



VENEZUELA
INVESTMENT CLIMATE STATEMENT
2015

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Executive Summary

Venezuela is located on the northern coast of South America. Political tensions, state interventions in the economy, macroeconomic distortions, physical insecurity, corruption, and a volatile regulatory framework make Venezuela a difficult climate for foreign investors. Conditions for foreign investment are unlikely to improve in the near term. During 2014 the Venezuelan government (GBRV) passed new foreign investment laws that have made the country less hospitable to foreign investors. The falling oil prices, which started in the second quarter of last year, have aggravated Venezuela's economic crisis. Venezuela finished 2014 with an estimated 4 percent economic contraction, 68.4 percent inflation, and widespread shortages of consumer goods. For 2015, the International Monetary Fund (IMF) projects that the economy will shrink another 7 percent, with inflation reaching 80 percent. Financial analysts have raised concerns that strains on Venezuela's USD resources could exacerbate shortages of consumer goods and potentially force a default on its external debt.

The energy sector dominates Venezuela's import-dependent economy; the petroleum industry provides roughly 96 percent of export earnings, 40 percent of government revenues, and 11 percent of GDP. Falling petroleum export revenues and a corruption-plagued, mismanaged foreign exchange regime have deprived multinational firms of hard currency to repatriate earnings and import inputs and finished goods. Insufficient access to USD, price controls, and rigid labor regulations have compelled U.S. and multinational firms to reduce or shut down their Venezuelan operations, while high costs for oil production and state oil company Petroleos de Venezuela's (PDVSA) poor cash flow have slowed investment in the petroleum sector. Venezuela has traditionally been a destination for U.S. direct investment, especially in energy and manufacturing, and for exports of U.S. machinery, medical supplies, chemicals, agricultural products, and vehicles. Such investment and trade links have been weakened in recent years by GBRV efforts to build commercial relationships with ideological allies, strained U.S.-Venezuelan relations, and the deteriorating investment climate.

Under President Nicolas Maduro, the GBRV's policy response to Venezuela's economic crisis has centered on increasing state control over the economy. President Maduro has used decree powers to pass laws that implement former President Hugo Chavez's Second Socialist Plan for 2013-2019; erode foreign investors' rights; deepen the state's role as the primary buyer and marketer of imports; tighten the currency control regime; and empower the GBRV to cap business profits and regulate prices throughout the economy. The GBRV has promulgated regulations to open a new alternative foreign exchange mechanism for the private sector to buy and sell dollars, including for qualified oil sector inflows, but the new system has attracted limited hard currency in its first months of operation. The GBRV has implemented new laws and regulations to varying degrees, and their staying power remains unproven, increasing uncertainty in the investment climate.

U.S. and multinational firms contemplating business in Venezuela should weigh carefully the risks posed by an ongoing economic crisis, a non-transparent and heavily if unevenly regulated operating environment, and a foreign exchange regime that strictly limits access to hard currency.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Recent changes to Venezuela's legal and regulatory regime reflect the GBRV's hardening posture toward foreign investment. The 1999 constitution generally provides for equal treatment of foreign and domestic investment. Article 301 provides for equal treatment of national and foreign investment. Article 302 reserves the petroleum industry and other strategic sectors of public interest for the state. In November 2014 a new foreign investment law was issued. While the new law has reduced foreign investors' statutory rights, it remains unclear how it will be enforced.

Other Investment Policy Reviews

The World Trade Organization (WTO) last conducted a Trade Policy Review of Venezuela in 2002.

Laws/Regulations of Foreign Direct Investment

In November 2014, a new foreign investment law went into effect. The new law, issued by presidential decree, has reduced foreign investors' statutory rights compared to the prior regime. The law abolishes the former Superintendent of Foreign Investment (SIEX) and declared the Venezuelan currency commission, the National Center for Foreign Commerce (CENCOEX), to be the new regulatory authority for foreign investment, under oversight of the Commerce Ministry. The Petroleum and Mining Ministry and the Economy, Finance, and Public Banking Ministry have concurrent authority with CENCOEX for regulating their respective sectors. CENCOEX and other competent authorities will have six months from the time this new law goes into effect to implement regulations.

This law stipulates the following legal entities and physical persons are subject to its measures; foreign businesses (51 percent or more owned by non-Venezuelans) and their affiliates and subsidiaries (50 percent or more owned by a foreign business), national companies subject to a strategic plan by two or more states; national companies that capture foreign investment as defined by the law; Venezuelans and non-Venezuelans resident abroad who invest in Venezuela; non-Venezuelans resident in Venezuela who undertake investments in Venezuela. This law defines an investment as any legally obtained resources used for the production of goods and services, particularly those of national origin or manufacturing, that contribute to creating jobs, promoting small and medium enterprises (SMEs), local production chains, and innovation. It also includes financial, tangible, and non-tangible assets, as well as reinvested earnings.

Tangible goods are required to make up at least 75 percent of the value of the foreign investment. Foreign investment must be for a minimum value of USD 1 million and for at least five years, although CENCOEX may exceptionally approve an investment of no less than USD 100,000 for the promotion of SMEs. After the initial five years and payment of any financial obligations, a foreign investor may repatriate up to 85 percent of the registered foreign investment. This condition is waived if the foreign investor instead sells the business to local investors who will

continue to operate the business. In those cases, the foreign investor may repatriate 100 percent of their investment.

Likewise the pay out of earnings and dividends will now be done in the local currency in Venezuela. No more than 80 percent of earnings may be repatriated in hard currency in any fiscal year. The GBRV may undertake special measures regarding foreign investments and technology transfer, including limiting earnings and capital repatriation, if extraordinary circumstances affect Venezuela's balance of payments or international reserves. Neither CENCOEX, nor its predecessor, CADIVI, has authorized USD sales for purposes of earnings or capital repatriation since 2008 (see Conversion and Transfer Policies).

All foreign investors must, contribute to the production of goods and services to satisfy domestic demand and promote non-traditional exports; aid in economic development, research, and innovation; participate in Venezuelan government economic policies; implement responsible business conduct programs consistent with international standards; and align to the objectives of Venezuela's national economic policy. Failure to comply subjects a foreign investor to revocation of the foreign investment registration and monetary fines.

