatives of employers and, in certain aspects, protect workers that are not under an employment relationship, defined as persons that habitually live from their work without being under an employment relationship with one or more employers. The following is a very general summary of this system.

## 1. Fundamental Elements

The Venezuelan labor system is made up of the following fundamental elements: (i) a set of rules that regulate its principles (e.g., the non-waiver of rights and territoriality, among others), the sources that give rise to the labor rules (e.g., the law, collective bargaining agreements), the parties thereto (worker and employer), the most important rights of said parties (salary and benefits, labor conditions and other obligations of each party), and the distinction between the various types of workers, and among representatives of the employer and contractors; (ii) a set of rules that apply to the incidences that may arise during the labor relationship (such as the trial period, suspension of the employment relationship, inventions or improvements, the substitution of the employer and prohibits certain forms of outsourcing); (iii) a set of rules that regulate the reasons for terminating an employment relationship (i.e., dismissal, retirement or resignation, mutual agreement, reasons beyond the control of the parties); (iv) a set of rules that regulate working conditions (e.g., vacations, rest days and holidays, workday, and occupational health and safety); (v) a set of rules that regulate special labor regimes (e.g., work of minors and apprentices, home-based worker, residential workers, agricultural workers, professional sportsperson, land, river and air transportation workers, motorcycle workers, and work by persons with disability); (vi) a set of rules to regulate collective labor matters (such as collective bargaining agreements, collective conflicts, strikes, creation of unions, federations and union confederations); (vii) a set of rules to regulate matters in relation to occupational health and safety and labor-related accidents and illnesses, their consequences and probable liabilities for the employer in such cases; and (viii) a set of rules to regulate the social security systems for contingencies of old age, disability, health, maternity, labor risks, housing and other contingencies that the state considers must be covered by the system.

## 2. Sources of Labor Provisions

According to the Organic Labor and Workers' Law published on May 7, 2012 ("OLWL"), labor provisions may derive not only from the constitution and social justice as a foundational principle of the republic, but also from other sources identified therein (e.g., international treaties, pacts and conventions signed and ratified by the republic, the labor legislation and the principles that inspire it, collective bargaining agreements or arbitration awards -as the case may be- not contrary to mandatory policy provisions of a constitutional and statutory nature).

## 3. Principle of the Prevalence of Reality

According to the Constitution, the OLWL, the Regulations to the former Organic Labor Law (the "Regulations"), which are still in effect to the extent they are not in conflict with the OLWL by the time this work is published, and repeated decisions of the labor courts, in the Venezuelan labor system, the reality of the facts prevails over forms or appearances. Thus, for example, if an individual provides services to another on a subordinate basis and for the other's account, the individual providing the services is considered to be an employee and will have the right to payment of the pertinent labor benefits, regardless of whether a civil or commercial agreement has been entered into stipulating, for example, that this individual is an independent contractor.

#### 4. Non-Waiver Principle

Under the Constitution, the OLWL and the Regulations (which are still in effect to the extent not in conflict with the OLWL by the time this work is published), labor rights cannot be waived and any agreement or convention that diminishes them is null and void. However, it is possible for the worker to sign settlements or agreements with the former employer, subsequent to the termination of the labor relationship, provided that certain requirements and formalities are met.

#### 5. Main Labor Benefits

According to the OLWL, workers in general are entitled to the payment of a salary, and also profit sharing (or a year end bonus in lieu thereof in certain cases), vacations, vacation bonus, seniority benefits, rest days and holidays, overtime or night-work surcharge, and to indemnities in the event of justified resignation or unjustified dismissal. Pregnant workers, as well as the corresponding father under an employment relationship, have special protection and cannot be dismissed during pregnancy or during the two years following child birth without justified cause previously proven before the Labor Inspector of the jurisdiction. They are also entitled to pre- and post- birth leaves, breastfeeding leaves, and certain leaves for health control during the pregnancy. The father, regardless of his marital status, will also qualify for certain paternity leave paid by the Social Security System.

During the infant's first year, the mother or father has the right to one day of paid leave per month for the infant's medical control visits.

#### 6. Suspension of the Employment Relationship and Employer Substitution

The employment relationship may be suspended for reasons that are not generally directly imputable to the worker or by mutual agreement of the worker and the employer (at least in certain cases). Though there are exceptions, generally during the suspension, the worker is not required to provide the services or the employer to pay the salary, unless there is an agreement to the contrary (although certain benefits are maintained). During the suspension, the worker cannot be dismissed without justification previously proven before the Labor Inspector of the jurisdiction. When a substitution of the employer occurs, the labor relationships continue in principle, the new employer assumes the labor liabilities accrued prior to the employer substitution, the affected workers may, under certain circumstances and during a certain period, retire and claim payment of indemnification as if they had been dismissed without cause and the previous employer will be jointly and severally liable with the new employer for a maximum period of five years counted as of the date of the change of the employer or of the written notice thereof to the workers.

#### 7. Termination of the Employment Relationship

The employment relationship may be terminated by dismissal, retirement or resignation, mutual agreement, or for reasons beyond the control of the parties. The dismissal, retirement or resignation may be justified or unjustified. However, under the OLWL, there is an absolute labor stability system pursuant to which protected workers may not be dismissed without just cause. Dismissal of protected workers without cause is null and void, but the workers have the option to retire or resign, collecting the additional unjustified dismissal indemnity(ies) that may apply. Most workers, with a few exceptions, are protected by the absolute labor stability system. There are also several cases of special labor protection, which protects certain workers against dismissals, deterioration of conditions and transfers without just cause previously proven before and authorized by the competent Labor Inspector. Under a Presidential Decree the most recent version of which by the time this work is published was published on December 28, 2015, most workers, with a few exceptions, enjoy this special labor protection.



## 8. Health and Safety at the Workplace

The employer and the worker must promote a healthy and adequate workplace; however, this is mainly the duty of the employer. The employer must give written notice to the worker of all the labor risks and mechanisms to prevent these risks. Under the 2005 Organic Law on Occupational Prevention, Conditions and Environment and its Partial Regulations enacted in 2007, the obligations of the employer are increased and more thorough; something similar also occurs with the worker's obligations. It is very important for the employer to fulfill all its duties and obligations in an orderly and integral manner, and also observe the technical and regulatory rules issued, which are constantly evolving. Non-compliance with the applicable rules may give rise to severe civil, administrative and even criminal liabilities and sanctions for the employer.

Under certain conditions, the employer and the worker must contribute financially to social security, the housing and habitat benefit system, the employment benefit system, and the system for education and training of workers carried out by the state through the National Institute of Socialist Training and Education ("INCES").

## 9. Collective Affairs

According to the OLWL, workers and employers have the right to organize and create unions. The workers, subject to certain rules, may exercise their right to negotiate collective bargaining agreements and resort to collective conflicts, and even to strike.

## 10. Labor Proceedings

The Organic Procedural Labor Law ("OPL") sets forth that labor proceedings are predominantly oral and are governed by the principles of immediacy (the judge directly attends to the debate and examination of evidence), concentration (the debate is carried out in a single hearing, although it may extend for several days) and expeditiousness of the proceedings (brevity of the proceedings), among others. The OPL presents certain characteristics, such as early submission of evidence (before the debate between the parties), and attempts to promote reconciliation through the initial intervention of a mediator judge (other than the one who will decide on the proceeding) and encourages the use of alternate means for the settlement of conflicts, such as labor agreements.

According to the OPL, (i) the judge has broad powers to evaluate the evidence and decide, and may also order payment of items other than those required –when these have been discussed at the proceedings and have been duly proven- and adjudge the payment of amounts higher than those claimed, provided that those claimed by the worker are lower than those provided by law and those alleged and proven in the proceedings; (ii) the burden of proof of the reasons for dismissal of the worker rests with the employer, as well as payment to release the employer's obligations under the employment relationship; and (iii) whenever doubts arise on the interpretation of any rule the judges are required to apply the interpretation most favorable to the worker.



