Venezuela

RISK & COMPLIANCE REPORT

DATE: December 2017
### Executive Summary - Venezuela

| Sanctions: | The US has imposed sanctions blocking property and suspending entry of certain persons contributing to the situation in Venezuela. |
| FAFT list of AML Deficient Countries | No |
| Higher Risk Areas: | US Dept of State Money Laundering assessment  
Not on EU White list equivalent jurisdictions  
Corruption Index (Transparency International & W.G.I.)  
World Governance Indicators (Average Score)  
Failed States Index (Political Issues)(Average Score)  
International Narcotics Control Majors List - Cited |
| Medium Risk Areas: | Compliance with FATF 40 + 9 Recommendations |

### Major Investment Areas:

**Agriculture - products:**
- corn, sorghum, sugarcane, rice, bananas, vegetables, coffee; beef, pork, milk, eggs; fish

**Industries:**
- petroleum, construction materials, food processing, textiles; iron ore mining, steel, aluminum; motor vehicle assembly, chemical products, paper products

**Exports - commodities:**
- petroleum, bauxite and aluminum, minerals, chemicals, agricultural products, basic manufactures

**Exports - partners:**
- US 39.1%, China 14.3%, India 12%, Netherlands Antilles 7.8%, Cuba 4.6% (2012)

**Imports - commodities:**
- agricultural products, livestock, raw materials, machinery and equipment, transport equipment, construction materials, medical equipment, pharmaceuticals, chemicals, iron and steel products

**Imports - partners:**
Investment Restrictions:

The Venezuelan National Assembly passed legislation in 2010 designed to create a communal state and economy, privileging public-sector economic institutions and reducing the space for private-sector participation.

Venezuela’s legal framework for foreign investment requires equal treatment for both foreign and local companies, with the exception of a few sectors in which the state or Venezuelan nationals must be majority owners, including hydrocarbons and the media. In practice, however, foreign investors encounter hurdles.

Foreign investors need to register with the Superintendent of Foreign Investment (SIEX) within 60 days of the date of their investment. Foreign companies may open offices in Venezuela without prior authorization from SIEX as long as they do not engage in certain sales or business activities that would require registration. No prior authorization is required for technical assistance, transfer of technology, or trademark-use agreements provided they are not contrary to existing legal provisions. Decree 2095 reserved three areas of economic activity to “national companies”: (1) broadcast media, (2) Spanish-language newspapers, and (3) professional services regulated by national laws. These professional services include law, architecture, engineering, medicine, veterinary medicine, dentistry, economics, public accounting, psychology, pharmacy, and management. A “national company” (as defined in Article 1 of Andean Community Decision 291) is a company in which Venezuelan nationals hold more than 80 percent of the equity. Foreign capital is therefore restricted to a maximum of 19.9 percent in the areas noted above.
Section 1 - Background

Venezuela was one of three countries that emerged from the collapse of Gran Colombia in 1830 (the others being Ecuador and New Granada, which became Colombia). For most of the first half of the 20th century, Venezuela was ruled by generally benevolent military strongmen, who promoted the oil industry and allowed for some social reforms. Democratically elected governments have held sway since 1959. Hugo CHAVEZ, president from 1999 to 2013, sought to implement his "21st Century Socialism," which purported to alleviate social ills while at the same time attacking capitalist globalization and existing democratic institutions. Current concerns include: a weakening of democratic institutions, political polarization, a politicized military, rampant violent crime, overdependence on the petroleum industry with its price fluctuations, and irresponsible mining operations that are endangering the rain forest and indigenous peoples.
Section 2  -  Anti-Money Laundering / Terrorist Financing

FATF status

Venezuela is no longer on the FATF List of Countries that have been identified as having strategic AML deficiencies

FATF Statement - 22 February 2013

The FATF welcomes Venezuela’s significant progress in improving its AML/CFT regime and notes that Venezuela has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF had identified in October 2010. Venezuela is therefore no longer subject to FATF’s monitoring process under its on-going global AML/CFT compliance process. Venezuela will work with the CFATF as it continues to address the full range of AML/CFT issues identified in its Mutual Evaluation Report.

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Venezuela was undertaken by the Financial Action Task Force (FATF) in 2009. According to that Evaluation, Venezuela was deemed Compliant for 6 and Largely Compliant for 12 of the FATF 40 + 9 Recommendations. It was Partially Compliant or Non-Compliant for 5 of the 6 Core Recommendations.


The “Bolivarian Republic of Venezuela”, situated in the northern part of South America, has an area of approximately 912,050 square kilometres, and 28,800,000 inhabitants. Petroleum and its derivatives are the mainstay of the economy, which boasts one of the highest per capita incomes in the region.

Because of its geographical location, Venezuela is a transit country for illicit drugs, which account for the largest proportion of money laundering activities. Other sources of illicit funds are corruption, which accounts for the largest number of cases analysed by the FIU, after those related to drug trafficking.

Up to the present time no cases of financing of terrorist activities have been discovered in the Republic of Venezuela.

Legal systems and related institutional measures
As regards criminalisation of money laundering, Article 4 of the Organic Law Against Organised Crime (LOCDO) criminalises and sanctions money laundering under the title of “Legitimisation of Capital”. It embodies all the characteristic elements and modalities set out in the 1988 UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the 2000 UN Convention against Transnational Organised Crime (Palermo Convention). All offences enumerated in the LOCDO constitute predicate offences, and in general terms almost all serious crimes are covered as predicate to money laundering. A person may be prosecuted for laundering assets derived from crimes committed abroad, and a person may be convicted for laundering the proceeds of offences committed by himself (self-laundering).

As regards evidence, for purposes of conviction for money laundering, intent on the part of the accused may be inferred from the objective circumstances of the case. Evidence may also be introduced on the basis of the principle of libertad probatoria (full admissibility of evidence) embodied in Article 198 of the Organic Code of Criminal Procedure (COPP). The offence is an independent one, and therefore a prosecution for money laundering does not require previous conviction for the offence from which the illicit assets were derived. Finally, criminal liability of legal persons is recognised, except for the State and State enterprises. In the period 2004-2008 there were 5 instances of convictions confirmed by the Supreme Court. None of them, however, was obtained under the LOCDO, but rather under anti-narcotics legislation.

Financing of terrorism is also criminalised, together with the financing of criminal organisations or armed gangs with terrorist objectives, as well as the financing of terrorist organisations and acts of terrorism. Only financing of individual terrorists is not covered. There have been no convictions for financing of terrorism.

As regards provisional measures and confiscation, Venezuelan law stipulates that seizure or confiscation of assets are necessarily accessory to the basic sanction. Acts intended to hinder the identification, blockage or seizure of assets derived from or related to an offence may be voided, but this may not be done in the case of goods of equivalent value. Preventive securing of assets may be performed without prior notification. No figures concerning application of provisional measures or confiscation were provided. There are no mechanisms to enable terrorist assets to be frozen or confiscated, as embodied in Special Recommendation III. 6

In the area of competent authorities, Venezuela has a National Financial Intelligence Unit (as part of the financial supervisory structure) which receives suspicious transaction reports and which may request, receive, analyse, record and forward to the competent authorities the financial information it needs to carry out its investigations. In practice the FIU suffers from certain shortcomings in the analysis of information.