Foreign investors will enjoy rights as foreign investors once CENCOEX or another competent authority provides them with a foreign investment registration. CENCOEX had not published regulations pursuant to the new law as of the drafting of this report.

Comparative information on the former requirements for foreign investments under decree 2095 is still available at the SIEX website, although it is unclear whether such regulations are still valid: <http://www.siex.gob.ve/>. New regulations should eventually be available on CENCOEX's website: <http://www.cencoex.gob.ve/>.

Industrial Promotion

Energy and Mining

The GBRV has made changes to contracts, royalty and tax policies that have expanded state control of the hydrocarbons sector. The 2001 Hydrocarbons Law did not grandfather contracts executed under earlier legislation. The 2001 hydrocarbons law reserved for the state the rights of exploration, production, transportation and storage of petroleum and associated natural gas. Under these regulations, hydrocarbon activities must be carried out by state-owned enterprises such as PDVSA, or by a public-private partnership with at least 50 percent state ownership.

In 2005, the GBRV informed companies operating under service contracts that they needed to convert their existing contracts into joint ventures to conform to the 2001 Hydrocarbons Law. That same year, the Venezuelan government threatened to seize 33 services contracts if these foreign investors did not migrate their existing contracts to the new format. Sixteen of those oil companies signed memoranda of understanding, converting their contracts to joint ventures. Exiting joint venture investments in the petroleum sector have proved problematic for minority partners seeking to sell their stakes, as GBRV approval is required.

In contrast to the framework for petroleum, the 1999 Gaseous Hydrocarbons Law offers more favorable terms to investors within the unassociated natural gas sector, which is mostly offshore. This law opened the sector to private investment, both domestic and foreign, and created a licensing system for exploration and production regulated by the former Ministry of Energy and Mines (now the Ministry of Petroleum and Mining). Venezuela retained ownership of all natural gas in situ, but PDVSA involvement was not required for gas development projects (although the law allows PDVSA to back into 35 percent ownership of any natural gas project once the private partners have declared commerciality). The law prohibited vertical integration of the gas business from the wellhead to the consumer.

In 2008, the Organic Law on the Restructuring of the Internal Liquid Fuels Market came into effect. The law mandates government control of domestic transportation and wholesale of liquid fuels and set a 60-day period for negotiations with the affected companies. The law does not define liquid fuels, this created uncertainty as to whether it applies to products other than gasoline and diesel fuel. This law affected companies that had investments in the downstream sector.

In 2009, Venezuela enacted the Organic Law that Reserve to the State the Assets and Services related to Hydrocarbon Primary Activities. The law affected petroleum service companies involved in the injection of water, steam, or gas as secondary recovery methods, as well as services rendered for the performance of primary activities on Lake Maracaibo. It provided for the rendering of contracts previously executed between PDVSA and private companies. All contracts and activities governed by this law are subject to domestic law and are the exclusive jurisdiction of Venezuelan courts. The GBRV nationalized more than 75 companies, including three U.S. firms. In 2014, the GBRV announced it had reached an agreement to compensate the Venezuelan owners of a small number of the expropriated firms.

Despite Venezuela's expropriations in the petroleum sector and the costly and difficult operating environment, since 2009, several international companies have agreed to create joint venture companies with PDVSA to extract crude oil. A number of these joint ventures are in the Faja, where most of Venezuela's reserves are located. Venezuela's oil production and reserves also account for the continued presence of major foreign oilfield service companies. Nevertheless, some service companies operating in Venezuela have left and others have shrunk due to the problem of late payments from PDVSA that began in late 2008, nationalizations, and the threat of nationalizations.

In 2009, Venezuela's Organic Law for the Development of Petrochemical Activities entered into force. The law reserves basic and intermediate petrochemical activities to the state. It allows the state, through the Ministry of Petroleum and Mining, to create mixed companies in which the GBRV will control at least 50 percent of the shareholder equity and exercise effective control over company decisions. Such mixed companies can only exist for a maximum of 25 years, extendable for periods of 15 years by mutual agreement of the parties and with national assembly approval.

The GBRV has modified laws and regulations, and adjusted loan terms with foreign oil companies, to encourage investment in the energy sector. The GBRV revised in February 2013

the Law of Special Contributions for Extraordinary and Exorbitant Prices, commonly called the windfall profit tax. The revision reduced the measure's tax burden by raising the price per barrel at which a graduated scale of tax rates would apply. The rates are: 20 percent for USD 60-80/barrel; 80 percent for USD 81-100/barrel; 90 percent for USD 101-110/barrel; and 95 percent for more than USD 110/barrel. Foreign companies involved in joint ventures to develop the Orinoco Heavy Oil Belt have sought GBRV clarification regarding whether the new windfall profit tax rates would apply to the joint ventures' production of extra-heavy crude.

Limits on Foreign Control

Express limits on foreign ownership of investments are generally found in the energy and mining sector, as described in the Industrial Promotion section.

Privatization Program

Information not available.

Screening of FDI

Venezuela's current investment law contains language regarding, e.g., the development of local suppliers and non-traditional exports, but remains unclear on whether the authorities will use the law to screen applications for foreign investment registration and, if so, under what rules and procedures.

Competition Law

In 2014 a new competition law, the anti-monopoly law went into effect. The law provides for an independent anti-monopoly authority, headed by a superintendent, to implement and regulate compliance. The law prohibits anti-competitive conduct, restraints on trade, manipulative conduct, price fixing and other anti-competitive agreements. Violations may subject businesses to fines up to 40 percent of their gross revenues and 20 percent of their equity. The previous competition authority, Procompetencia (<http://www.procompetencia.gob.ve/>), will continue overseeing competition policy for 90 days after this law goes into effect; this period is renewable for 90 additional days by the Commerce Ministry.