# Immigration Laws and Practices

Venezuelan immigration laws are an increasingly important consideration when planning an investment in the country. The careful planning of employees' transfer to Venezuela is a key element for a successful business venture in Venezuela. Strict adherence to Venezuelan immigration laws will protect companies against sanctions or disqualification by various governmental bodies that investors must deal with. Early legal advice is highly recommended in order to: (i) plan ahead the type of visa most appropriate for the applicant, (ii) review and prepare the documentation required for the appropriate visa, and (iii) ensure proper processing of the application.

The Law on Alien Citizens and Migration (the "Law") became effective in November 2004. The purpose of the Law is to regulate all matters regarding the admission, entry and permanence of alien citizens in Venezuela, as well as their rights and obligations in our country. The Law shall apply to all alien citizens, regardless of whether they are in Venezuelan territory illegally or legally, and in the latter case, regardless of the visa they have been granted. The Joint Resolution by the Ministries of the Interior and Justice, Foreign Affairs and Labor setting forth the Rules of Procedure for the Issuance of Visas (Special Official Gazette No. 5.427 of 5 January 2000) remains in force for all matters that do not contradict the provisions of the Law.

The Law classifies alien citizens in the following categories, according to the time and the purpose of their stay:

**Non-Migrants:** Those who come into the country with no intention of setting up residence, to remain for a term of no more than 90 days, extendable for additional 90 days.

**Temporary Migrants:** Those who enter the country intending to stay while they perform the activities for which they have been admitted.

**Permanent Migrants:** Those who have authorization to stay in the country for an indefinite period of time. The Law creates a National Alien Citizens Register to be kept by the Ministry of the Interior and Justice.

The structure, organization and functions of said register shall be established in the Regulations to the Law. However, such register has not been into practice. Foreigners coming to the country under the category of temporary or permanent migrants, or who acquire the latter status afterwards, shall be obliged to register in said register within 30 days of their entry. The following will also be obliged to notify the competent office in charge of the register:

- Companies that engage foreign citizens must notify the registry office of the terms and conditions of the employment relationship and the termination thereof. This notice must be made within 30 days of the respective act.
- Owners or administrators of hotels, inns or lodging places must notify the registry office regarding foreign citizens lodged in their facilities. The relevant report must be sent to the registry office every eight days, without impairment to any provisions set in the regulations thereafter.
- Owners or administrators of passenger carriers, and national or international tourism companies regarding the uses of their services. The relevant report must be sent to the registry office every eight days, without impairment to any provisions set in the regulations thereafter.



Alien citizens who are not registered in the register will be penalized with a fine of 10 tax units, while the companies that fail to notify the registry office according to the terms set forth above shall be penalized by a fine of 50 tax units.

The Law provides that foreign citizens who are in Venezuela as temporary or permanent migrants must submit their official marriage certificates and those of their families to the competent civil authority and inform such authorities of any change of residence. Also, it provides that foreigners are obliged to keep their visa or the document accrediting their stay in Venezuela up-to-date. The Regulations to the Law will establish the terms within which each visa shall be renewed. However, the Regulations to the Law have not yet been enacted. Failure to renew the visa within the term to be set forth in the Regulations to the Law constitutes a cause for deportation.

Companies are responsible for compliance with their obligations according to the Law. Thus, companies that hire illegal workers will be penalized by a fine of 200 tax units. Also, the Law establishes the criminal liability of legal entities whose administrators or persons in charge facilitate or allow the illegal entry of alien citizens into the country or contract foreign labor in order to exploit such labor in violation of the workers' rights.

In addition to the crime of facilitating illegal entry into the country and the labor exploitation of migrants, the law penalizes crimes of unlawful immigration and illegal traffic of persons with imprisonment for a term of four to eight years.

When it is necessary for an investor to transfer key personnel, including executives, to Venezuela, there are a number of visas to be considered under Venezuelan law. As a general rule, the Venezuelan Consulates and the Autonomous Service of Identification, Migration and Alien Citizens ("SAIME"), ascribed to the Ministry of Internal Affairs and Justice, are the competent governmental authorities for processing and approving visas.

#### 1. Labor Transient Visa ("TR-L")

An employee that must enter into Venezuela by virtue of an employment agreement, is required to obtain a work permit from the Labor Ministry and the TR-L Visa. Such visa must be obtained by the employer, who must be domiciled and registered in Venezuela.

The procedure for issuing the work permit and the TR-L Visa comprises three stages:

Step 1: The first step takes place at the Labor Ministry, where the reasons for which the company wishes to engage foreign labor are analyzed, as well as the nature of the activities to be carried out by the latter in Venezuela, and ends with the issuance of the corresponding labor permit.

The obligation to obtain the labor permit is exempted in certain cases. Such is the case, just to provide some examples, of scientists, professionals, technicians, experts and specialized personnel who come to provide consulting services, training or to carry out temporary tasks for not more than 90 days, as well as those who come into the country under cooperation and technical assistance agreements.

Companies that hire foreign labor are obliged to repatriate such persons and their families within the month following the termination of the relevant contract, assuming the expenses that this may imply.



Step 2: Once the permit has been obtained, the SAIME reviews the documentation and the corresponding work permit. If no objections are raised, SAIME authorizes the granting of the visa.

Step 3: Finally, once the authorization for granting the visa has been issued, the applicant must go to the consulate he/she selects at the country of origin, in order to have the visa stamped on his/her passport. Also, you should bear in mind that each Venezuelan consulate abroad is autonomous in setting its own procedures for granting the visa, as well as the documents to be submitted for this purpose. Generally, the applicant must undergo medical check-ups and a general review at the consulate, submit police records and make a dollar deposit in the consulate's bank account.

The Labor Ministry and the SAIME request several documents to obtain the labor permit and the TR-L Visa and from time to time change the documents requested.

## 2. Business Transient Visa ("TR-N")

This visa is granted to business executives or entrepreneurs that wish to enter into Venezuela in order to perform financial, commercial or mercantile activities, or any other profitable and legal activity related to their business. The TR-N Visa is valid for one year and confers the right to multiple entries and departures to and from Venezuela during such period. However, holders of TR-N visas are allowed to stay in Venezuela only for a term of 180 consecutive days. Once such term has elapsed, the person must depart from Venezuela, or the visa will not be renewed. Notwithstanding the foregoing, during the term of the visa, the person may enter and stay for less than 180 days, as many times as needed.

The TR-N Visa is currently granted by Venezuelan consulates in the country where the person who wishes to obtain this visa resides. Generally, each Venezuelan consulate is autonomous in terms of determining the procedure for issuing the TR-N Visa, as well as some additional documentation required for this purpose. Once the consulate has reviewed the documents, it will authorize the issuance of the TR-N Visa. Generally, the process for obtaining the TR-N Visa may take from two to five weeks, depending on the consulate.

## 3. Other Visas

There are other types of visas that are not commonly used, but which are worth noting in this article. These are:

- Visa for Entrepreneurs and Industrialists ("TR E-I"). This visa is granted to persons who can demonstrate their interest in companies or industries located in the place of his or her domicile and which have affiliates in Venezuela. This visa is valid for two years with a maximum stay of four months.
- Visa for Investors ("TR-I"). This visa is granted to individuals or company representatives who have established business in Venezuela and an investment in Venezuela recognized and registered with the competent foreign investment authority, such as the Superintendence of Foreign Investments. This visa is valid for three years with no limitations on the length of stay.

Finally, Venezuelan law also contains provisions to regulate other visas, such as tourist visas, student visas, and religious visas for ministers and priests.



# Price Regulation

On November 12, 2015, there was published in the Special Official Gazette No. 40.787, the Decree having the Rank, Value and Force of Organic Law on Fair Prices (the “Fair Price Law”), which became effective on the same date of its publication.