The bodies acting as law enforcement agencies are the right ones, but they lack specialised money-laundering departments. Permitted investigative techniques include undercover operations and wiretapping, but these have not yet been used in the area of money laundering or financing of terrorism.

Investigative authorities may collect all information of interest by means, inter alia, of statements, inspection of persons, vehicles, and public places; by means of raids, recordings, interception of calls or correspondence, requests for data held by financial institutions, accounting records and
commercial registers, always provided the requirements of legality, relevance and usefulness, which are the governing principles of evidence in criminal prosecution, are met.

**US Department of State Money Laundering assessment (INCSR)**

**Venezuela is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.**

**OVERVIEW**

Conditions in Venezuela allow ample opportunities for financial abuses. Venezuela’s proximity to drug source points and its status as a drug transit country, combined with weak AML supervision and enforcement, lack of political will, limited bilateral cooperation, an unstable economy, and endemic corruption make Venezuela vulnerable to money laundering and financial crimes. Venezuela’s distorted and controlled multi-tiered foreign exchange system and strict price controls provide numerous opportunities for currency manipulation and goods arbitrage. They also cause many legitimate merchants to engage illicit actors to obtain access to U.S. dollars, facilitating money laundering. A robust black market continues to function in the porous border regions of Venezuela and Colombia despite border closings, reportedly to quell such activities. A significant amount of laundered funds come from drug trafficking, but informal traders offering products ranging from shampoo to gasoline also profit from currency manipulation. A series of recent U.S. legal actions against Venezuelan citizens, including government officials and their relatives, have exposed questionable financial activities related to money laundering.

**VULNERABILITIES AND EXPECTED TYPOLOGIES**

Money laundering is widespread in Venezuela, and is evident in a number of areas, including government currency exchanges, commercial banks, gaming, real estate, agriculture, livestock, securities, metals, the petroleum industry, and minerals. TBML remains common and profitable. One such trade-based scheme, a variation of the black market peso exchange, involves drug traffickers providing narcotics-generated dollars from the United States to commercial smugglers, travel agents, investors, and others in Colombia in exchange for Colombian pesos. In turn, those Colombian pesos are exchanged for Venezuelan bolivars at the parallel exchange rate and used to repurchase dollars through Venezuela’s currency control regime at much stronger official exchange rates. In Brazil, several seizures of large amounts of bolivars may be linked to drug trafficking, currency exchange scams, and U.S. dollar and euro counterfeiting schemes.

**KEY AML LAWS AND REGULATIONS**

Revisions made in 2014 to the 2012 Organic Law Against Organized Crime and Financing of Terrorism were a step in the right direction but the law lacks important mechanisms to combat domestic criminal organizations, such as the exclusion of the state and its companies from the scope of investigations. Roughly 900 types of offenses can be prosecuted as “organized crime” under the law. One legal expert noted that such a broad mandate gives the government too
much power, which has been used as a tool to suppress political opposition and intimidate its broadly-defined “enemies.”

In November 2014, the Venezuelan government revised the Anti-Corruption Law and created a law enforcement organization, the National Anti-Corruption Body, to combat corruption. The reform also created a criminal penalty for bribes between two private companies. However, the law differentiates between private and public companies and includes exemptions for public companies and government employees.

Venezuela is a member of the CFATF, a FATF-style regional body.

**AML DEFICIENCIES**

Venezuelan government entities responsible for combating money laundering and corruption are ineffective and lack political will. The National Office against Organized Crime and Terrorist Finance has limited operational capabilities. Venezuela’s FIU, the National Financial Intelligence Unit (UNIF), is supervised by the Superintendent of Banking Sector Institutions, which prevents UNIF from operating independently. A politicized judicial system further compromises the legal system’s effectiveness and impartiality. Although the Venezuelan government has organizations to combat financial crimes, their technical capacity and willingness to address this type of crime remains inadequate. FinCEN, the United States’ FIU, suspended information sharing with the UNIF in 2006 due to an unauthorized disclosure of shared information. The suspension remains in effect until FinCEN has assurances that its information will be protected. The UNIF should operate autonomously, independent of undue influence. Venezuela should increase AML institutional infrastructure and technical capacity.

There are enhanced due diligence procedures for foreign and domestic PEPs.

**ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS**

Since 2003 the Venezuelan government has maintained a strict regime of currency controls. Private sector firms and individuals must request authorization from a government-operated currency commission to purchase hard currency to pay for imports and for other approved uses (e.g., foreign travel). Virtually all dollars laundered through Venezuela’s formal financial system pass through the government’s currency commission, the central bank, or another government agency.

Venezuela’s official, “protected” exchange rate of 10 bolivars per U.S. dollar as of October 2016 is used for vital imports. A second, complementary floating official exchange rate, introduced in March 2016, is ostensibly a floating exchange rate but has stayed relatively constant, while the volatile parallel exchange rate has increased to over 1,600 bolivars per U.S. dollar as of November 2, 2016. The huge margin achievable by defrauding the currency commission has resulted in sophisticated trade-based schemes, which may include the laundering of drug money. Trade-based schemes make it extremely difficult for financial institutions and law enforcement to differentiate between licit and illicit proceeds. Numerous allegations suggest that some government officials are complicit and even directly involved in such schemes. Venezuela’s CTR regulations have not kept pace with Venezuela’s high inflation, with the 10,000 bolivar threshold in
effect since 2010. A 10,000 bolivar ($1,000 at the official exchange rate) withdrawal is now an ordinary transaction.

Current Weaknesses in Government Legislation (INCRS Comparative Tables):
According to the US State Department, Venezuela conforms with regard to all the government legislation required to combat money laundering and the terrorism of financing.

EU White list of Equivalent Jurisdictions
Venezuela is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators
To view historic Governance Indicators Ctrl + Click here and then select country

Failed States Index
To view Failed States Index Ctrl + Click here

Offshore Financial Centre
Venezuela is not considered to be an Offshore Financial Centre
Venezuela remained a major drug-transit country in 2016. Venezuela is one of the preferred trafficking routes for illegal drugs, predominately cocaine, from South America to the Caribbean region, Central America, the United States, Western Africa, and Europe, due to its porous western border with Colombia, weak judicial system, sporadic international counternarcotics cooperation, and permissive and corrupt environment.

In 2016, traffickers continued to smuggle marijuana cultivated in Colombia through Venezuela, primarily to the Caribbean. There is insufficient data to determine current drug consumption trends within Venezuela, but marijuana is believed to be the most commonly consumed illicit drug, followed by crack cocaine and “basuco” (cocaine paste).

Limited coca cultivation occurs along Venezuela’s border with Colombia. Some precursor chemicals used to produce cocaine are trafficked through Venezuela, but the quantity is unknown. In 2016, Venezuelan authorities did not release statistics on seizures of drug labs or precursor chemicals. The Venezuelan government has not reported the production or trafficking of new psychoactive substances in Venezuela.