Investment Trends

Political tensions, state interventions in the economy, corruption, and a volatile regulatory framework make Venezuela a difficult climate for foreign investors. Conditions for foreign investment are unlikely to improve in the near future. Venezuela has traditionally been a destination for U.S. direct investment in the energy and manufacturing sectors, as well as an importer of U.S. machinery, medical supplies, chemicals, agricultural products, and vehicles. Such investment and trade links have been weakened in recent years by GBRV efforts to build commercial relationships with ideological allies, strained U.S.-Venezuelan relations, and the deteriorating investment climate.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	161 of 175	transparency.org/cpi2014/results
World Bank’s Doing Business Report “Ease of Doing Business”	2014	182 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	122 of 143	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 17,900	data.worldbank.org/indicator/NY.GNP.PCAP.CD

2. Conversion and Transfer Policies

Foreign Exchange

Venezuela’s foreign exchange (FX) regime has been in flux for several years, with multiple FX mechanisms and exchange rates introduced, modified, and eliminated. The GBRV has described the current FX regime as transitory, increasing uncertainty for the near term. Since 2003, the GBRV has maintained strict currency controls. Venezuela authorizes three official FX mechanisms to sell USD to private sector firms and individuals.

The currency commission, CENCOEX, oversees two FX mechanisms. The first, CENCOEX, sells USD at the official exchange rate of 6.3 VEF/USD for imports of goods and services deemed national priorities, primarily food, medicine, and medical supplies. Firms and individuals soliciting dollars from CENCOEX must register with the body and obtain supporting documentation from various GBRV ministries, e.g., certificates of non-national production of the proposed imports and statements of good standing with the tax authorities. CENCOEX also operates a complementary FX mechanism, SICAD, which periodically sells USD to specific priority sectors at roughly 12 VEF/USD. Firms and individuals who wish to place bids for SICAD USD must separately register for the system. FX regulations state that CENCOEX will sell dollars for certain priority sectors, e.g., aviation, overseas travel, IT, IPR, capital goods, international investments, and insurance, through normal CENCOEX procedures, rather than ad hoc special sales, but use the prevailing exchange rate from the most recent SICAD sale, instead of the official exchange rate. Information about SICAD is available at <http://www.bcv.org.ve/c5/sicad/c9/tme01.asp>.

The Venezuelan central bank (BCV) oversees a third FX mechanism, SIMADI (<http://www.bcv.org.ve/c5/simadi/simadi-02.asp>), which was created in 2015. SIMADI allows for three distinct foreign exchange activities undertaken by different authorized agents: wholesale FX trading for firms by commercial banks; retail FX trading for individuals by commercial banks and exchange houses; and trading in dollar-denominated securities by commercial banks and stock brokers through the public-sector stock exchange. Participants in

SICAD and SIMADI must hold dollar-denominated checking accounts in a Venezuelan bank. The BCV publishes daily SIMADI's exchange rate. The BCV has controlled SIMADI's exchange rate, which depreciated from 170 to 190 VEF/USD in its first two months of operations. Firms often wait 180-270 days to receive dollars, or never receive them, despite having had their applications approved.

Remittance Policies

Foreign investors in Venezuela have struggled to convert their VEF earnings into USD. Since 2008, CENCOEX and its predecessor, CADIVI, virtually ceased approving the sale of USD for earnings or capital repatriation. Multinational firms have announced numerous accounting losses due to the exchange rates. Venezuela's investment law limits earnings repatriation to a maximum of 80 percent of local currency earnings in any fiscal year. Legally, foreign investors could purchase dollars through SIMADI to repatriate earnings, at a 96 percent devaluation compared to the official exchange rate, but SIMADI has not been able to satisfy the demand for hard currency. There is also a parallel market for dollars. Private websites hosted outside of Venezuela publish the parallel exchange rate. They report that the rate has been depreciating steadily, reaching 260 VEF/USD in March 2015.

The OECD's Financial Action Task Force (FATF) announced in February 2013 that Venezuela was no longer subject to FATF's global anti-money-laundering/combating terrorist finance (AML/CFT) monitoring process. FATF noted Venezuela would continue to work with the Caribbean FATF regional body to address AML/CFT deficiencies identified in Venezuela's mutual evaluation report.

3. Expropriation and Compensation

Since 1998, Venezuelan trade association Conindustria estimates the GBRV has expropriated more than 1,400 private businesses. The affected sectors included agribusiness, chemicals, construction, energy and mining, finance, food processing and packaging, information and communication technology, metals manufacturing, ports, real estate, and transportation. The GBRV has cited as valid reasons for these expropriations; abusive prices, economic sovereignty, excessive profits, food security, monopolistic behavior and public utility

The legal framework for expropriations is included in the Law of Expropriations, the Land and Agricultural Development Reform Law, the Urban Land Law and the Emergency Law of Urban Lands and Housing. These laws authorize expropriation by means of a presidential decree. The law provides for adequate and timely compensation, but the process has been slow and opaque, forcing companies to seek relief through international arbitration.

The 2005 land and agricultural development law calls for the redistribution of unproductive land, which in this context means land held by private owners that is considered idle by the government because it is currently not being used for agriculture or livestock production. The GBRV continues to nationalize large tracts of land and farms. In 2013, the National Land Institute (NLI), which oversees expropriations of agricultural property, claimed to have seized over 8.9 million acres of land since 2002. The 2014 budget contained funding to seize up to an additional 865,000 acres.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

Venezuela's legal system is based on the civil law tradition, reflecting Napoleonic and continental European influences. The commercial and civil codes address most business matters. The investment law stipulates that foreign investments shall be subject to the jurisdiction of Venezuelan courts and any bodies in which Venezuela might participate within the framework of Latin American and Caribbean integration. Venezuelan legal analysts have conflicting views regarding whether the new law eliminates the possibility of arbitration. The legal system is generally slow and inefficient, and lacks independence from the executive branch.