The provisions of the Fair Price Law are public policy and, therefore, cannot be waived.

Following are the main regulations contained in the Fair Price Law:

1. Its purpose is to determine the rules for the determination of prices for goods and services, the profit margins, the commercialization mechanisms, and the controls to be undertaken to guarantee the persons’ access to goods and services at fair prices.
2. This Law applies to all individuals and legal entities, public and private, national and foreign, who engage in economic activities in Venezuela, including those which carry their activities through electronic media (the “Persons Subject to the Law “). Exceptions apply to persons who due to the nature of their activities are subject to special legal regulations.
3. The Law provides that the profit margin of each actor in the marketing chain cannot exceed thirty (30) percentile points of the cost structure of the good or service.
4. The National Superintendence for the Defense of Socio-Economic Rights (“SUNDDE”) is the agency in charge of implementing the Fair Price Law.
5. The Persons Subject to the Law must be registered in the Sole Register of Persons that Engage in Economic Activities (“RUPDAE”), to be kept by the SUNDDE. The registration in the RUPDAE is a mandatory requirement to engage in economic and commercial activities in the country.
6. The Law grants broad powers to the SUNDDE to impose precautionary measures, among which, the seizure of the goods and the temporary occupation or closure of establishments. Additionally, during the course of an audit, the SUNDDE has powers to order, as a precautionary measure, the “immediate adjustment of the prices of goods and services, according to those fixed by the SUNDDE” and “the temporary supervision of the licenses, permits or authorizations issued by the SUNDDE.”
7. The Law includes crimes, such as the “speculation”, “hoarding”, “boycott”, “resale of basic products” and “corruption between private persons”, among others. These crimes are sanctioned with (i) fines of up to 20% of the company’s annual net income corresponding to the previous fiscal year<sup>9</sup>; (ii) imprisonment for up to eighteen (18) years; (iii) confiscation, temporary closure or occupation of the companies assets; (iv) suspension of the company’s registration with the RUPDAE (in which case the company will be prevented from executing commercial activities); and (v) revocation of the company’s licenses and administrative authorizations.
8. Partners, as well as any member or person involved in the business, direction, administration, management and surveillance bodies or functions of legal entities, as

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<sup>9</sup> This type of fines applies to companies which qualify as Special Taxpayers. Otherwise, the fines are set on Tax Units.

well as the media, web pages, and other advertising media, will be personally and jointly liable for the crimes committed by the company they represent.

It is worth mentioning that on October 26, 2015, the Administrative Order No. 070/2015 was published on Official Gazette No. 40,774, which establishes the procedures for the determination, setting and labeling of prices in Venezuela (“the Order”). The Order was reprinted and then published in Official Gazette No. 40,775 of October 27, 2015. The most relevant provisions of the Order are the following:

1. Scope: The Order regulates the determination, setting and labeling of prices of goods sold and/or services performed in Venezuela.
2. Parties subject to the application of the Order (“Entities”): Individuals and legal entities subject to the application of the Fair Price Law.
3. Price setting:
  - a. Categories of prices:
    - i. Producer or Importer Maximum Sales Price (“PIM Sales Price”): The price determined and set by the producer or importer, which will be charged to the subsequent Entity in the commercialization channels.
    - ii. Maximum Sales Price to the Public (“Maximum Price”): The price determined and set by the producer, importer or service provider. According to the Order, the Maximum Price results from the sum of (a) The PIM Sales Price; and (b) The intermediation margin corresponding to each of the Entities of the commercialization channels, subject to the restrictions set forth in the Order (*i.e.*, the maximum intermediation margin in the channel or 60% over the PIM Sales Price). In other words, the Maximum Price must be the highest price that the final consumer shall pay, which could be less than the result obtained from increasing the PIM Sales Price by 60%, but in no event higher than the referred to result.
    - iii. Fair Price: The price (a) Set by the SUNDDE for those products such agency may deem necessary; (b) That represents the highest price the purchaser or final consumer will pay for a given good or service; and (c) Published in SUNDDE’s website.
  - b. Cost structure: The Entities and/or SUNDDE must set the prices considering, among other aspects, the cost structure of the good or service.
  - c. Maximum profit margin: (i) Importers of goods: 20%; (ii) local producers and service providers: 30%; (iii) the Order does not provide any express regulation regarding other Entities subject to the application of the Order. Nevertheless, the general rules of the Fair Price Law are applicable (*i.e.*, maximum profit margin of 30%), subject to the maximum intermediation margin as provided in the Order.
  - d. Maximum channels’ intermediation margin: It is the limitation resulting from applying 60% over the PIM Sales Price. Such limitation will apply regardless of the number of individuals or legal entities participating in the sales channels.
  - e. Other limitations set forth in the Order:



- i. The producers and/or importers are not allowed to sell goods to the subsequent Entity in the commercialization channel for a price higher than the PIM Sales Price.
  - ii. Goods or services can not be marketed for prices exceeding the Maximum Price or the Fair Price.
  - iii. The PIM Sales Price and the Maximum Price may be reviewed, adjusted and set by SUNDDE. Once such prices have been set by such Agency, they can not be increased without SUNDDE's prior authorization.
  - iv. SUNDDE may adjust the price if the maximum profit margins are exceeded, in which case SUNDDE will notify such adjustment to the corresponding Entity.
  - v. The effect of the distributor/seller's maximum profit margin on the maximum intermediation margins must be adjusted on the basis of the customary marketing standards of the good or service.
  - vi. The maximum intermediation margin of the distributor must not exceed the retailer's maximum intermediation margin.
4. **Labeling:** The Order did not make significant changes to the labeling rules set forth in Administrative Order No. 057/2014 and 073/2014 issued by SUNDDE regarding the obligation of labeling the Fair Price. In any case, following is a summary of the relevant changes set forth by the Order:
  - a. Labeling the Maximum Price and the Fair Price is mandatory for all the Entities and must be made to all goods sold and/or services provided in the country.
  - b. No good or service may be offered for sale if it does not have the Maximum Price or the Fair Price or if it is not visible for the knowledge of any possible purchasers.
  - c. The Entities must not label the term "Fair Price" if the price has not been set by SUNDDE.
  - d. The labeling of the Maximum Price or Fair Price may be done by any of the following methods:
    - i. directly labeled in the good;
    - ii. stamped through an auto-adhesive sticker; and
    - iii. printed listing.
  - e. The selection of the labeling method is not optional for the Entity. In this regard, the preferred method is labeling the good, except when it is not possible due to physical features, presentation or usual commercialization conditions. In this case, the stamp through an auto-adhesive sticker in the good, package or wrapper would be applicable.
  - f. The printed listing method is only applicable to the provision of services or sale of goods whose physical features, presentation or usual commercialization



conditions do not allow for the application of the methods referred to in sub-paragraphs d(i) and d(ii), above.

- g. The label of the Maximum Price in the good or wrapper must be: (i) visible; and (ii) placed on the front part of the product at a size not smaller than 5 mm. When the dimensions of the good prevent compliance with those requirements, the Maximum Price or Fair Price may be labeled at a size of 3 mm.
- h. SUNDDE may order the Entities to change their labeling method if it considers that the nature of the good allows for any other method assuring a better price identification.
- i. The label of the Maximum Price or Fair Price must include the following information:
  - i. The term “PMVP” or “PRECIO JUSTO” (Fair Price, in Spanish), as the case may be;
  - ii. The currency denomination “Bs”, followed by the amount corresponding to the Maximum Price or Fair Price in figures.
  - iii. The expression “IVA” referring to the value-added tax (VAT), followed by the corresponding percentage, indicated in figures and followed by the percentage sign (%).
  - iv. The expression “TOTAL A PAGAR” (Total to be Paid, in Spanish), followed by the denomination “Bs”, and the amount resulting from the sum of the Maximum Price and the VAT thereof, in figures; and,
  - v. The date of labeling indicating the month and year in numbers (mm/yy).
- j. The information referred to in sub-paragraphs (iii), (iv) y (v), above, will not be applicable to goods not subject to value-added tax (*i.e.*, case of medicines).