In 2016, the President of the United States determined that Venezuela had failed demonstrably to adhere to its obligations under international counternarcotics agreements, though a waiver allowing for continued U.S. assistance was granted in the interest of U.S. national security.

In 2016, the Venezuelan government engaged in minimal bilateral law enforcement cooperation with the United States. Venezuelan authorities do not effectively prosecute drug traffickers, in part due to political corruption. Additionally, Venezuelan law enforcement officers lack the equipment, training, and resources required to significantly impede the operations of major drug trafficking organizations.

Though the level of drug control cooperation between Venezuela and the United States was limited during 2016, the United States remains committed to cooperating with Venezuela to counter the flow of cocaine and other illegal drugs transiting Venezuelan territory.
To advance cooperation, the Venezuelan government can sign an addendum to the 1978 Bilateral Counternarcotics MOU. Enhanced cooperation could increase the exchange of information and ultimately lead to more drug-related arrests, help dismantle organized criminal networks, aid in the prosecution of criminals engaged in narcotics trafficking, and stem the flow of illicit drugs transiting Venezuela.

**US State Dept Trafficking in Persons Report 2016 (introduction):**

Venezuela is classified a Tier 3 country - is classified a Tier 3 Country. This is a country whose governments does not fully comply with the TVPA’s minimum standards, and: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or, c) the determination that a country is making significant efforts to bring themselves into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.

Venezuela is a source and destination country for men, women, and children subjected to sex trafficking and forced labor. Venezuelan women and girls are subjected to sex trafficking and child sex tourism within the country, including some lured from poor interior regions to urban and tourist centers. NGOs continue to report Venezuelan women are subjected to forced prostitution in Caribbean island countries, particularly Aruba, Curaçao, and Trinidad and Tobago. Venezuelan children are exploited within the country, frequently by their families, in domestic servitude. Venezuelan officials and international organizations have reported identifying sex and labor trafficking victims from South American, Caribbean, Asian, and African countries in Venezuela. Ecuadorians, Filipinos, and other foreign nationals are subjected to domestic servitude by other foreign nationals living in Venezuela. Venezuelan officials reported an increase of sex trafficking in the informal mining sector. Media reports indicate some of the estimated 30,000 Cuban citizens, particularly doctors, working on behalf of their government in Venezuela on social programs may experience treatment indicative of forced labor. Some of these Cubans attribute such treatment to their own government, including labor trafficking indicators such as chronic underpayment of wages, mandatory long hours, and threats of retaliatory actions against the citizens and their families if they leave the program.

The Government of Venezuela does not fully meet the minimum standards for the elimination of trafficking and is not making significant efforts to do so. The government released minimal information on its efforts. Authorities investigated at least one sex trafficking case and indicted at least one trafficker, but reported no prosecutions or convictions. The lack of reliable data on government anti-trafficking efforts made these efforts difficult to assess. The government did not report identifying or assisting trafficking victims. The extent of efforts to investigate internal forced labor, protect child sex trafficking victims, or improve interagency coordination to address trafficking was unclear.

**US State Dept Terrorism Report 2016**
Venezuela is currently identified by the US Secretary of State as a Safe Haven for International Terrorism.

**Overview:** In May 2016, for the eleventh consecutive year, the Department of State determined, pursuant to section 40A of the Arms Export Control Act, that Venezuela was not cooperating fully with U.S. counterterrorism efforts. There were credible reports that Venezuela maintained a permissive environment that allowed for support of activities that benefited known terrorist groups. Individuals linked to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army, and Basque Fatherland and Liberty (ETA) were present in Venezuela, as well as Hizballah supporters and sympathizers.

Separately, the Venezuelan government took no action against senior Venezuelan government officials who have been designated under the Foreign Narcotics Kingpin Designation Act by the U.S. Department of the Treasury, for materially assisting the narcotics-trafficking activities of the FARC or for acting for or on behalf of the FARC, often in direct support of its narcotics and arms trafficking activities.

**Legislation, Law Enforcement, and Border Security:** The Venezuelan criminal code and Venezuelan laws explicitly criminalize terrorism and dictate procedures for prosecuting individuals engaged in terrorist activity. The government routinely levies accusations of “terrorism” against its political opponents. Following a wave of anti-government protests in 2014, the Venezuelan government introduced a series of counterterrorism laws intended to suppress future public demonstrations.

Some Venezuelan military and civilian agencies perform counterterrorism functions. Within the Venezuelan armed forces, the General Directorate of Military Counterintelligence and the Command Actions Group of the National Guard have primary counterterrorism duty. The Bolivarian National Intelligence Service and the Division of Counterterrorism Investigations in the Bureau of Scientific, Penal, and Criminal Investigative Corps within the Ministry of Interior, Justice, and Peace have primary civilian counterterrorism responsibilities. The degree of interagency cooperation and information sharing among agencies is unknown due to a lack of government transparency.

Border security at ports of entry was vulnerable and susceptible to corruption. The Venezuelan government routinely did not perform biographic or biometric screening at ports of entry or exit. There was no automated system to collect advance passenger name records on commercial flights or to cross-check flight manifests with passenger disembarkation data.

In July, Syrian national Jihad Diyab, who had been relocated to Uruguay following his 2014 release from Guantanamo Bay, traveled to Caracas with the perceived intention of continuing onward to Turkey to reunite with his family. He was detained by Venezuelan authorities in late July and deported back to Uruguay.

Venezuela did not respond to a 2015 request from the Spanish government to extradite former ETA member José Ignacio de Juana Chaos, who served 21 years in prison for his role in the killing of 25 people in a series of terrorist attacks. De Juana Chaos has been wanted in Spain since 2010 on charges of “glorifying terrorism.”
**Countering the Financing of Terrorism:** Venezuela is a member of the Caribbean Financial Action Task Force, a Financial Action Task Force-style regional body; and its financial intelligence unit, Unidad Nacional de Inteligencia Financiera, is a member of the Egmont Group of Financial Intelligence Units.

Venezuela’s existing anti-money laundering/counterterrorist financing legal and regulatory framework criminalizes the financing of terrorism and includes obligations for suspicious transaction reporting. There remained; however, significant deficiencies in the terrorist asset freezing regime, including a lack of adequate procedures to identify and freeze terrorist assets.
The US has imposed sanctions blocking property and suspending entry of certain persons contributing to the situation in Venezuela.

On July 10, 2015, the Office of Foreign Assets Control (OFAC) issued regulations to implement the Venezuela Defense of Human Rights and Civil Society Act of 2014 (Public Law 113–278) and Executive Order 13692 of March 8, 2015 (“Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela”).

On 13 November 2017, the EU imposed an arms embargo against Venezuela. It also established the legal framework for sanctions, including travel bans and the freezing of assets, against government officials.
Corruption represents a major obstacle for businesses operating or planning to invest in Venezuela. Most sectors of the Venezuelan economy suffer from endemic corruption, due to the highly politicized and ineffective judiciary that is inefficient in cracking down on corruption and impunity. The Venezuelan legal framework criminalizes several corruption offenses, including extortion, passive and active bribery and abuse of office. However, the legal framework does not include the bribery of foreign officials. Enforcement of anti-corruption legislation in the country is very weak, and government officials do engage in corrupt practices with impunity. Bribery and facilitation payments are widespread. Gifts given in return for an undue advantage are illegal under Venezuelan law; however, the practice is recurrent in most sectors. Information provided by GAN Integrity.