Bankruptcy

Venezuela's bankruptcy laws are outdated and inadequate to permit the reorganization of a debtor as a going concern. Currently insolvent companies that file for bankruptcy or reorganization generally lose control of their businesses and assets to a receiver and a bankruptcy judge, giving creditors fewer options to assert their interests in the process, compared to bankruptcy proceedings in other jurisdictions. All financial and commercial unsecured creditors are treated equally, but they are subordinated to the debtor's employees, who are due unpaid wages and other labor benefits, as well as to certain taxes. The bankruptcy trustee and advisors also have a statutory preference over all other creditors. Under the commercial code, all creditors that are not secured by a legal and valid security interest, or have a preference as mandated by law (e.g., the debtor's employees) must be treated equally by the bankruptcy court. Lawyers say Venezuela's bankruptcy laws incentivize debtors and creditors to negotiate settlements outside the context of formal bankruptcy proceedings.

Investment Disputes

The GBRV has not specifically targeted U.S. firms in its expropriations, but many expropriations and investment disputes have involved U.S. businesses. Roughly 15 investment disputes involving U.S. firms are ongoing at the International Centre for Settlement of Investment Disputes.

International Arbitration

Venezuelan law provides for commercial arbitration, based on UNCITRAL's model arbitration law. The private sector Venezuelan Business Center of Arbitration and Conciliation (CEDCA) offers arbitration services. Additional information is available at <http://www.cedca.org.ve/>.

ICSID Convention and New York Convention

On January 24, 2012, the GBRV withdrew as a member state from the convention on International Centre for Settlement of Investment Disputes (ICSID Convention). Withdrawal from ICSID does not offer any immediate benefits to Venezuela. Twenty cases pending before ICSID remain active. These pending cases are not affected by Venezuela's denunciation of the ICSID convention. Between the date of the notice of denunciation and the date when it became

effective, foreign investors had an additional six months file new claims against Venezuela. Since 2013, ICSID has returned judgments in favor of several claimants. The GBRV has sought to annul ICSID's judgments within the ICSID forum and to challenge claimants' efforts to enforce the judgments in U.S. and European courts.

Venezuela is a signatory to the convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention) and a member of the International Chamber of Commerce's International Court of Arbitration, which covers commercial disputes.

Duration of Dispute Resolution

The legal system is generally slow and inefficient, and independent observers have said it suffers from corruption and a lack of independence from the executive branch. Venezuelan lawyers say routine commercial disputes can take up to five years to litigate in Venezuelan courts.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Venezuela is a member of the World Trade Organization (WTO). Venezuela's only Trade Related Investment Measures (TRIMs) notification regards a 1995 agreement among Colombia, Ecuador, and Venezuela on local content requirements for automobile assemblers. Venezuela's new investment law contains mandatory language regarding the development of local suppliers and non-traditional exports, but it remains to be determined whether the GBRV will enforce these rules in a manner consistent with the agreement on TRIMs.

Investment Incentives

Investment incentives are generally found in the energy and mining sector as described in the Industrial Promotion section.

Research and Development

Not applicable.

Performance Requirements

Venezuela's new investment law contains mandatory language regarding the development of local suppliers, domestic research and development, and non-traditional exports, but it remains to be determined whether the GBRV will enforce these rules as performance requirements. PDVSA seeks to maximize local content and hiring in its deals with foreign companies. New agreements require technology transfers and also social contributions from companies. Foreign companies receive the same tax treatment as domestic companies, with the exception of the non-associated natural gas sector where foreign investors receive preferential tax treatment.

The Law for Communal Management of Responsibilities and Services outlined preferential treatment for companies that cooperate with the "communal state," including: access to the

government's distribution and commercialization network; guarantees of technical assistance; access to GBRV's direct purchasing plans (i.e., closed bidding); access to credits and funds for production encouragement; preferential rates and conditions on manufacturing credits; access to technology; tax exemptions; and exemption from the Law of Public Contracts, which, among other things, gives the GBRV the right to expropriate a government contractor's equipment if the firm breaches its agreement.

Currently, government procurement is governed by the Partial Tender Reform Act and the Law of Public Contracts. The law has sought to increase participation by small and medium enterprises (SME). The law on public contracts has sought to enhance the role of communal councils in public procurement. Venezuela is not a signatory to the WTO Agreement on Government Procurement.

Data Storage

Venezuela's new investment law contains mandatory language regarding the development of local suppliers, domestic research and development, and non-traditional exports, but it remains to be determined whether the GBRV will enforce these rules in a manner that constitutes a local content requirement. Venezuela's telecommunications law gives regulatory authorities powers to access and intervene in telecommunications infrastructure and services in the interest of national security, defense, and public order. Venezuela's law against computer crimes criminalizes a range of conducts, including unauthorized access to systems, espionage, and sabotage. No information is available regarding requirements that foreign investors store data in Venezuela, although anecdotally many foreign firms store data outside the country.

6. Right to Private Ownership and Establishment

There are legal limits on foreign ownership in certain sectors as noted in the 1999 constitution and special laws (reference Openness To, and Restrictions Upon, Foreign Investment).

7. Protection of Property Rights

Real Property

Expropriations, weak public sector institutions, and lack of judicial independence undermine real property rights in Venezuela. Mortgages and property liens exist. Real estate lawyers say land registries are generally reliable, although in some cases are subject to abuse and corruption. In 2014, the World Bank ranked Venezuela 102 out of 189 countries for ease of registering property. The Bank said registering a property interest takes nine administrative procedures, 52 days, and costs 2.5 percent of the property value. Venezuela has a law on indigenous land rights which provides general definitions of indigenous peoples' lands and use rights and assigns the laws implementation to the environment ministry. Data are unavailable on the percentage of Venezuelan land lacking clear title.

A November 2013 presidential decree law capped commercial rental rates at 250 VEF/square-meter, which represented 50-75 percent reductions from prior market prices. The law prohibits commercial rent contracts in any currency other than VEF; private arbitration for the resolution

of conflicts between landlords and tenants; and foreign companies administering commercial rental contracts.