Labeling more than one Maximum Price or Fair Price on a good or service, removing stamps, deleting or amending the price originally indicated and setting lists of prices higher than the ones already marked is expressly forbidden.

- 5. Registration in RUPDAE is an indispensable requirement to carry out economic and commercial activities in the country. The RUPDAE is currently operational.
- 6. According to the Law, the prices of all goods produced, imported or sold in the country will be calculated according to the System for Continued Adequacy of Fair Prices. This system shall comprehend the fair pricing on the entire chain of production, distribution, importation, transportation and marketing of the goods and services by the Subjects of application of this Law.
- 7. Subjects of Application of this Law who obtained foreign currency from the Bolivarian Republic of Venezuela for any of the economic activities set out in the Law of Fair Prices, must subscribe a Performance Bond Contract, by which they agree to comply strictly with the object and use under which said currencies were requested. Things acquired or produced with the currency awarded by the Republic shall be identified by label, in order to inform consumers the origin of said currency.



8. The Law grants broad powers to the SUNDDE for the imposition of preventive measures, including the confiscation of goods and temporary occupation or shutdown. Additionally, in the course of an audit, the SUNDDE has authority to order preventive measures such as “the immediate adjustment of prices of goods or services in accordance with those set by the SUNDDE” and the “temporary suspension of licenses, permits or authorizations issued by the SUNDDE”.
9. The SUNDDE may request the competent body a temporary or permanent suspension of any system of allocating foreign currency by the State, of those subjects of application that have incurred in any unlawful act set forth on the Law on Fair Prices.
9. The “Resale of first Necessity Goods” and “Private Corruption” are, among others, established as offenses. Nonetheless, the sanction of temporary occupation may be applied for a maxim period of 180 days.

Note that in the exercise of its functions, the SUNDDE has issued Rulings governing (i) general accounting criteria to determine fair prices; and (ii) the conditions to establish and mark the Fair Price of products and services sold in the country. Similarly, the SUNDDE has regulated the prices of certain products and services, among which we can find: compotes, mineral water, pasteurized fruit juices, disposable diapers, shampoo, hair rinses, deodorant, shower soap, shaving razors, toilet paper, sanitary towels, toothpaste, mouthwashes; chlorine, floor waxes, detergents, washing soap, dishwashing liquid, gel or cream; cleaning products (disinfecting); rinses and conditioners for clothes.

10. Lastly, the Executive has established regulations for the leasing of buildings for commercial use.



# Consumer Protection

Consumer protection is an area of law currently regulated under the Law on Fair Prices already identified in chapter XX.

The Law on Fair Prices expressly derogated the Law for the Defense of People's Access to Goods and Services, which was published in the Official Gazette No. 39.358 dated 1 February 2010 (the "Law of Indepabis") that was enacted to defend, protect and safeguard the individual and collective rights of persons in their access to goods and services.. Moreover, the Law on Fair Prices caused the abolishment of the Institute for the Defense of People's Access to Goods and Services ("Indepabis"), which was the competent authority in charge of determining the perpetration of violations against the Law of Indepabis and then applying the pertinent sanctions. On the other hand, the Law of Fair Prices created the National Superintendence for the Defense of the Socio-Economic Rights ("SUNDDE").

The Law on Fair Prices was intended mainly to protect the consumer's incomes and salaries through the determination of fair prices for goods and services via the analysis of cost structures, the setting of a maximum profit percentage and the effective supervision of the economic and commercial activities. However, the law contains a few provisions regarding consumer protection.

Article 10 of the Law on Fair Prices sets forth the catalog of rights granted in favor of the consumers in relation to the access to goods and services. Among such rights are the following:

1. The protection of their lives, health and security, the satisfaction of their fundamental needs and the access to basic services
2. To receive goods and services of optimum quality and to freely choose them
3. To receive adequate, truthful, clear, timely and complete information on the goods and services offered in the market as well as their prices, characteristics, quality, contractual conditions and risks that may be derived from their use or consumption
4. The protection against false, misleading or abusive advertising as well as against coercive and unfair business methods
5. The reparation and compensation for damages, deficiencies and poor quality of goods and services
6. Protection in contracts of adhesion that are disadvantageous or are damaging to their rights or interests
7. To withdraw or desist the claim and settlement in the matters keen to their interest, as long as collective rights are not harmed
8. The disposal and enjoyment of the goods and services in a continuous, regular, effective, efficient and uninterrupted manner
9. The other rights that the Constitution of Venezuela and other rules in force establish, inherent to people's access to goods and services



Article 10 of the Law on Fair Prices also regulates the “right of return and refund,” whereby those who acquire goods or services by telephone, catalog, television, electronic means or at home shall have the right to return the product and obtain the immediate refund of the price. Such right shall be exercised within fifteen (15) days following the reception of the product, as long as permitted by the nature of the product and that the latter is in the same conditions as received. In the case of services, the right of return will be exercised by the immediate cessation of the service contract.

Article 11 of the Law on Fair Prices incorporates the provider’s obligation to provide guarantees to cover deficiencies in the manufacture and operation of any vehicle, machinery, equipment or appliances and other durable goods possessing mechanical, electrical or electronic systems susceptible of failures or malfunctions.

In Article 54 of the Law on Fair Prices, which refers to the generic offenses, it is established that any subject that infringes, diminishes or impedes the exercise of the following people’s rights will be sanctioned with a fine of 200 to 20,000 tax units:

- The disclosure of information that is sufficient, timely and truthful regarding the goods and services placed at their disposal, with the specifications of their elaboration, composition and necessary counter- indications
- The promotion and legal protection of their rights and economical and social interests in any transactions performed by any means or technology
- The replacement of the good or the indemnification for the damages suffered
- The protection against false, misleading or subliminal propaganda or publicity or coercive methods that induce consumerism or antagonize the people’s rights in the terms established in the law
- Prohibition of discriminatory treatment by the providers of the goods and services
- Protection of the consumer in contracts of adhesion that are disadvantageous or are damaging to their rights or interests
- The protection in credit transactions
- To withdraw or desist the claim and settlement in the matters keen to their interest, as long as collective rights are not harmed
- The disposal and enjoyment of the goods and services in a continuous, regular, efficient and uninterrupted way
- The other rights that the Constitution of Venezuela and other rules in force establish, inherent to people’s access to goods and services

The following offenses contained in the Law of Indepabis remain in force in the Law on Fair Prices, but with changes applicable in the sanctions, namely:

1. Generic usury – imprisonment of four to six years
2. Usury in Financial transactions – imprisonment of four to six years



3. Hoarding – imprisonment of eight to 10 years, a fine of 1,000 to 50,000 tax units and the temporary occupation of the commercial establishment for up to 180 days, extendable
4. Speculation – imprisonment of eight to 10 years, a fine of 1,000 to 50,000 tax units and the temporary occupation of the commercial establishment for up to 180 days, extendable
5. Boycott – imprisonment of 10 to 12 years, a fine of 1,000 to 50,000 tax units and the temporary occupation of the commercial establishment for up to 180 days, extendable
6. Fraudulent alteration of prices – imprisonment of two to six years
7. Importation, sale or marketing of goods that are hazardous to health – imprisonment of six to eight years
8. Extraction contraband – imprisonment from 14 to 18 years
9. Alteration of quality, quantity, weight or measure – imprisonment from six months to two year
10. Fraudulent alteration of the conditions of supply and demand – imprisonment of five to 10 years, a fine from 500 to 10,000 tax units and the temporary occupation of the commercial establishment for up to 180 days, extendable
11. Corruption between private parties – imprisonment from two to six years
12. Reselling of basic goods – imprisonment of one to three years and fine from 200 to 10.000 tax units
13. Destabilizing the economy – When the boycott, hoarding, speculation, extraction contraband, usury, the forming of cartels or other related crimes purport to destabilize the economy, alter the peace and go against the security of the nation, the penalties contemplated for each such crime will be applied at their maximum limit. Furthermore, the Law on Fair Prices provides the seizure of the goods, according to the provisions of the Constitution.