US State Department

Transparency International's 2013 Corruption Perceptions Index ranked Venezuela 160 out of 177 countries, the lowest ranked country in Latin America. Venezuela has anti-corruption laws that criminalize accepting bribes. 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.

Corruption and Government Transparency - Report by Global Security

Political Climate

For decades, Venezuela has been characterised by great social inequality and rampant corruption, which have periodically led to a popular disillusionment with politics. This situation formed the basis for the election of President Hugo Chávez Frías in December 1998 on the promise of massive social reforms, nationalisation of strategic sectors, fighting corruption and a break from the long-ruling political elite, infamous for its interlocking system of privileges. Chávez's controversial policy of '21st century socialism' has led to radical political and social changes, and political unrest and deep social cleavages between supporters and opponents have been characteristic of Chávez's time in office. While Chávez remains popular among the poor majority of Venezuelans, mainly because of his social programmes, he is extremely unpopular among the Venezuelan elite and business community. The opposition accuses the government of being undemocratic, disrespecting private property
rights and inhibiting freedom of speech. In the September 2010 parliamentary elections, Chávez's party won the majority of seats (90) in the National Assembly, but failed to hold on to the two-thirds majority when the opposition gained as much as 59 seats. Up until now, Chávez's government controlled the legislature, judiciary, the state oil company and the majority of state governments. Chávez's health has deteriorated since 2011, when it was announced that he had cancer. In May 2012, it was declared in that the treatment he had received in Cuba had been successful.

The fight against corruption is on the political agenda in Venezuela. Since his inauguration, Chávez has openly declared a zero tolerance policy towards corruption, which has been demonstrated by several public initiatives. His administration has passed an Anti-Corruption Law (in Spanish) in 2003 and established a number of agencies that are mandated to deal with corruption, gathered under an umbrella institution called Poder Ciudadano (in Spanish). However, despite the anti-corruption agencies' formal independence, the government has been criticised for interfering in their affairs in order to secure political support, and for using them as tools to investigate and prosecute opposition members. An example of this is the accusation of corruption and illicit enrichment made by the Public Prosecutor's Office in March 2009 of former presidential candidate and mayor of Maracaibo, Manuel Rosales. According to several sources such as Herald Tribune and Reuters, thousands of opposition supporters protested in Maracaibo against the attempt to arrest the opposition leader, claiming that it was a case of political persecution. Rosales fled to Peru where he was granted political asylum in May 2009. In June 2008, the opposition protested in Caracas after a top anti-corruption official unveiled a blacklist of people, primarily of opposition members, under investigation for corruption. The list could be used to bar key opposition candidates from running in future elections. However, critics claim that the ban is unconstitutional, as none of the individuals on the blacklist had been convicted of a crime. A more recent example is of Leopoldo Lopez, a presidential candidate who was barred from holding office by a government ruling due to alleged corruption, according to Freedom House 2012. This ruling was challenged in the Inter-American Court of Human Rights (IACHR) who stated that Lopez must be allowed to run as he had not been tried in court. The Venezuelan Supreme Court rejected this verdict as it contradicted the constitution and violated Venezuelan sovereignty. In January 2012, Lopez withdrew his candidacy for the presidency as he was in the absurd position of being allowed to run for office but not allowed to hold office if he won.

Corruption is a significant problem in Venezuela, and a systemic culture of corruption exists at most levels of society. At state level, an increasing overlap between Chávez's United Socialist Party and the state has led to the abuse of public resources for electoral campaigns, according to the Bertelsmann Foundation 2012. Similarly, Freedom House 2012 points to the non-transparent administration of state resources, reporting that several large development funds are controlled by the executive branch without any oversight and discrepancies in their figures remain unexplained. According to Global Integrity 2011, the Comptroller General, which has the power to provide oversight of public funds, is controlled solely by the ruling party. The lack of controls and oversight provides fertile ground for corruption. According to Transparency International's Global Corruption Barometer 2010, nearly 65% of the surveyed households perceive the government's actions against corruption to be 'ineffective'. According to the same report, 25% report having paid a bribe the previous year, while the police are reported to be the most corruption-prone public institution. According to the regional survey Latinobarómetro 2011, 23% Venezuelan households would pay a bribe to obtain public services and utilities while 49% is of the opinion that the government needs to
reduce corruption further in order to improve democracy. On the other hand, 61% of surveyed households perceive crime and social insecurity to be larger problems than corruption and 62% believe that the government is able to fight it. Hence, Chávez’s strong rhetoric against corruption seems to have had an effect on Venezuelans’ perception of the problem as while most perceive the level of corruption to be an increasingly pervasive problem in the country, the majority also perceives government anti-corruption efforts and institutions as positively affecting the situation. Still, however, petty corruption is a large problem in the country, and the Global Corruption Barometer 2010 reveal that Venezuela ranks among the countries in the region where most households have been victims of corruption themselves.

Business and Corruption

The management of Venezuela’s oil wealth has been a dominant economic and political issue for most of the past 100 years. Venezuela has a huge investment and economic growth potential and its natural resource wealth has made it an attractive place to invest. Officially, Venezuela welcomes foreign investment and provides equal treatment to local and foreign companies. Nevertheless, political and regulatory uncertainty has seriously weakened Venezuela’s capacity to attract foreign investment, as reported by companies in the World Economic Forum Global Competitiveness Report 2011-2012. Other factors too, such as foreign currency regulations, inefficient bureaucracy and corruption inhibit the business climate and should be noted by investors considering doing business in Venezuela. Similarly, the US Department of State 2011 reports that foreign direct investment in Venezuela has been lower in recent years than in most other Latin American countries as a result of a cumbersome business climate as well as a restrictive legal framework in the country.

Access to foreign exchange is a major barrier to trade in Venezuela. Foreign exchange control is administrated by the Foreign Exchange Commission (Comisión de Administración de Divisas - CADIVI), which authorises the purchase and sale of foreign currency. The Transparency International Global Corruption Report 2009 reports that the government’s management of foreign currency makes access to foreign currency a cumbersome bureaucratic process. Applicants fulfilling all the requirements to obtain foreign currency might still have their application denied and there are no appeal mechanisms. The same report also reveals that CADIVI’s officials allegedly request illegal commissions of up to 30% of the total value of the currency request in order to speed up the process.