Intellectual Property Rights

Venezuela's intellectual property regime provides ambiguous protections for rights holders under Article 98 of the 1999 constitution and the industrial property law of 1955. Under the constitution, intellectual property rights (IPR) are classified as cultural and educational rights rather than economic rights. In April 2006, Venezuela formally withdrew from the Andean Community (AC). Although there was legal uncertainty as to whether AC agreements still applied, the Venezuelan Supreme Court (TSJ) ruled in 2011 that Venezuela had reverted to the 1955 industrial property law (IPL) upon withdrawal from the AC. In its current form, the IPL is outdated and incapable of addressing modern IPR issues. It also conflicts with the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The 2012 Organic Law of Labor and Workers further complicated Venezuela's IPR regime because article 325 provides that any intellectual property generated by public sector entities, or using public sector funds, automatically becomes part of the public domain. In July 2012, recognizing the 1955 industrial property law was outdated and at odds with multiple national and international legal structures, the Venezuelan Supreme Court (TSJ) urged the National Assembly to revise the industrial property law and reconcile it with Article 98 of the 1999 constitution. However, the initiative faltered and there have been no new developments since 2014.

As a WTO member, the GBRV is obligated to adhere to the requirement of the TRIPS Agreement. However, its failure to grant any patents since in 2007 violates TRIPS Articles 2.1 and 62.2. Venezuela is a member of the World Intellectual Property Organization (WIPO). It is also a party to the Berne Convention for the Protection of Literary and Artistic Works, the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms, the Universal Copyright Convention, Paris Convention for the Protection of Industrial Property, and the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. Venezuela has not ratified the WIPO Copyright Treaty or the WIPO Performances and Phonograms Treaty, nor is it a party to the Madrid Protocol on Trademarks or the Patent Law Treaty.

Venezuela ranked as one of the top 20 economies worldwide for unlicensed software in 2014. An estimated 88 percent of the software used in Venezuela in 2014 was unlicensed. The commercial value, if all unlicensed products were purchased legally, would be roughly USD 1 billion. This figure more than doubled from 2007 to 2013. No Venezuelan markets were identified in this year's U.S. Department of Commerce "Notorious Markets" Report. The World Economic Forum's 2014-2015 World Competitive Report ranked Venezuela last out of 144 countries in intellectual property protection. The Property Rights Alliance's 2014 International Property Rights Index (IPRI) ranked it 131 out of the 131 countries, a decline of 3 positions from 2013.

Venezuela remained on the Priority Watch List in the 2014 Special 301 Report. Key concerns cited in the report are the deteriorating environment for the protection and enforcement of IPR in Venezuela.

Patents and Trademarks

The Autonomous Service of Intellectual Property (SAPI), the Venezuelan equivalent of the U.S. Patent and Trademark Office, has not issued a new patent since 2007. Venezuela's 1955 IPL provides that patents of invention, improvement, model, or industrial drawing can last five or ten years depending on the preference of the filer. Patents for technologies developed abroad may last five years or until the original foreign patent term expires, whichever is shorter. These patent durations violate the 20-year patent-term required under the TRIPS Agreement. Article 15 of the industrial property law excludes from patent protection medicine and pharmaceuticals, financial systems and plans, industrial processes, and speculative or theoretical inventions, in violation of Article 27 of the TRIPS Agreement. Several suits pertaining to data protection have been dismissed by the Supreme Court, which has ruled that allowing a third party to obtain a sanitary registration based on the information previously submitted by patent holder does not breach data protection and that obtaining a sanitary registration alone is not patent infringement.

SAPI's handling of trademarks is less hostile to rights-holders, but trademarks continue to be a problem. Trademarks must be filed with SAPI and published in the official gazette. SAPI grants trademarks for 15 years, and they may be renewed for successive 15-year periods. Trademarks are valid from the date SAPI publishes them in its bulletin. The registration process averages 12-14 months but can take significantly longer if a third party opposes the registration. SAPI continues to reject, under Article 33 of the IPL, most applications for trademarks bearing geographical indications.

Copyrights

Creative works are protected under the 1993 Copyright Law, the Berne Convention, and the Universal Copyright Convention. The law is modern and comprehensive and extends copyright protection to all creative works including computer software.

Enforcement

Low GBRV motivation, lengthy legal processes, inexperienced judges, and insufficient investigative and prosecutorial resources hamper IPR enforcement in Venezuela. In 2010, the GBRV abolished the Venezuelan copyright and trademark enforcement branch of the federal police. The GBRV dedicates only one prosecutor to IPR enforcement cases. IPR enforcement actions can only take place after a rights holder files a complaint. The complainant is then responsible for any storage costs of illicit goods—costs that may continue for years given the slowness of court proceedings. Prosecutors may only pursue violators operating at a fixed location, effectively shielding street vendors from sanctions. Venezuela's tax and customs service, SENIAT, occasionally conducts low-level raids against known illegal markets or small vendors of counterfeit goods, but these raids are random and officials are reportedly careful to avoid large markets that could create political repercussions for SENIAT. IPR laws are rarely enforced and cases take years to resolve. The process is slow and penalties do not deter counterfeiters. Post does not have any additional information on border enforcement or the legal authority of its customs officials to seize and destroy confiscated counterfeit goods.

The December 2010 anti-smuggling law criminalized contraband trade and strengthened customs controls. The law imposed penalties, such as imprisonment for customs officials convicted of smuggling, broadened the definition of contraband, and authorized the attorney general to carry out investigations of smuggling crimes along with SENIAT, the armed forces, and the national police. Venezuelan IP attorneys say constant rotation of personnel at SENIAT hinders the tax authorities' capability to enforce IPR-related disputes and investigations. Piracy and trademark infringement remain widespread, including on the Internet. Pirated software, music, and movies are readily available throughout the country.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

Resources for Rights Holders

Embassy Caracas Economic Section: CaracasEcon@state.gov, 58-0212-975-6411

The Venezuela-American Chamber of Commerce: www.VenAmCham.org

U.S. Patent and Trademark Office (USPTO): www.uspto.gov, 1-800-786-9199

National Intellectual Property Rights Coordination Center: www.iprcenter.gov

International Trade Administration, U.S. Department of Commerce: www.stopfakes.gov

For a list of local lawyers, please visit:

<http://photos.state.gov/libraries/venezuela/809612/sapersteinse/Law%20Firms%20Sep2013.pdf>

8. Transparency of the Regulatory System

Venezuela's regulatory system lacks transparency, is unpredictable, and suffers from corruption. The GBRV's ruling United Socialist Party of Venezuela (PSUV) and its allies control the executive branch, including all regulatory agencies, the National Assembly, the judiciary, and the electoral authority. International observers believe the executive branch exercises undue influence over the legislative, judicial, regulatory, and electoral authorities. Proposed laws are generally presented for two rounds of discussion in the National Assembly, but opposition parties and private parties are limited in their ability to influence legislative outcomes. The National Assembly has granted the president the ability to issue new laws by decree, most recently for November 2013-November 2014 and again for March 2015-December 2015, circumventing the normal legislative process. Executive agencies generally develop and promulgate implementing regulations without consulting private sector representatives of the affected sectors.