The majority of these offenses may bring an accessory penalty such as the suspension in the Register of Persons that Engage in Economic Activities (“RUPDAE”) or in the case of repeated offenses, the definite closure of the providers’ warehouses, deposits or establishments.



# Competition Regulation

Because any agreement, understanding, act or conduct that violates the Decree with Rank, Value and Force of Antimonopoly Law (“Antitrust Law”) is void and unenforceable, potential entrants to Venezuelan markets should carefully consider the way the rules set forth in the Antitrust Law will affect, and sometimes limit, their business decisions.

The Antitrust Law became effective on November 18, 2014, and was reprinted on November 26, 2014. To a very large extent, it maintains the dispositions set forth in the Law to Promote and Protect the Free Exercise of Competition modeled upon Articles 81 and 82 of the Treaty of Rome and the body of rules subsequently developed that include competition laws of the European Union (EU). For this reason, subject to certain caveats, competition laws of the EU may be looked to as a primary source of precedent for the application and interpretation of the Venezuelan Competition Law. However, the singular characteristics of the Venezuelan market, and the differences in the legal methods applied in Europe and Venezuela must always be taken into account. To a much lesser extent than European law, elements of United States antitrust laws were also reflected in the Venezuelan competition legislation, and may, therefore, serve as a guide for the development of Venezuelan rules on the subject.

The Antitrust Law is intended to create an environment where competition may prosper and abusive practices are eliminated. As in other countries that have adopted an approach based on the EU’s competition law, the underlying purpose is to create efficiency of allocation, reduce costs for the benefit of consumers and promote innovation and technological development. For this reason, the Antitrust Law gives the Antitrust Agency (Superintendence) authority to exempt certain agreements or practices which *prima facie* are uncompetitive when applying the prohibitions set forth in the Antitrust Law.

## 1. Scope of Application

The Antitrust Law applies to persons or groups of persons conducting economic activities within Venezuela, with the exception of (i) Base Organizations of the Popular Power subject to the Organic Law of the Communal Economical System; (ii) Public or Mixed Capital Companies of strategic character; and (iii) State owned Companies that provide public services.

## 2. The Omnibus Prohibition

The Antitrust Law has an omnibus provision covering, in broad terms, both restraint of trade and the abuse of a dominant position, as well as particular provisions considering specific violations under both categories. The omnibus provision prohibits conducts, practices, agreements, covenants, contracts or decisions that prevent, restrict, distort or limit free competition.

## 3. Specific Prohibitions

The behaviors which the Antitrust Law treats as uncompetitive are the following:

### *Restrictions*

It is prohibited to exert actions that restrict economic competition among subjects of the Antitrust Law, and incite not to accept delivery of goods or the provision of services, prevent their acquisition or provision not sell raw materials or supplies or provide services to others.



## *Manipulative Conducts*

Any conduct intended to manipulate factors of production, distribution, marketing, technological development or investments in prejudice of free competition.

### *Collective Restraints*

Collective restraints consist of agreements or covenants made directly or through unions, associations, federations, cooperatives or other similar groups or shareholders or partnerships' resolutions or decisions, restricting or preventing competition among members.

- Agreements, collective decisions or recommendations and concerted practices that:
- directly or indirectly fix purchase or sales prices, or other trading conditions;
- limit production, distribution, technical development or investment;
- apply dissimilar conditions to equivalent transactions with different trading parties, thereby placing some at a competitive disadvantage; and
- include tying arrangements making the closing of contracts subject to the acceptance of additional obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The experience available indicates that some activities are more likely to invite scrutiny by the Antitrust Agency and possibly result in liability. Agreements among competitors regarding prices or other trading conditions have been considered illegal *per se* by the Antitrust Agency. On the other hand, where the relationship between the parties is vertical (as in the case of manufacturer-distributor), the Antitrust Agency has applied a *rule of reason* analysis and examined their specific effects on a particular market or the business justification for the restriction.

In addition, the Antitrust Law proscribes contracts in which prices and conditions of contract for the sale of goods or provision of services to third parties are established and produce or may have the effect of restricting, distorting, restrict or impede fair economic competition.

#### 4. Economic Concentrations

The Antitrust Law prohibits any act resulting in an economic concentration that creates or reinforces a dominant position, or might generate the contrary effects to the effective competition, the democratization of production, distribution and marketing of goods and services. The resulting economic concentration may be either horizontal or vertical.

#### 5. Abuse of Dominant Position

The Antitrust Law prohibits the abuse of a dominant market position by one or more persons or entities. The abuse can take a number of forms, but the law is directed at curbing the following in particular:

- the imposition of discriminatory purchase or sales prices or trading conditions;
- the limitation, without justification, of production, distribution or technical development, thereby prejudicing enterprises and consumers;
- the unjustifiable refusal to satisfy demand for products or services;



- the application of dissimilar conditions to equivalent transactions with different parties, thereby placing some at a competitive disadvantage;
- subjecting contracts to additional conditions that, by their nature or according to commercial usage, have no connection with the subject matter of said contracts.

The particular cases, however, are not exhaustive.

We will find ourselves in the presence of a dominant position when a given economic activity is carried out by one person or group of people linked together, both a purchaser and seller, and in their capacity as service provider and as a user of them, or when, despite the existence of a multiplicity of persons performing certain type of activity, there is no effective competition between them.

## 6. Unfair Competition

Antitrust Law prohibits the development of marketing policies which tend to eliminate competitors through disloyal competition, specifically the following:

- **Misleading Advertisement:** Any action aiming to mislead the consumer or user on the key features of a good or service.
- **Simulation or Imitation:** Confusing consumers on the commercial origin of a product, as it is intended that the public associates the company with another one that enjoys of prestige and notoriety.
- **Commercial bribery:** When an operator induces a person working in a competing company to perform activities or take decisions contrary to the interests of the company where he/she works in exchange for a fee.
- **Violation of rules:** It is considered unfair, prevailing in the market through an advantage acquired as a result of a breach of a rule or technical regulation.

## 7. Exemptions

Certain limited categories of activities are exempted from the application of the Antitrust Law. The conditions for granting exemptions are patterned wholly on Article 81(3) of the Treaty of Rome. The Antitrust Law allows exemptions in relation to a limited number of activities. These are:

- The direct or indirect fixation of the sale price for goods and services.
- The application of different conditions in commercial relations, to similar services or equivalent ones that cause inequities in the competitive situation, if different from conditions which would be required to the effective competition in the market; except in cases of early payment discounts, volume discounts, lower cost of money to offer lower risk and other conditions commonly found in commerce;
- Exclusive territory arrangements and franchises with exclusive dealership provisions.

The main condition set forth in this enabling provision is that the exemptions must concurrently result in an improvement in the production or distribution of goods or services, the promotion of technical innovation, and creation of advantages for consumers.



# Dispute Resolution

The Constitution establishes that the power to administer justice arises from the citizens and is exercised through the System of Justice, made up by, among others, the Supreme Court, other courts provided by the law, alternative means of justice (arbitration, conciliation and mediation), auxiliaries participating in the administration of justice and lawyers authorized to practice law in the country.

Furthermore, the Constitution establishes that justice must be free, accessible, impartial, suitable, transparent, autonomous, responsible, equitable and expeditious, without undue delay, and without undue bureaucracy, with the right to due process and the right to defense being inviolable principles in all stages of the process.

The Constitution also guarantees the right of all people to be protected by the courts in the enjoyment and exercise of constitutional rights; in the event of violation of these rights, the constitutional relief procedure has been established. This proceeding is oral, public, brief, free and without undue bureaucracy. In these cases, the competent authority is empowered to reestablish a violated juridical situation. Thus, if a constitutional right is violated during the course of a lawsuit, the injured party may resort to another judge to order the judge hearing the case to reestablish the violated constitutional right.