Several sources indicate that corruption is a key constraint for doing business in Venezuela. In Transparency International Global Corruption Barometer 2010, the private sector scores 3.1 on a 5-point scale (1 ‘not at all corrupt’ and 5 ‘extremely corrupt’). According to the World Bank & IFC Enterprise Surveys 2010, 38% of the companies surveyed identify corruption as a major constraint to doing business. They also cite transport security, customs and ports as serious problems for their business activities. The informal or shadow economy in Venezuela is less of a hindrance to business than in the region, according to the World Bank & IFC Enterprise Surveys 2010. The source reports that only 10% of companies surveyed report that they identify the practices of competitors in the informal sector as a major constraint compared to the regional average of 30%. Furthermore, public procurement is tainted by corruption and lack of transparency. Thus, the US Department of State 2011 reports that a great majority of public contracts are awarded without open competition, while Global Integrity 2011 reveals that political considerations prevail in most procurement cases, with
conflicts of interest constantly present. Foreign investors considering establishing themselves in Venezuela are generally advised to consult with experienced attorneys and to develop, implement and strengthen integrity systems, and carry out extensive due diligence before committing funds or when already doing business in the country.

**Regulatory Environment**

According to Global Integrity 2011, Venezuela’s regulatory environment continues to suffer from inefficiency, and companies investing in the country often face inconsistent application of regulations. Thus, cumbersome bureaucracy is a major constraint on business operations in Venezuela, presenting opportunities for rent-seeking and encouraging corruption. Similarly, business executives surveyed in The World Economic Forum Global Competitiveness Report 2011-2012 perceive government administrative requirements to be quite burdensome, especially foreign currency regulations. Moreover, business executives also report that government policy-making is fairly opaque and that government officials usually favour well-connected companies and individuals when deciding on policies and contracts. Commercial regulations can be ambiguous and inconsistent, and the lack of transparency increases start-up and overall operational costs. Given the often time-consuming process of obtaining licenses, many companies resort to irregular methods in order to shorten the waiting time and hire an agent, a so-called ‘gestor’, with connection to decision-makers, as pointed out by Global Integrity 2009. This overall perception is corroborated by figures from the World Bank & IFC Doing Business 2012, which illustrate that, when compared to the regional averages, starting a company and obtaining business licences in Venezuela can be very time-consuming and bureaucratic. On the other hand, the process is relatively inexpensive and no minimum capital is required. According to the World Bank & IFC Enterprise Surveys 2010, almost 28% of senior management time is spent dealing with regulatory requirements and 23% of the surveyed companies identify licensing and permits as a major constraint for doing business. Both figures are higher than the regional averages.

According to the US Department of State 2011, the Venezuelan Constitution of 1999 (in Spanish) governing foreign investment generally gives equal treatment to local and foreign companies, except in certain sectors such as media, engineering and pharmacy in which Venezuelan nationals or the state must hold at least 80% of the equity. Nationalisation of important economic sectors of society is a high priority for the Chávez administration, and several sectors have already been subject to the nationalisation reform, most notably the oil sector. The Hydrocarbons Law (in Spanish) ensures that all oil production and distribution activities are the domain of the Venezuelan state. As a result, foreign companies already operating in this sector in 2001 had their operating agreements and licences invalidated, and royalties for certain projects were raised considerably. In 2007, foreign-owned companies operating in the Orinoco Belt, such as ConocoPhillips, Chevron, ExxonMobil, BP, Statoil and Total were forced into joint ventures with the state-owned oil company, Petróleos de Venezuela, S.A. (PDVSA). These controversial regulatory measures have led to reluctance on the part of international oil companies to further invest in Venezuela. Foreign companies considering investing in Venezuela are advised to contact the Venezuelan Council for Investment Promotion (CONAPRI - Consejo Nacional de Promoción de Inversiones), which is a private non-profit organisation providing relevant information on investment legislation, registration requirements, visas and licences.
Companies operating in Venezuela have experienced a change in conditions under Chávez’s presidency. After his re-election in late 2006, Chávez proclaimed that he would accelerate the drive towards ‘21st century socialism’ by further nationalising the economy, and, according to the US Department of State 2011, some of Chávez’ reforms have led to reduced property rights. The Bertelsmann Foundation 2012 also states that property rights are not sufficiently protected in Venezuela, as the government has started taking over so called ‘strategic interests’ of the people, for example food production, processing and distribution, construction materials, utilities, media, telecommunications, buildings, real estate and hotels. Acting in ‘the people’s interest’ the government requires no proof in order to seize private goods. Private investment has generally been deterred by this uncertain legal and regulatory framework, although many companies with existing investments in Venezuela have been recording high profits thanks to high economic growth.

Venezuela’s judicial system is accessible to foreign entities seeking to resolve investment disputes and foreign investors may pursue property claims through court. US Department of State 2011 reports that while the judicial system is often slow, inefficient and corrupt, foreign entities do not generally suffer discrimination in legal proceedings. Nevertheless, business executives surveyed in the World Economic Forum Global Competitiveness Report 2011-2012 report that the judiciary is often politically influenced by members of government, individual citizens or companies. Venezuela is a member of the International Centre for the Settlement of Investment Disputes (ICSID) and the New York Convention of 1958, however, there are special regulations that define which arbitration body Venezuelan state-owned companies can use. For instance, the 2001 Hydrocarbon Law prohibits the PDVSA from entering into agreements that provide for international arbitration. Access the Lexadin World Law Guide for a collection of legislation in Venezuela.
Section 3 - Economy

Venezuela remains highly dependent on oil revenues, which account for almost all export earnings and nearly half of the government’s revenue. The country ended 2015 with an estimated 10% contraction in its GDP, 275% inflation, widespread shortages of consumer goods, and declining central bank international reserves. The IMF forecasts that the GDP will shrink another 8% in 2016 and inflation may reach 720%.

Falling oil prices since 2014 have aggravated Venezuela’s economic crisis. Insufficient access to dollars, price controls, and rigid labour regulations have led some US and multinational firms to reduce or shut down their Venezuelan operations. Market uncertainty and state oil company PDVSA’s poor cash flow have slowed investment in the petroleum sector, resulting in a decline in oil production.

Under President Nicolas MADURO, the Venezuelan Government’s response to the economic crisis has been to increase state control over the economy and blame the private sector for the shortages. The Venezuelan government has maintained strict currency controls since 2003. On 17 February 2016, the Venezuelan government announced a change from three official currency exchange mechanisms to only two official rates for the sale of dollars to private sector firms and individuals, with rates based on the government’s import priorities. The official exchange rate used for food and medicine imports was devalued to 10 bolivars per dollar from 6.3 bolivars per dollar. The second rate moved to a managed float. These currency controls present significant obstacles to trade with Venezuela because importers cannot obtain sufficient dollars to purchase goods needed to maintain their operations. MADURO has used decree powers to enact legislation to deepen the state’s role as the primary buyer and distributor of imports, further tighten currency controls, cap business profits, and extend price controls.