9. Efficient Capital Markets and Portfolio Investment

Venezuela's financial services are heavily regulated. In 2010 the GBRV passed laws to reform the financial sector, including the Organic Law of the National Financial System, the regulatory framework for banks, insurance companies, and the capital markets; the Law for Insurance Activity; the Capital Markets Law, which created a state-run securities exchange; the Bicentennial Public Securities Exchange (BPVB); and the Law of Banking Sector Institutions. Financial services account for a relatively small but growing share of GDP. According to BCV data, financial services represented 8 percent of GDP in the first three quarters of 2014.

Financial services growth has been driven by increasing monetary liquidity (M2) resulting from loose fiscal and monetary policy and strict currency controls, which traps VEF earnings in Venezuela.

Venezuelan capital markets are underdeveloped and thinly traded. The leading Caracas stock market index, the Caracas Stock Exchange Index, was up roughly 80 percent in bolivar terms, year on year, in March 2015. Private analysts attribute the rise to government spending-driven increases in M2 and currency controls that trap the liquidity in Venezuela. Activity in Venezuela's securities market has decreased in recent years due to nationalizations of previously listed firms and the GBRV's seizure of 51 brokerages, since 2010, mostly on charges of illegal trading in a now defunct foreign exchange market.

Venezuela's primary stock market is the Caracas Stock Exchange (BVC). On January 31, 2011, the GBRV launched the BPVB, under the November 2010 securities market law, to sell government and corporate bonds and to compete with the BVC. The BPVB was empowered to trade both VEF- and USD-denominated securities, but as of April 2014 it had only traded VEF-denominated debt. Private brokerages have not been allowed to participate in the BPVB. Trading volumes in both the BVC and the BPVB are low and dominated by fixed-income public- and private-sector securities offering negative real interest rates due to an excess of VEF liquidity trapped in Venezuela by currency controls.

Foreign investors can buy or sell stocks and bonds in Venezuelan capital markets as long as they have registered with the securities regulator, the Superintendent of Securities (SNV). Venezuela's new foreign investment law requires foreign investors to obtain a foreign investment registration before they invest directly in Venezuelan firms.

Money and Banking System, Hostile Takeovers

Venezuelan credit markets are heavily regulated. The BCV and the Superintendent of Banks (SUDEBAN) regulate Venezuela's banking sector. The 2010 law of banking sector institutions describes banking as a public service and banks as public utilities, permitting the GBRV to nationalize financial institutions without National Assembly approval. The public sector's share of total bank assets has grown in recent years, primarily through GBRV nationalizations. According to SUDEBAN data, in April 2014 there were 35 banking institutions—25 private and 10 public—down from 59 in November 2009. Public-sector banks held an estimated 32 percent of total banking sector assets in February 2015.

Venezuela's banking sector is heavily distorted by the GBRV's and BCV's expansive fiscal and monetary policies, which combined with currency controls trap local currency liquidity in the economy, fuel inflation, reduce loan default rates, and inflate banking sector profitability indicators. Universal and commercial banks enjoyed return on equity of roughly 51 percent in the twelve months to February 2015, with a sector-wide default rate of less than 1 percent, driven by M2 growth and currency controls that constrain capital transfers out of Venezuela. Financial analysts believe reform to the currency control regime would have to be paired with banking sector reforms to avoid widespread stress to the financial system.

The BCV sets maximum and minimum interest rates banks can charge. Recent limits included 24 percent on commercial and personal loans, 29 percent on credit cards, and 16 percent on car loans. With inflation ranging between 20 and 70 percent since 2009, real interest rates have generally been negative. Banks are required to allocate roughly 59 percent of their portfolio for loans to the housing, agriculture, small business, manufacturing, and tourism sectors, at preferential interest rates that have been negative, in real terms, since 2012. Universal and commercial banks are prohibited from making commercial loans for terms longer than three years. The BCV also regulates interest rates on savings accounts and time deposits. Recent limits have included 16 percent on savings account balances from 0 to VEF 20,000, 12.5 percent on savings account balances above VEF 20,000, and 14.5 percent on certificates of deposit. Such rates have been negative, in real terms, since 2009, discouraging household saving and incentivizing domestic consumption and the purchase of USD in the parallel market as a more stable store of value. Faced with negative real interest rates on bank deposits and VEF-denominated securities, multinationals with VEF earnings trapped in Venezuela have increasingly invested in commercial real estate in an attempt to mitigate inflation risks.

The majority of banking sector assets is concentrated in the country's five largest banks. Total banking assets, at roughly USD 420 billion (at the official exchange rate), grew 62 percent from February 2014 to February 2015. Public and private universal and commercial banks control 99 percent of total banking sector assets. The three largest private universal banks are: Banesco, with 16 percent of total sector assets in February 2015; Banco Provincial, with 13 percent; and, Banco Mercantil, with 12 percent. Banesco and Banco Mercantil are Venezuelan-owned, while Banco Provincial is majority-owned by BBVA of Spain. Citibank is the only U.S.-owned universal bank with a presence in Venezuela. The two largest state universal banks are Banco de Venezuela and Banco Bicentenario. The GBRV nationalized Banco de Venezuela from Spain-based Banco Santander in May 2009. Banco de Venezuela is now the country's largest bank, with 18 percent of total sector assets in February 2015. Banco Bicentenario was formed in 2010 through the nationalization of four private banks; it held 7 percent of assets as of February 2015. The BCV promulgated regulations in September 2012 outlining conditions under which businesses and individuals may open USD-denominated bank accounts at Venezuelan universal and commercial banks. Venezuelan residents may use such accounts for international transfers, overseas debit card transactions, and transactions through Venezuela's alternative FX mechanisms, SICAD and SIMADI (see Conversion and Transfer Policies). Venezuelans may not withdraw dollars from such accounts in Venezuela, however.