## 1. Public Treaties

Venezuela has signed, among others, the following treaties in the area of dispute resolution. It is important to mention that public treaties have priority over the laws of the Republic.

- The Code on International Private Law (*Bustamante Code*) (Cuba).
- The Protocol on Uniformity of Powers of Attorney that are to be Utilized Abroad (Washington Protocol).
- The Inter-American Convention on the Legal Regime of Powers of Attorney to be Used Abroad (Panama).
- The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards. (Uruguay Convention).
- The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).
- The Convention on the Settlement of Investment Disputes between States and Nationals of other States (Washington Convention). On 24 January 2012, Venezuela gave notice to the World Bank denouncing this treaty.
- The Inter-American Convention on International Commercial Arbitration (Panama Convention).
- The Inter-American Convention on Letters Rogatory (Panama).
- The Inter-American Convention on the Taking of Evidence Abroad (Panama).
- The Inter-American Convention on Proof of and Information on Foreign Law (Uruguay).

- The Inter-American Convention on Conflicts of Law Concerning Commercial Companies (Uruguay).

## 2. Commercial Dispute Resolution Procedure

The procedure for commercial dispute resolution in Venezuela is governed by the Code of Civil Procedure along with some special rules in the Commercial Code. It is a written procedure in which the judge must rely only on what was alleged and proven in the court proceedings.

The court hierarchy for dispute resolutions begins with commercial courts, which are trial courts that hear the cases, followed by superior courts of the commercial jurisdiction, which are appellate courts, and finally, the Supreme Court of Justice, the highest court of the republic, which is divided into six Chambers: civil, criminal, social, political-administrative, constitutional and electoral. Judges are not required to follow judicial precedents (case law). Therefore, the decisions of a judge in a particular lawsuit only affect the parties of that lawsuit and are not applicable to the resolution of other similar cases. The one exception is that the case law of the Constitutional Chamber of the Supreme Court can be binding.

Commercial lawsuits are tried in two instances: trial and appeal. In lawsuits exceeding 3,000 tax units (currently the tax unit is equivalent to VEF 300) the decisions of the superior court judges (second instance) may be appealed before the Supreme Court, but only when the superior court judge, in his or her decision, has failed to apply or has misinterpreted a legal rule, or when the form of the procedure has been violated. In these cases, the Supreme Court may void the decision of the superior court judge and order that another superior court judge issue a new judgment. The Supreme Court does not hear the merits of the action (although there may be some exceptions). The tax unit taken as reference to establish the amount necessary in order to resort to the Supreme Court is established annually by the Tax Administration, taking into consideration the inflation of the immediately preceding year.

## 3. Enforcement of Foreign Judgments

Judgments of foreign courts can only be enforced in Venezuela after obtaining the corresponding *exequatur* from a competent Venezuelan court. An *exequatur* petition can be denied in the event the judgment deprives Venezuelan courts of jurisdiction or when any of the reasons to deny it provided for in the Statute on Private International Law are present, for instance, if such judgment is contrary to Venezuelan public policy, if process was not properly served on the defendant, or if the defendant's right to defense was not guaranteed.

## 4. Court Costs

Pursuant to the Constitution, justice is free. Therefore, there are no direct court costs. However, losing parties are sentenced to reimburse lawyers' fees and expenses for an amount that may not exceed 30 percent of the amount involved in the litigation.

## 5. Arbitration

Pursuant to the Constitution, arbitration is one of the alternative means to solve conflicts allowed by the Venezuelan justice system. Commercial arbitration is ruled by the Law on Commercial Arbitration and may be institutional or independent. Institutional arbitration is carried out before or through an arbitration center with its own regulations, while in independent arbitration there is no intervention by an arbitration center.

Additionally, arbitration may be at law or in equity and the place of arbitration may be chosen by the parties. If arbitration at law is carried out in Venezuela, the arbitrators must be Venezuelan lawyers.



Among the more experienced and prestigious arbitration centers of Venezuela are the Arbitration Center of the Caracas Chamber of Commerce and the Business Center for Conciliation and Arbitration of the Venezuelan-American Chamber of Commerce (CEDCA).

#### 6. Enforcement of Foreign Arbitral Awards

Foreign arbitral awards are enforceable in Venezuela without the need for an exequatur. The enforcement of awards may only be denied for reasons provided for in the relevant treaties or in Article 49 of the Commercial Arbitration Law, *e.g.*, if they are contrary to Venezuelan public policy, if the parties have not been notified of the appointment of the arbitrators, or if the parties' right to defense has not been guaranteed.



# Criminal Law

The Venezuelan system of criminal law is based on the European codified system. The characteristics of Venezuelan criminal legislation are unique, complex and vary according to the nature of the typified criminal conduct. Venezuela abolished the death penalty for all crimes in 1863 and currently the maximum term of imprisonment is 30 years.

In addition to the Criminal Code of 1915, which has been partially amended in 1964, 2000 and 2005, Venezuela has many other special criminal laws (more than 80).

The most important criminal laws for private companies and corporations are: the Criminal Law of the Environment; the Law against the Illegal Exchange of Foreign Currency; the crimes typified and criminal precaution on money laundering contained in the Organic Law against Organized Crime and Financing Terrorism; the Organic Law on Drugs; the Organic Tax Code; the Law against the Crime of Smuggling; the Law on the Institutions of the Financial Sector (Banking); The Decree of Organic Law of Fair Prices; the Law Against Corruption; the Organic Law on Prevention, Job Conditions and Environment; and the Informatics Crimes Law, among others.

Venezuela also ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; the Inter-American and the United Nations Organization Treaties against Corruption; the American Convention against the Illicit Manufacturing and Trafficking of Firearms, Ammunition, Explosives and other Related Minerals, among others.

## *Criminal Law on the Environment*

The criminal provisions of this law might be classified as rules that protect the air, land and water. This legislation is also closely related to the Law for the Protection of Wildlife and the Organic Law of the Environment, Jointly, the provisions of these laws aim at a balance between environmental preservation and economic development.

The Criminal Law on the Environment contains technical rules within its framework that defines the maximum acceptable levels of contamination. There are also many new Rules in different sublegal instruments and international Treaties. This Law establishes objective criminal liability without proof of factual guilt of the subject, enough to show that it has violated any administrative rule on the environment. Additionally, the Law imposes criminal liability and solidarity between a contracting company and possible offenses by its contractors and employees.

Environmental crimes committed by three or more individuals intentionally with the purpose of obtaining a benefit are considered as organized crime. Also when an individual is representing a legal entity.

## *Illegal Exchange of Foreign Currency*

This criminal law contains criminal and administrative sanctions for violations of exchange control rules. Specifically, among others: (i) Get foreign currency through fraud; ii) using unofficial exchange rate to set prices; iii) spreading false information about the exchange rate; iv) penalty for failure to comply repayment of foreign currency to the Central Bank of Venezuela and (v) diversion of foreign currency legally obtained for another purpose different from the purpose that was original approved.

## *Organized Crime and Terrorism Financing*

The Organic Law against Organized Crime and the Financing of Terrorism (“OLOCF”) increases the extreme penalties of up to 30 years imprisonment for individuals and forcing companies to close indefinitely, confiscation of property and very high fines, in addition to administrative and civil

sanctions for legal persons, excluding the State and their enterprises. This Act provides for various offenses typical of organized crime and the financing of terrorism, adding that all offenses under the Penal Code and special criminal laws are part of offenses in which these can punish companies and individuals.

### *Money Laundering*

The OLOCFT establishes money laundering as a special crime, when capitals come from any kind of “illicit activities” typified in this Law, such as drug trafficking, corruption, environmental crimes, frauds, kidnapping, extortion, banking crimes, smuggling, tax crimes and others. There are several regulations to prevent money laundering in the banking, insurance and capital market sectors, This law authorizes undercover investigations.