Agriculture - products:
com, sorghum, sugarcane, rice, bananas, vegetables, coffee; beef, pork, milk, eggs; fish

Industries:
agricultural products, livestock, raw materials, machinery and equipment, transport equipment, construction materials, medical equipment, pharmaceuticals, chemicals, iron and steel products, crude oil and petroleum products

Exports - commodities:
petroleum and petroleum products, bauxite and aluminium, minerals, chemicals, agricultural products

Exports - partners:
US 26.6%, India 13.7%, China 11.7%, Cuba 6.4% (2015)

Imports - commodities:
agricultural products, livestock, raw materials, machinery and equipment, transport equipment, construction materials, medical equipment, petroleum products, pharmaceuticals, chemicals, iron and steel products
Imports - partners:

US 18.4%, China 15.3%, Brazil 9.7%, Colombia 5.9%, Mexico 4.2% (2015)

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**Banking**

As of December 2010, Venezuela’s banking system consisted of 42 institutions, 30 of them Venezuela’s Central Bank (BCV), which designs and implements monetary policy; the Superintendency of Banks (SUDEBAN), which monitors the sector and ensures the financial soundness of all financial operators; the Deposit Guaranty Fund (FOGADE), which guarantees deposits in the banking system; and the Ministry of Finance, which sets overall policy.

The banking sector has been challenged by state takeovers of multiple banks in the past two years. The government arrested bankers and issued corruption-related arrest warrants for others who had fled the country.

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**Stock Exchange**

Venezuela’s 1999 Constitution generally provides equal treatment for foreign and domestic investors, although investment in some sectors is restricted. As long as the foreign investor has registered with the National Securities Superintendency, it can buy or sell stocks and bonds in Venezuelan capital markets. Foreign investors may also buy shares directly in Venezuelan companies. Although no prior registration is generally required prior to making foreign investments, subsequent registration with the Superintendency of Foreign Investments is required. On January 31, 2011, the GBRV launched the Bicentennial Public Securities Exchange to sell government and corporate bonds. This new market will compete with the private Caracas Stock Exchange, but will function differently in that entities that can participate by issuing bonds include “organized communities” and state entities.
Section 4 - Investment Climate

Executive Summary

Venezuela is located on the northern coast of South America. Political tensions, state interventions in the economy, macroeconomic distortions, physical insecurity, corruption, interruptions in the supply of electricity, a challenging labor environment, 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. Low global oil prices have aggravated Venezuela’s economic crisis. According to Central Bank of Venezuela (BCV), the country finished 2015 with an estimated 5.7 percent economic contraction, 180.9 percent inflation, and widespread shortages of consumer goods. For 2016, the International Monetary Fund (IMF) projects that the economy will shrink another 8 percent, with inflation reaching 720 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 94 percent of export earnings, 40 percent of government revenues, and 11 percent of Gross Domestic Product (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 hard currency, 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 the Venezuelan government’s (GBRV’s) 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 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. In early 2016, the GBRV has promulgated regulations to open a new alternative foreign exchange mechanism for the private sector to buy and sell dollars, but the new system suffers from a lack of transparency and 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.

Table 1

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<td>2015</td>
<td>158 of 167</td>
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1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

Despite government rhetoric welcoming foreign investment, the GBRV has thus far remained unwilling to adopt systemic changes to protect and promote 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.

Other Investment Policy Reviews


Laws/Regulations on Foreign Direct Investment

A 2014 foreign investment law reduced foreign investors’ statutory rights compared to the prior regime. The law designated the Venezuelan currency commission, the National Center for Foreign Commerce (CENCOEX) as the 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.

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. The 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, 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 the investment.
The pay out of earnings and dividends is 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).

By law, 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. New regulations should eventually be available on CENCOEX’s website: http://www.cencoex.gob.ve/.

Industrial Promotion

Energy and Mining

The GBRV retains state control of the hydrocarbons sector. 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. Minority partners seeking to exit joint venture investments in the petroleum sector have faced difficulties securing requisite GBRV approval to do so.

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, which 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 del Orinoco (the Orinoco Heavy Oil Belt), 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.

Since the December 2015 opposition coalition victory in the National Assembly, there have been public discussions about the executive branch’s ability to enter into foreign contracts without legislative oversight. In February 2016, President Maduro declared through decree powers that the Mining Arc of Orinoco, a 111,843 square kilometer zone in Bolivar State, was certified for exploitation and presented favorable investment terms to certain international mining companies. The National Assembly has proposed no new energy and mining laws. See the section on the transparency of the regulatory system for more information.

Limits on Foreign Control and Right to Private Ownership and Establishment

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
Screening of FDI

Venezuela’s current investment law contains language regarding 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 an 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.

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. Since 2003, the GBRV has maintained strict currency controls. In March 2016, Venezuela again modified its official FX mechanisms, and now authorizes two official FX mechanisms to sell USD to private sector firms and individuals.

The BCV oversees and provides daily information about the two FX mechanisms. The first, the Protected Rate, or DIPRO, sells USD at the official exchange rate of 10 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.

The second mechanism, the Complementary Rate or DICOM, is a managed floating rate, used for imports of non-priority goods and services. The government has not yet published regulations defining which sectors are eligible to purchase FX at either rate. The BCV publishes the DICOM rate daily.

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 exchange rate depreciation. 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 DICOM to repatriate earnings, at a significant devaluation compared to the DIPRO exchange rate, but DICOM 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 significantly reaching 1134 VEF/USD on April 14, 2016, a devaluation of 410% since March 1, 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

Venezuelan trade association Conindustria estimates that since 1998 the GBRV has expropriated more than 1,400 private businesses. The affected sectors include 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.

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 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. 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
debtor 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 (ICSID).

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 ICSID Convention. Twenty cases pending before ICSID remain active. These pending cases are not affected by Venezuela’s renunciation of the ICSID convention. Between the date of the notice of renunciation and the date when it became effective, foreign investors had an additional six months file new claims against Venezuela. Because the U.S. and Venezuela do not have a bilateral investment treaty, ICSID may not have jurisdiction to consider claims raised by U.S. businesses against the GBRV. Some businesses have instead filed claims based on the jurisdiction in which subsidiaries of the U.S. based parent corporation are located, when a bilateral investment treaty is in place in that jurisdiction. 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 – Local Courts

According to Venezuelan lawyers, 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 2014 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 2014 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 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. 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 2015, the World Bank ranked Venezuela 130 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 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 Rights (IPR) regime remains inefficient and ineffective. Its 1955 Industrial Property Law (IPL), the primary IPR legislation governing trademarks and patents, is in conflict with the 1999 Venezuelan Constitution, domestic labor law, and international agreements to which Venezuela is a signatory. 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 failed and there have been no new developments since 2014. Limited improvements in specific areas, such as law enforcement cooperation and the new “one-stop” SAPI website, offer glimmers of hope, and IP lawyers are optimistic about possible reforms under the new National Assembly elected in December 2015, but any legislative reforms, even if successfully enacted into law, would take time to implement. In 2015, SAPI adjusted the fee structure for patents and trademarks, forcing all foreign rights holders to pay fees in dollars at the strongest exchange rate.

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.

According to a multi-year study by the Business Software Alliance (BSA) released in 2014, Venezuela ranked as one of the top 20 economies worldwide for unlicensed software and 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. According to the BSA report, the amount more than doubled from 2007 to 2013. No Venezuelan markets were identified in 2015’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 IP protection. The Property Rights Alliance’s 2015 International Property Rights Index (IPRI) ranked Venezuela 125 out of 129 countries, a slight improvement from 2014 when IPRI ranked Venezuela 131 out of 131 countries.