10. Competition from State-Owned Enterprises

State Owned Enterprises (SOEs) are dominant in diverse sectors of the Venezuelan economy, including agribusiness, food, hydrocarbons, media, mining, telecommunications, and tourism. Private firms are at a disadvantage when competing with public enterprises, specifically in terms of accessing foreign currency at the official exchange rate. SOEs generally do not need to go through CENCOEX to request hard currency at the official exchange rate, while private companies struggle with the official mechanisms' limitations and process delays (see Conversion and Transfer Policies).

In March 2012 the GBRV amended its customs and tax regimes to favor imports by the public sector over those of the private sector. The new rules exempt SOE importers from providing

certain customs documentation and grant waivers on value-added taxes, customs duties, and fees on a broad range of imported products. The exemptions do not generally apply to the private sector. The GBRV has extended such benefits to certain private-sector firms. The BCV provides massive monetary financing to SOEs, especially PDVSA, to cover local currency operating deficits. Financial analysts generally believe Venezuela's SOEs contribute to macroeconomic imbalances and undermine domestic output.

OECD Guidelines on Corporate Governance of SOEs

The GBRV does not encourage its SOEs to adhere to the OECD Guidelines on Corporate Governance for SOEs. The CEO of PDVSA and the rest of PDVSA's board members are appointed by the President. GBRV direct appointment of SOE executives is commonplace, such as in the Venezuelan Corporation of Guayana (CVG), a state holding company that includes firms in basic industries such as aluminum, iron ore mining, electricity generation, and steel. Venezuela is not a party to the WTO's Agreement on Government Procurement. Private sector firms are at a disadvantage vis-à-vis SOEs in Venezuelan courts.

Sovereign Wealth Funds

Not applicable.

11. Responsible Business Conduct

Article 135 of the Venezuelan constitution declares a general duty for all non-state actors to respect laws regarding social responsibility. Venezuela's 2014 foreign investment law requires foreign investors to promote responsible business conduct (RBC) consistent with international standards. Various Venezuelan laws set forth requirements intended to advance principles generally included under the concept of RBC. GBRV regulation and enforcement of these laws is weak and uneven.

The Venezuelan private sector is generally aware of and promotes RBC. The Venezuelan-American Chamber of Commerce (VenAmCham), for its part, promotes RBC through its Social Alliance program, which organizes RBC-themed events. The Venezuelan Federation of Chambers of Commerce (Fedecamaras) promotes RBC through a standing working group devoted to the dissemination of best practices and an annual award to recognize RBC excellence.

OECD Guidelines for Multinational Enterprises

Venezuela does not encourage foreign or local firms to follow the OECD Guidelines for Multinational Enterprises or the UN Guiding Principles on Business and Human Rights.

12. Political Violence

Venezuela's political climate is polarized between supporters and opponents of the GBRV and policies of the PSUV. There were, however, no major incidents of political violence that specifically targeted foreign owned companies or installations through March 2015. The GBRV

publicly accuses the United States and the private sector of waging an economic war against the Venezuelan people, fostering an atmosphere of hostility toward private business.

13. Corruption

Venezuela has comprehensive anti-corruption laws but enforcement is weak, as indicated by Venezuela's ranking by Transparency International of 160 out of 177 countries in its corruption perceptions index. Corruption is endemic in Venezuela, including in government procurement; the awarding of authorizations, particularly in the foreign exchange regime; dispute settlement; the regulatory system; and customs and taxation. The GBRV does not provide protection to NGOs that investigate corruption and often subjects them to harassment.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Venezuela signed the UN Convention against Corruption on December 10, 2003, and ratified it on February 2, 2009. Venezuela has not adopted the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Resources to Report Corruption

The GBRV's Public Ministry, roughly equivalent to the U.S. Attorney General's Office, has telephonic and e-mail resources for victims to report crimes, including corruption. The Public Ministry's contact information is:

Sede Principal del Ministerio Público
Esquinas de Misericordia a Pele El Ojo y Avenida México
Caracas
58-0212-509-7211 (main)
58-0212-509-7464 (main)
58-0-800-FISCA-00 (speak to a Public Ministry attorney)
58-0-800-VICTIMA (victim hotline)
mp@mp.gob.ve

Transparency International's Venezuela chapter, Transparencia Venezuela, offers consultation and services to victims of corruption. Transparencia Venezuela's contact information is:

Avenida Andrés Eloy Blanco
Edificio Cámara de Comercio de Caracas
Piso 2
Oficina 2-15
Los Caobos
Caracas 1050
58-0212-576-0863
58-0212-573-3134
comunicaciones@transparencia.org.ve

14. Bilateral Investment Agreements

Venezuela has bilateral investment treaties with Argentina, Barbados, Belarus, Belgium and Luxembourg, Brazil, Canada, Chile, Costa Rica, Cuba, Czech Republic, Denmark, Ecuador, France, Germany, Iran, Islamic Republic, Italy, Lithuania, Netherlands*, Paraguay, Peru, Portugal, Russian Federation, Spain, Sweden, Switzerland, United Kingdom, Uruguay, and Vietnam.

Effective November 1, 2008, Venezuela revoked its Bilateral Investment Treaty with the Netherlands. Revocation did not have immediate consequences for investments made prior to the date of revocation. The BIT remains in force for these investments for a period of 15 years.

Bilateral Taxation Treaties

The United States and Venezuela have a bilateral tax treaty for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed in 1999. The provisions of the treaty apply to the following taxes in existence at the time of the entry into force: a) in Venezuela: the tax on income and the business assets tax; b) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding social security contributions), and to any identical or substantially similar taxes that imposed after the date of signature.