### *Drugs and Controlled Substances*

The Organic Law on Drugs considers the crime of deviation of Controlled Substances as a variation of organized crime of trafficking of drugs. The law formulates a series of preventive and severe rules to keep companies from handling Controlled Substances.

### *Law against Corruption*

This Law includes all the crimes of administrative corruption. As a novelty, this Law includes transnational bribery and crimes of private corruption.

### *Bank Crimes*

The Law on Institutions of the Financial Sector provides criminal sanctions for certain financial crimes, such as the unlicensed conduct of banking business, fraudulent approval of unlawful loans, misappropriation of funds, forgery or false documentation, submitting false information, publication of fraudulent balance sheets, fraudulent certification of the existence or value of mortgaged realty, fraudulent offers of securities, fraudulent representations to the Banks Superintendence.

### *Privacy in personal communications.*

According the Venezuelan Constitution, privacy is a civil right and is guaranteed by the Law. The Law to Protect the Privacy of Communications establishes several crimes against the violation of privacy.

### *Law of Fair Prices*

The Decree of Organic Law of Fair Prices provides that partners and members of the management boards, administration, management and surveillance of legal persons, operational staff as well as social media, web pages and other advertising media will be personally and severally liable when it is shown that the offenses established therein were committed by the company they represent.

Offenses are, among others: hoarding, usury and its variations, false information, import or sale of products that are hazardous or harmful to health, boycott, destabilization of the economy, conditioning, smuggling extraction, corruption between individuals, fraudulent alteration of goods and services and fraudulent alteration of prices.

### *Kidnapping and Extortion*

The Law against Kidnapping and Extortion establishes several penalties for anyone who kidnaps any person, including imprisonment for up to 30 years. This Law sets a prohibition to pay for ransom and several penalties for whomever pays for them. Also regulates the control of the affected family's



personal accounts and other measures. This Law establishes the possibility of wiretapping and recording all communications in case of kidnap.

*Death and Disabilities in labor accidents*

The Organic Law on Prevention, Work Conditions and Environment sets several crimes in cases of death and disabilities caused by work-related accidents in the companies.



# Human Rights

Human rights provided for and guaranteed by the international treaties signed by Venezuela within the framework of the United Nations (“UN”) and the Organization of American States (“OAS”) have become an integral part of the Venezuelan legal system, as provided for in the constitution, which defines Venezuela as a Democratic and Social State of Law and Justice. Human rights are deemed preeminent.

On 10 September 2012, the Venezuelan government delivered the Secretariat of the Organization of American States a formal withdrawal notice from the American Convention on Human Rights, which is subtracted from the judicial review of the Court of Human Rights. This decision is effective one year from the complaint. Cases filed before then are subject to the Court’s jurisdiction.

In this regard, the constitution contains more than 100 articles on human rights, classified as: (i) Civil, (ii) Political Rights and the People’s Referendum, (iii) Social and Family, (iv) Cultural and Educational, (v) Economic, (vi) Environmental and (vii) Native People’s Rights. Thus, each constitutional right established in the constitution is also a human right inherent to human beings. Pursuant to commentary and case law, legal entities have constitutional and fundamental rights, but do not hold human rights.

The constitution provides that the state must guarantee that every individual, pursuant to the universal and progressive principles and without discrimination of any kind, the non-waivable, indivisible and interdependent enjoyment and exercise of human rights, and public power entities are obliged to respect and guarantee these rights. In this regard, the constitution has incorporated as a rule of national positive law the rules of the UN Universal Declaration of Human Rights (1948) and the Vienna Declaration and Programme of Action (1993).

The treaties, pacts and conventions executed and ratified by Venezuela are of constitutional rank, and prevail over internal legislation, insofar as they contain provisions that are more favorable than those established by the constitution and national laws, and must be immediately and directly applied by the courts and other entities of public power.

The Constitutional Chamber of the Supreme Court is in charge of the interpretation of constitutional provisions on human rights and on how they apply to the decisions that may be issued by multilateral organizations on human rights.

Venezuela has signed and ratified most of the existing international treaties, pacts and conventions on human rights, and their protocols, among which are the International Pact on Civil and Political Rights and their Protocols I and II, the latter to Abolish the Death Penalty, the International Pact on Economic, Social and Cultural Rights, the Convention on the Elimination of all the Forms of Racial Discrimination, the Inter-American Convention on Human Rights (San José Pact) and its Additional Protocol about Economic, Social and Cultural Rights (Protocol of San Salvador), the Conventions against Torture and Other Cruel, Inhuman and Degrading Treatment, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belem do Pará) and its Protocol, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on Forced Disappearance, the Inter-American Convention on the Elimination of All Forms of Discrimination against People with Disabilities, and the Convention on the Rights of the Child and the Optional Protocol thereof on the Sale of Children, Child Prostitution and Child Pornography, among others.

For the implementation of certain treaties, Venezuela also enacted the Organic Law on Refugees and Asylum, the Organic Law on Indigenous People and Communities, the Organic Law for the Protection of Children and Adolescents, the Law to Integrate Disabled Persons, the Organic Law on



the Rights of Women to a Life Free of Violence, the Organic Law for the Protection of Constitutional Rights and Guarantees, among others. Recently, the Law Against Racial Discrimination was enacted.

The recitation of rights and guarantees contained in the constitution and in international instruments concerning human rights is not to be understood as denying other rights and guarantees inherent to individuals which are not expressly mentioned in such recitation. The absence of a law regulating these rights will not adversely affect the exercise thereof. This open rule evidences the ultimate scope of international treaties on human rights, even when there is no law to regulate them.

Any government act that violates or encroaches upon a human right is null and void. Public employees who order or implement any such act will incur in criminal, civil and administrative liability, as applicable in each case, and the defense of obedience of orders of a superior cannot be claimed.

The constitution states that all people have the right to be protected by the courts in the enjoyment and exercise of constitutional rights and guarantees, including those rights inherent in individuals that are not expressly mentioned in the constitution or in international instruments concerning human rights. The declaration of a state of exception or restriction of constitutional guarantees shall not affect the exercise of this right in any way. This includes the *habeas corpus* or protection of personal freedom and safety.

The constitution reaffirms the absolute prohibition against the death penalty. This prohibition was established in the Constitution of 1864 and has since been included in all subsequent Venezuelan constitutions. Life sentences or humiliating penalties are prohibited, and penalties of deprivation of liberty may not exceed 30 years.

The constitution provides for the *habeas data* when it establishes that all people have the right of access to information and data contained in official or private records concerning them or their goods, as well as to know the use being made and the purpose thereof, and to petition the competent court for the updating, correction or destruction thereof if they are erroneous or unlawfully affect the petitioner's rights. Access to any documents of any nature containing information of interest to communities or groups of persons is also granted. The foregoing is without prejudice to the confidentiality of the sources of journalists or other professions as determined by law.

The state is obliged to investigate and legally sanction crimes against human rights committed by its authorities. No statute of limitations is applicable to actions to punish crimes against humanity, serious violations of human rights and war crimes. Human rights violations and crimes against humanity will be investigated and judged by ordinary courts. These crimes are excluded from any benefit that might render offenders immune from punishment, including pardons and amnesty. In this regard, Venezuela must adopt a coding instrument that allows for the inclusion of international crimes (genocide, crimes against humanity and crimes of war) and the other provisions of the Rome Statute of the International Criminal Court.

Pursuant to the constitution, the state has the obligation to fully indemnify the victims of human rights violations for which it may be held responsible, as well as the legal successors of such victims, including the payment of damages. The state is also obligated to protect the victims of ordinary crimes and to make the guilty parties indemnify the damages caused.