Patents and Trademarks
SAPI has issued no new patents since 2007. Venezuela’s 1955 IPL provides that patents of invention, improvement, model, or industrial drawing are valid for five or ten years, depending on the preference of the filer. Patents for technologies developed abroad may be valid for 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 IPL excludes several items, including medicine and pharmaceuticals, financial systems and plans, industrial processes, and speculative or theoretical inventions, from patent protection in violation of Article 27 of the TRIPS Agreement.

Venezuelan IP lawyers note that SAPI’s handling of trademarks is less hostile to rights-holders than its handling of patents, but trademark issues continue to be a problem. Trademarks must be filed with SAPI and published in SAPI’s 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 the process 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. According to SAPI’s IP bulletin, the number of trademark registrations dropped from 21,000 in 2014 to 19,600 in 2015. The decrease is due, in part, to companies pursuing trademarks in other Andean countries such as Colombia where IP laws have more clarity and stronger enforcement. From a legal perspective, companies feel trademarks obtained in other AC countries may still be enforceable in Venezuela at a later date. In addition, new fee structures that have increased the overall price for trademarks for foreign companies could also be a factor. Implemented in May 2015, the new fee structure forces foreign rights holders to pay patent and trademark fees in U.S. dollars calculated at the strongest exchange rate, currently 10 bolivars per U.S. dollar, rather than the weaker DICOM rate of approximately 340 bolivars per U.S. dollar. Legal representatives in Venezuela and their foreign rights holders have complained that although the higher fees apply equally to domestic and foreign companies when expressed in bolivars, the regulation requiring foreign rights holders to pay the fees in U.S. dollars at the official exchange rate is discriminatory. The overall effect is a substantial increase in patent and trademark fees for foreign rights holders because they can no longer use more preferential exchange rates for these transactions.

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

Lengthy legal processes, inexperienced judges, and insufficient investigative and prosecutorial resources significantly hamper IP enforcement in Venezuela. The GBRV abolished the Venezuelan copyright and trademark enforcement branch of the federal police in 2010. Although the GBRV has not replaced this organization, SENIAT, the Venezuelan tax and customs authority, occasionally conducts low-level raids against known illegal markets or small vendors of counterfeit goods. In February 2016, SENIAT officials met with Mexican Institute of Industrial Property (IMPI) to finalize a draft Memorandum of Understanding between the two countries to facilitate cooperation on industrial IP. Legal experts, however, note that IP laws are unevenly enforced and cases can take years to resolve without guarantee of a positive outcome. The process is so slow and the penalties are so low that the system does not deter counterfeiters.
Data from industry representatives indicates that copyright piracy, including piracy over the Internet, and trademark counterfeiting remains widespread. Venezuela remains non-compliant with Section Four, Part Three, of the TRIPS Agreement, which mandates special requirements related to border enforcement measures. However, there are examples of cooperation. According to an Interpol press release, Venezuelan law enforcement officials participated in an international operation (Operation Jupiter VII) in October 2015 against criminal organizations involved in counterfeiting of goods that included 11 South American countries. Numbers specific to Venezuela were not available, but this operation led to the overall seizure of 800,000 fake articles with an approximate value of $130 million and the arrest or investigation of 805 suspects.

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


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:

7. 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 judiciary, the electoral authority, and a theoretically independent branch composed of the Attorney General, the Comptroller General, and the Public Defender (or ombudsman). International observers believe the executive branch exercises undue influence over the judicial, regulatory, and electoral authorities. In December 2015 a coalition of opposition parties won control of the National Assembly. Proposed laws are generally presented for two rounds of discussion in the National Assembly, but the PSUV-dominated Supreme Court has struck down all laws that the opposition-controlled National Assembly has passed, to date. The Supreme Court has ruled that the president has the ability to issue new laws by decree, circumventing the normal legislative process. Executive agencies generally develop and promulgate implementing regulations without consulting private sector representatives of the affected sectors.

8. 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 7 percent of GDP in the first three quarters of 2015. 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 181 percent in bolivar terms, year on year, in April 22nd 2016. 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.

Venezuela’s banking sector is 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 SUDEBAN data, in March 2016 there were 34 banking institutions—24 private and 10 public—down from 59 in November 2009. Public-sector banks held an estimated 31 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 52 percent in the twelve months to March 2016, 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 180 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 548 billion (at the official exchange rate), grew 96 percent from March 2015 to March 2016. Public and private universal and commercial banks control 99 percent of total banking sector assets. The three largest private universal banks are: Banesco, with 15 percent of total sector assets March 2016; Banco Provincial, with 12 percent; and, Banco Mercantil, with 11 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 20 percent of total sector assets in March 2016. Banco Bicentenario was formed in 2010 through the nationalization of four private banks; it held 6 percent of assets as of March 2016.

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 the DICOM FX mechanism (see Conversion and Transfer Policies). Venezuelans may not withdraw dollars from such accounts in Venezuela, however.

9. 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. 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.

10. 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.

11. Political Violence

Venezuela’s political climate is polarized between supporters and opponents of the GBRV and policies of the ruling PSUV party. There were, however, no major incidents of political violence that specifically targeted foreign owned companies or installations through March 2016. 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.

12. Corruption

Venezuela has comprehensive anti-corruption laws but enforcement is weak, as indicated by Venezuela’s ranking by Transparency International of 158 out of 167 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

13. 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, the 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.

14. 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.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

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

<table>
<thead>
<tr>
<th>Host Country Statistical source</th>
<th>USG or international statistical source</th>
<th>USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic Data</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Year</td>
<td>Amount</td>
</tr>
<tr>
<td>Host Country Gross Domestic Product (GDP) ($M USD)</td>
<td>2012</td>
<td>316,482</td>
</tr>
<tr>
<td>Foreign Direct Investment</td>
<td>Host Country Statistical source</td>
<td>USG or international statistical source</td>
</tr>
<tr>
<td>U.S. FDI in partner country ($M USD, stock positions)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Host country’s FDI in the United States ($M USD, stock positions)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Total inbound stock of FDI as % host GDP</td>
<td>2012</td>
<td>12.8</td>
</tr>
</tbody>
</table>

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)
<table>
<thead>
<tr>
<th>Inward Direct Investment</th>
<th>Outward Direct Investment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Inward</td>
<td>51,817</td>
</tr>
<tr>
<td>Netherlands</td>
<td>10,693</td>
</tr>
<tr>
<td>United States</td>
<td>9,282</td>
</tr>
<tr>
<td>France</td>
<td>3,985</td>
</tr>
<tr>
<td>Spain</td>
<td>3,500</td>
</tr>
<tr>
<td>Switzerland</td>
<td>2,273</td>
</tr>
</tbody>
</table>

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

Source: IMF Coordinated Direct Investment Survey

Table 4: Sources of Portfolio Investment

<table>
<thead>
<tr>
<th>Portfolio Investment Assets</th>
<th>Top Five Partners (Millions, US Dollars)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Total</td>
</tr>
<tr>
<td>All Countries</td>
<td>8,228</td>
</tr>
<tr>
<td>United States</td>
<td>4,726</td>
</tr>
<tr>
<td>UK</td>
<td>894</td>
</tr>
<tr>
<td>Switzerland</td>
<td>754</td>
</tr>
<tr>
<td>Germany</td>
<td>650</td>
</tr>
<tr>
<td>Argentina</td>
<td>76</td>
</tr>
</tbody>
</table>