15. OPIC and Other Investment Insurance Programs

Overseas Private Investment Corporation (OPIC) programs in Venezuela were suspended in 2005, due to Venezuela's failure to cooperate in suppressing international narcotics trafficking. In 2014, the United States determined that Venezuela failed to make sufficient or meaningful efforts to adhere to its obligations under international counter-narcotics agreements and conventions. However, President Obama issued a national interest waiver, determining that support for programs to aid Venezuela is vital to the national interest of the United States. Under this waiver, Venezuela is eligible for OPIC programs starting in 2015.

The U.S. Export-Import Bank (ExIm Bank) has not provided new financing for projects in Venezuela since April 2003. Both OPIC and the Ex-Im Bank still retain significant exposure in Venezuela prior to suspending operations.

16. Labor

Several factors make human resources a challenge for domestic and foreign investors alike: heavily regulated labor markets; talent flight, as skilled Venezuelans have sought employment abroad due to physical insecurity and political and economic uncertainty; government programs that support poorer Venezuelans making it more difficult for companies to attract unskilled labor; and declining traditional trade unions, as the GBRV has supported the establishment of "parallel" unions aligned to government interests and new "workers militias" to monitor the activities of union members. Roughly 10 percent of the total workforce is unionized. The GBRV extended in December 2014 a firing freeze in place since 2002 that shields most private-sector workers from termination through December 31, 2015.

In April 2012, former President Chavez used a presidential decree law to pass a long-pending Organic Law of Labor and Workers. The law replaced a 1997 labor law, expanding workers' rights and benefits. The law prohibits employer discrimination on the basis of race, sex, age, civil status, religion, political beliefs, social class, nationality, sexual orientation, union membership, criminal record, or disability. The law prohibits termination without legal justification and requires employers to consult labor courts regarding the lawfulness of a termination. The law also prohibits employers from hiring third-party contractors to perform ongoing, regular duties as a means of avoiding legal obligations owed to those on one's payroll. The law guarantees a retirement pension for workers in both the formal and informal sectors.

The law reduced the legal workweek from 44 to 40 hours and guaranteed workers 15 days of vacation, plus one day for each additional year of employment, up to a total of 45 days per year. The law also introduced new rights for female workers with children, including: 26 weeks of paid maternity leave for mothers (six pre- and 20 post-natal); two breaks per day for mothers who are breastfeeding; and access to a lactation room, if they work for an employer with more than 20 employees. The law created guidelines for temporary workers, who can work 10-hours daily with a labor inspector's permission; shift workers may not work more than 42 hours per week, on average, over any eight-week period. The GBRV promulgated regulations implementing the new labor law in May 2013.

In 2014, Venezuela saw continued protests and work stoppages by unions across the public and private sectors. While no official statistics are available for 2014, the number of labor protests declined in 2014 compared to 2013. The Ministry of Labor reported 1,612 actions in 2013 and the non-governmental organization Venezuelan Observatory of Social Conflict registered 1,415 conflicts in 2014, a 21 percent decrease. Union protests in the state of Guayana have stopped operations at the Venezuelan Corporation of Guayana (CVG), the largest state-owned industrial conglomerate in the country. The GBRV has delayed negotiations over collective bargaining agreements for workers in the public sector, leaving more than two million public employees without collective contracts, including teachers and electrical workers. In February 2014, PDVSA and unions representing oil and gas industry employees agreed on a new collective bargaining agreement for the period of 2013-2015.

The GBRV's statistics agency estimated the unemployment rate at 7.9 percent in January 2015. The INE estimated 41 percent of the employed worked in the informal sector and 59 percent in the formal sector.

17. Foreign Trade Zones/Free Ports/Trade Facilitation

The Free-Trade Zone Law provides for free-trade zones and free ports. The three existing free-trade zones are located in the Paraguana Peninsula, in the state of Falcon, which also has a tourism investment promotion provision; Atuja in the state of Zulia; and the municipalities of Libertador, Campo Elias, Sucre; and Santos Marquina in the state of Merida, but only for cultural, scientific, and technological goods. These zones provide exemptions from most import and export duties and offer foreign-owned firms the same investment opportunities as Venezuelan firms. Venezuela has two free ports that also enjoy exemptions from most tariff duties: Margarita Island (part of Nueva Esparta state) and Santa Elena de Uairen in the state of Bolivar.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

Economic Data	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Host Country Gross Domestic Product (GDP) (\$M USD)	2012	381,395	2013	438,238	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	NA	NA	2013	14,487	BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Host country's FDI in the United States (\$M USD, stock positions)	NA	NA	2012	4,683	BEA data available 3/19/14 at http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2012	12.8	2013	11.7	

Source: Venezuelan Central Bank

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data**From Top Five Sources/To Top Five Destinations (US Dollars, Millions)**

Inward Direct Investment			Outward Direct Investment		
Total Inward	51,817	100%	Total Outward	NA	100%
Netherlands	10,693	21%			
United States	9,282	18%			
France	3,985	8%			
Spain	3,500	7%			
Switzerland	2,273	4%			

"0" reflects amounts rounded to +/- USD 500,000.

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets**Top Five Partners (Millions, US Dollars)**

Total			Equity Securities			Total Debt Securities		
All Countries	8,228	100%	All Countries	79	100%	All Countries	8,149	100%
United States	4,726	57%	United States	69	87%	United States	4,657	57%
UK	894	11%	NA	NA	NA	UK	894	11%
Switzerland	754	9%	NA	NA	NA	Switzerland	754	9%
Germany	650	8%	NA	NA	NA	Germany	650	8%
Argentina	76	1%	NA	NA	NA	Argentina	76	1%

Source: IMF Coordinated Portfolio Investment Survey

19. Contact for More Information

U.S. Embassy Caracas Economic Section
 Calle F con Calle Suapure
 Urbanización Colinas de Valle Arriba
 Caracas, Venezuela
 58-0212-907-8441
 CaracasEcon@state.gov