The constitution establishes that all people have the right, under the terms established by human rights treaties, pacts and conventions ratified by Venezuela, to address petitions and complaints to the international entities created for such purpose, in order to ask for protection of their human



rights. Also, both the state and public officials must comply with the decisions issued by said international entities.

Further, Venezuela ratified the most important treaties and Conventions on International Humanitarian Law, such as the Geneva Convention to alleviate the plight of wounded and sick members of armed forces on land, of 1949; the Geneva Convention to alleviate the plight of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 1949; the Geneva Convention Relative to the Treatment of Prisoners of War, of 1949, the Geneva Convention on the Protection of Civilian Persons in Time of War, of 1949; Protocol I Additional to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts, of 1977; Protocol III additional to the Geneva Conventions of 1949 relating to the approval of an additional distinctive emblem, of 2005; also, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, the Nuclear Tests Ban Treaty, among others.



# Science, Technology and Innovation

The Organic Law on Science, Technology and Innovation (“LOCTI”) currently in force was published in the Official Gazette No. 39.575 dated 16 December 2010, and partially amended on 13 November 2014 through Decree\_Law No. 1.411 published in the Special Official Gazette No. 6.151 dated 18 November 2014. The LOCTI became effective as of its publication.

The LOCTI sets forth the obligation to make contributions to the National Fund for Science, Technology and Innovation (“FONACIT”), the official entity responsible for the administration, collection, control, audit, verification and quantitative and qualitative determination of said contributions.

Legal entities, public or private entities, whether or not domiciled in the Bolivarian Republic of Venezuela that engage in economic activities in the national territory and have obtained annual gross incomes of more than 100,000 tax units in the immediately preceding fiscal year are obliged to make the contributions contemplated in the LOCTI:

1. Stock corporations and limited liability partnerships
2. Collective partnerships, limited partnerships, communities, and any other associations of persons, including irregular or *de facto* associations
3. Associations, foundations, corporations, cooperatives and other legal or economic entities not mentioned in the preceding paragraphs
4. Permanent establishments, centers or fixed bases located in the national territory

As to the amount of the contributions, the following percentage scale is set, which will depend on the economic activity in which the contributor engages:

1. Two (2) percent when the economic activity is among those contemplated in the Law for the Control of Casinos, Bingo Halls and Slot Machines, and all those related to the industry and trade of ethyl alcohol, spirits and tobacco.
2. One (1) percent regarding private companies when their economic activity is among those contemplated in the Organic Law on Hydrocarbons and in the Organic Law on Gaseous Hydrocarbons and includes mining exploitation, processing and distribution.
3. Point-five (0.5) percent regarding State-owned companies when the economic activity is among those contemplated in the Organic Law on Hydrocarbons and the Organic Law on Gaseous Hydrocarbons, and comprises the exploitation of mines, their processing and distribution.
4. Point-five (0.5) percent regarding any other economic activity.

When the contributor concurrently engages in several of the activities set forth above, it must calculate its contribution applying the rate pertaining to the activity that generates higher gross income.

The contribution must be declared and paid to FONACIT during the second quarter following the end of the relevant fiscal year. FONACIT may designate as responsible for payment of the contribution, as withholding or collection agents, those who by their public duties or by reason of their private activities are involved in activities taxed by the LOCTI.

The LOCTI provides for the possibility to use the resources resulting from the contributions to science, technology and innovation. The parties that may opt for this funding are the following:

1. The national authority with jurisdiction over science, technology, innovation and their applications, its agencies and entities ascribed thereto
2. All the institutions, individuals and legal entities that generate, develop and transfer scientific, technological, innovation know-how and their applications
3. The ministries of the People's Power that share with the national authority the competence regarding science, technology, innovation and the applications thereof, the construction of social, scientific and technological conditions for the implementation of the National Plan for the Nation's Economic and Social Development
4. Communes that engage in activities related to science, technology, innovation and their applications

In order to have access to these resources, the parties referred to above must propose the formulation of projects, plans, programs and activities related to the priority areas set forth by the national authority with competence over science, technology, innovation and their applications.

According to the LOCTI, the following activities will be considered feasible for being carried out with contributions made to science, technology and innovation:

1. Innovation projects related to activities that involve obtaining new knowledge and technologies in the country, with national participation in the intellectual property rights, in the priority areas established by the national authority with competence over science, technology and innovation and their applications:
  - a. Substitution of raw materials or components in order to reduce importations or technological dependency
  - b. Creation of national production networks
  - c. Use of new technologies to increase the quality of the production units
  - d. Participation, investigation and innovation of universities and centers for research and innovation in the country, introducing new technological processes, organization schemes, obtaining new products or procedures, exploring the needs and, generally, innovation processes with a view to solving specific problems of the Venezuelan people
  - e. Forming scientific and technological experts on quality standards, techniques, processes and procedures
  - f. Technology transfer processes for the production of goods and services in the country that contemplate the training of experts in science and technology for technical, operating, professional and scientific purposes
2. The creation or participation in incubators or nurseries of national technological production units, in the priority areas provided by the national authority with competence on science, technology, innovation and their applications



3. Participation in national guaranty or risk capital funds for innovation, research or escalation projects in the priority areas indicated by the national authority having competence on science, technology, innovation and their applications
4. Research and escalation activities that include:
  - a. Funding research and escalation projects conducted by universities, or research or escalation centers certified by the national authority having competence on science, technology, innovation and their applications
  - b. The creation of units or spaces for not-for profit research, science, technology and innovation, according to the guidelines included in the National Plan for Science, Technology and Innovation
  - c. The creation of freely-accessed databases or information systems that contribute to the strengthening of the not-for-profit activities related to science, technology, innovation and their applications, in the priority areas established by the national authority having competence on science, technology, innovation and their applications
  - d. The promotion and dissemination of the non-commercial activities related to science, technology, innovation and their applications in the country
  - e. The creation of programs for the development of research, escalation and innovation in the country, implemented by the executive branch of the government
  - f. Funding the organization's non-commercial scientific meetings or events in priority areas set forth by the national authority with competence on science, technology, innovation and their applications
  - g. Consolidation of scientific, technological and innovation cooperation networks, both national and international, in the priority areas identified by the national authority with competence on science, technology, innovation and their applications established by the official sector
  - h. Forming projects for creation and research, and the social production units, for technology transfer processes, in order to guarantee the independence and sovereignty of the national production infrastructure
5. Investment in activities for training scientists and technicians in the priority areas set forth by the national authority with competence on science, technology, innovation and their applications, including:
  - a. The organization and funding of non-commercial courses and events for training in science, technology and innovation in the country
  - b. The creation and strengthening of training spaces related to the activities regulated by this law, at official universities in the country
  - c. Funding scholarships for the training of scientists and technicians that form an active part of the social production unit related to a specific project for science, technology, innovation and their applications in the priority areas stipulated in the National Plan for Science, Technology and Innovation



- d. Programs to update the personnel in social production units, regarding technological innovation, with the participation of the country's official education institutions
- e. Funding work insertion programs for unemployed Venezuelans with high training levels
- f. Funding mobilization programs, on a nationwide basis, for researchers linked to the creation and funding of graduate studies integrated to national and international research networks, driven by the official sector
- g. Funding graduate thesis and research internships for university students
- h. Any other activity that in the opinion of the national authority with competence on science, technology, innovation and their applications, can be deemed necessary to promote science, technology, innovation and their applications

As to the penalty system, the LOCTI provides for the application of fines equivalent to 50 percent of the amount of the contribution, for those persons who default on making the same. The law states that fines will be imposed by FONACIT considering the amount of the default, which fines may be increased or reduced based on the existing aggravating or extenuating circumstances.

It is further provided that persons benefitting from investments that partially or totally use said resources for purposes other than those for which they were granted, shall be penalized by the highest authority of the agency or entity that has granted the financing, by a fine equivalent to 50 percent of the amount received as contribution, and the obligation to refund the resources not used for the purpose for which they were granted.



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