Source: IMF Coordinated Portfolio Investment Survey
Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chief of State and Cabinet Members, please access the following - Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments

Legal system:

civil law system based on the Spanish civil code

International organization participation:

Caricom (observer), CD, CDB, CELAC, FAO, G-15, G-24, G-77, IADB, IAEC, IBRD, ICAO, ICC (NGOs), ICCT, ICRC, IDA, IFAD, IFC, IFRCs, IHO, ILO, IMF, IMO, IMHO, Interpol, IOC, IOM, IPU, ITSO, ITU, ITUC (NGOs), LAES, LAIA, LAS (observer), Mercosur, MIGA, NAM, OAS, OPANAL, OPCW, OPEC, PCA, Petrocaribe, UN, UNASUR, UNCTAD, UNESCO, UNHCR, UNIDO, Union Latina, UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO
Exchange controls are currently in effect. Foreign currency transactions are controlled by the Commission of Administration of Currency (CADIVI). Also all foreign currencies entering the territory were to be mandatory sold to the Central Bank of Venezuela. Financial institutions cannot engage in a foreign exchange business without prior approval of CADIVI and/or Central Bank of Venezuela.

### Treaty and non-treaty withholding tax rates

<table>
<thead>
<tr>
<th>Dividends</th>
<th>Interest</th>
<th>Royalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Non Treaty Countries</td>
<td>34</td>
<td>4.95</td>
</tr>
<tr>
<td>Treaty Countries:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andean Community</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Austria</td>
<td>5/15</td>
<td>4.95/10</td>
</tr>
<tr>
<td>Barbados</td>
<td>5/10</td>
<td>5/15</td>
</tr>
<tr>
<td>Belarus</td>
<td>5/15</td>
<td>5</td>
</tr>
<tr>
<td>Belgium</td>
<td>5/15</td>
<td>10</td>
</tr>
<tr>
<td>Brazil (Not effective)</td>
<td>10/15</td>
<td>15</td>
</tr>
<tr>
<td>Canada</td>
<td>5/15</td>
<td>10</td>
</tr>
<tr>
<td>China</td>
<td>5/10</td>
<td>5/10</td>
</tr>
<tr>
<td>Cuba</td>
<td>10/15</td>
<td>10</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>5/10</td>
<td>10</td>
</tr>
<tr>
<td>Denmark</td>
<td>5/15</td>
<td>5</td>
</tr>
<tr>
<td>United Arab Emirates</td>
<td>5/10</td>
<td>10</td>
</tr>
<tr>
<td>France</td>
<td>5/15</td>
<td>5</td>
</tr>
<tr>
<td>Country</td>
<td>Due Date</td>
<td>5/10</td>
</tr>
<tr>
<td>-----------------------</td>
<td>----------</td>
<td>------</td>
</tr>
<tr>
<td>Germany</td>
<td>5/15</td>
<td>5</td>
</tr>
<tr>
<td>Indonesia</td>
<td>10/15</td>
<td>10</td>
</tr>
<tr>
<td>Iran</td>
<td>5/10</td>
<td>5</td>
</tr>
<tr>
<td>Italy</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Korea</td>
<td>5/10</td>
<td>5/10</td>
</tr>
<tr>
<td>Kuwait</td>
<td>5/10</td>
<td>5</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0/10</td>
<td>5</td>
</tr>
<tr>
<td>Norway</td>
<td>5/10</td>
<td>5/15</td>
</tr>
<tr>
<td>Portugal</td>
<td>10/15</td>
<td>10</td>
</tr>
<tr>
<td>Qatar (Not effective)</td>
<td>5/10</td>
<td>5</td>
</tr>
<tr>
<td>Russia</td>
<td>10/15</td>
<td>5/10</td>
</tr>
<tr>
<td>Spain</td>
<td>10</td>
<td>4.95/10</td>
</tr>
<tr>
<td>Sweden</td>
<td>5/10</td>
<td>10</td>
</tr>
<tr>
<td>Switzerland</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>5/10</td>
<td>15</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>United States</td>
<td>5/15</td>
<td>4.95/10</td>
</tr>
<tr>
<td>Vietnam</td>
<td>5/10</td>
<td>10</td>
</tr>
</tbody>
</table>

(1) On 90% of the gross payment.
Methodology and Sources

Section 1 - General Background Report and Map
(Source: CIA World Factbook)

Section 2 - Anti – Money Laundering / Terrorist Financing

<table>
<thead>
<tr>
<th></th>
<th>Lower Risk</th>
<th>Medium Risk</th>
<th>Higher Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FATF List of Countries identified with strategic AML deficiencies</strong></td>
<td>Not Listed</td>
<td>AML Deficient but Committed</td>
<td>High Risk</td>
</tr>
<tr>
<td>Compliance with FATF 40 + 9 recommendations</td>
<td>&gt;69% Compliant or Fully Compliant</td>
<td>35 – 69% Compliant or Fully Compliant</td>
<td>&lt;35% Compliant or Fully Compliant</td>
</tr>
<tr>
<td><strong>US Dept of State Money Laundering assessment (INCSR)</strong></td>
<td>Monitored</td>
<td>Concern</td>
<td>Primary Concern</td>
</tr>
<tr>
<td><strong>INCSR - Weakness in Government Legislation</strong></td>
<td>&lt;2</td>
<td>2-4</td>
<td>5-20</td>
</tr>
<tr>
<td><strong>US Sec of State supporter of / Safe Haven for International Terrorism</strong></td>
<td>No</td>
<td>Safe Haven for Terrorism</td>
<td>State Supporter of Terrorism</td>
</tr>
<tr>
<td><strong>EU White list equivalent jurisdictions</strong></td>
<td>Yes</td>
<td>Arab League / Other</td>
<td>No</td>
</tr>
<tr>
<td>International Sanctions</td>
<td>None</td>
<td>UN , EU or US</td>
<td></td>
</tr>
<tr>
<td>UN Sanctions / US Sanctions / EU Sanctions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Corruption Index (Transparency International)</strong></td>
<td>&gt;69%</td>
<td>35 – 69%</td>
<td>&lt;35%</td>
</tr>
<tr>
<td><strong>Control of corruption (WGI) Global Advice Network</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>World government Indicators (Average)</strong></td>
<td>&gt;69%</td>
<td>35 – 69%</td>
<td>&lt;35%</td>
</tr>
<tr>
<td><strong>Failed States Index (Average)</strong></td>
<td>&gt;69%</td>
<td>35 – 69%</td>
<td>&lt;35%</td>
</tr>
<tr>
<td><strong>Offshore Finance Centre</strong></td>
<td>No</td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>
Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: CIA World Factbook)

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: US State Department)

Section 5 - Government

Names of Government Ministers and general information on political matters.


Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: OECD Global Forum on Transparency and Exchange of Information for Tax Purposes, PKF International)
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